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Remuneration review TOR and chair



David Macdonald

The Terms of Reference document for the Review of Listed Provider Remuneration has been released.

The review is being conducted by an Advisory Panel, made up of an independent chair, a New Zealand Law Society representative, a Ministry of Justice official, and the Legal Services Agency Chief Executive. The chair is Victoria University adjunct professor, and former Auditor General, David Macdonald (pictured).

The review will look at:

- all rates, including hourly, fixed fees, and disbursements
- rates applicable to all schemes (legal aid, duty solicitor, and police detention legal assistance)
- rates applicable to all law types

The panel had its first meeting on 28 March 2007, reviewed the Terms of Reference and set out the key issues to address and to follow up. The review is scheduled to be completed by 30 September 2007.

The terms of reference are at <http://www.lsa.govt.nz/Currentinitiatives.php>

Website

The new website has received a lot of, mostly favourable, feedback. The reason for the re-design was to make the information on the site more accessible, and most of the comments about the site reflect that this has been achieved. Comments have ranged from 'excellent layout' and 'easy to find your way around' to 'more professional looking' and 'great new site'.

The burst of advertising about what the Agency does and where to get more information has been completed, and had a significant impact on the website traffic. There was an average of 11,000 hits per day on the website through February, but during the peak of the advertising there were 48,000 hits in a single day. The number of hits stayed over 35,000 per day for the following week, and is still in the high teens and early 20's.

The website can be a first point of contact for information ranging from application forms, to legal aid news and current information, to searching the provider manual.



Legal Services Amendment Act implementation

Feedback indicates that lawyers and staff are coping well with the Legal Services Amendment Act, a month on from one of the most significant changes to improve peoples' access to justice. Two issues that have arisen have been forms and the complexity of communicating the new debt requirements.

Forms

Generally feedback from providers about application forms is that they are easier to use and follow. But while being easier to follow, the criminal legal aid application forms are taking a bit longer for Duty Solicitors fill in, as was predicted when the forms were tested. This issue has been mitigated by reviewing the roster numbers to allow for the extra few minutes per application.

It is also important for providers to note that the one month for transition to the new forms is now up and only new forms will be accepted. These can be ordered and/or downloaded directly from the listed provider section at www.lsa.govt.nz

Attached to the back of the next print run of forms will be the *What you need to know* information sheets for applicants to take away.

Debt

A challenge of the Amendment Act is explaining debt requirements. Following feedback during the provider seminars, the Agency chose to advise providers, but not applicants, the Prescribed Repayment Amount (PRA) for a case because of the complexity and potential for misunderstanding by applicants. PRAs are the upper limit of what a person will have to repay for their case. However the Agency does inform the applicant of their interim repayment which is what the aided person is required to repay while the case is ongoing.

It is also useful to remind you that the Agency sets the interim repayment on an estimate of the cost of services and that in a minority of cases this may be too high. If you think this is possible, you can submit an estimate of the total cost of services for the Agency to consider (as per the Provider Manual at <http://www.lsa.govt.nz/LPmain.php>).

We are considering further improvements to our letters to legally aided people, and providers.

If you are having any difficulties with legal aid because of the Amendment Act, or for any other reason, contact your nearest legal aid office.



Robyn Nicholas

Provider seminars feedback

More than 600 people attended the training seminars coordinated with the New Zealand Law Society's Continuing Legal Education throughout the country. This is an excellent number for a training seminar, and the content was well received.

The Director of Education at the New Zealand Law Society, Dick Edwards has provided the following feedback from attendees:

- 99% thought the content was pitched at the right level, and 1% thought that the pitch of the seminar was too basic.
- 96% felt that the opportunity for audience participation was about right, 1% that there was too much opportunity, and 3% felt there was not enough opportunity.
- 87% of attendees said that their expectations were met, 11% that they were exceeded, and 2% of attendees said that their expectations were not met.

The evaluation form feedback included comments like:

- "The materials are excellent and will be very valuable in the future"
- "Good to see the Agency's policies and procedures so well explained"
- "Topics well explained and made easy to digest"
- "Dry subject handled well"
- "Good to get perspective of both the practitioners and the Agency staff - gave good balance"

A number of participants also used the evaluation form to comment on remuneration and the access to justice issues.

CLC national funding

The Purchase Plan and National Funding Policy have been distributed to community law centres (CLCs) to help them prepare their service delivery strategies and plans. The funding policy has been developed with CLCs over the past year.

The overarching framework for distribution of funding among CLCs is a balance of:

- Aiming for optimum access coverage
- Equitable access relative to the size and nature of unmet legal needs and the community
- The monies available to fund CLCs
- The adequacy of funding to individual CLCs to enable effectiveness

Parts of the funding policy will require additional work with CLCs before they can be implemented as the Agency aims to achieve maximum coverage and equity of access.

For 2006/07, \$9.67 million in funding was allocated among 27 CLCs.

The primary consideration of the Purchase Plan 2007-2010 is to ensure funding is available to maintain the present levels of core CLC services. That includes restoring access to community legal services where this has been disrupted by the termination of contracts, and to address gaps in accessibility in south Waikato, south Taranaki, Tararua, south Canterbury and the West Coast, and for the disabled and refugee/migrant communities in the Auckland region.

Legal Aid for private mediation

One of the changes brought about by the recent Amendment Act allows for private mediation to be funded through legal aid. Grants will be made only if the matter is suitable for private mediation and there is a reasonable likelihood that private mediation will resolve the whole or part of the dispute. The policy is set out in full in the Provider Manual and on the website, www.lsa.govt.nz in the For Listed Providers section.

In summary private mediation is a facilitated process to resolve a dispute, and is expected to result in a written agreement between the parties. It is led by a trained mediator, who may be a lawyer.

If the matter is not resolved by private mediation, the legally aided person may seek to amend their grant to cover other resolution options. In this situation, the Agency will require details of the outcome of the mediation. In addition, the Agency must be informed of any offers that were made at the mediation and the reasons why these were not accepted.

Payment for providers for debt assistance – interim policy

Requests for payment for attendances relating to legal aid repayments will only be considered in special circumstances. Special circumstances include situations where:

- the client has special communication needs requiring extra assistance of the provider, e.g. English as a second language which may mean they have difficulty understanding spoken English over the phone, or a disability making phone communication with the Agency's Debt Management Group (DMG) too complicated for the applicant
- the client's financial situation is unusually complicated and they require extra face to face assistance
- the client has tried but is unable to resolve the issues with the DMG directly. In such a situation, the Agency expects that the client would discuss the issues with the DMG in the first instance.

The Agency recognises that there may be times when it is appropriate to make additional payments for providing advice to clients on debt-related matters. Providers will need to describe the special circumstances that justify the additional work. For example, if the provider helps the client with a request to temporarily stop or defer payments, the provider will need to give the reasons why the client was unable to arrange this directly with the DMG.

Providers are required to submit;

- an estimate on Form 2 Estimate for criminal proceedings where the substantive matter is criminal;
- an amendment application on Form 9 Application for amendment to Grant where the substantive matter is civil or family.

Legal aid supply and demand report released

The Legal Services Agency's Analysis of the supply, distribution and assignment to legal aid providers in New Zealand 2005/06 has been released.

Margaret Pearson, the Agency's Manager Service Contracts says, "This report shows that demand for legal aid has grown, that most legal aid lawyers have significant experience, and that overall, the number of providers listed to do legal aid work is similar to the previous year."



Margaret Pearson

Some of the key findings from the 2005/06 analysis, include:

- For criminal legal aid, there was a 12% increase in grants, while there was a 1% decrease in active providers. The number of listed providers stayed the same. More than 70% of active criminal legal aid providers have 9 or more years experience, and another 20% have between 4 and 9 years experience.
- For family legal aid, there was a decrease in the number of grants (<1%) and a decrease in the number of active providers (6%), while the number of listed providers increased by one. 65% of active family legal aid providers have 9 or more years experience, and another 24% have between 4 and 9 years experience.
- For mental health legal aid, there was an increase in the number of grants (4%) and an increase in the number of active providers (4%), while the number of listed providers decreased (1%). 82% of active mental health legal aid providers have 9 or more years experience, and another 17% have between 4 and 9 years experience.
- For civil-general legal aid, there were decreases across the board, with grants (18%), active providers (9%) and listed providers (1%). 69% of active civil-general legal aid providers have 9 or more years experience, and another 25% have between 4 and 9 years experience.

Ms Pearson says "This is not intended to be an assessment or commentary on whether the supply of providers is adequate. However, the report shows there are some locations where there are few, or even no legal aid lawyers. If someone cannot find a legal aid lawyer they can contact the Agency and get names from the list of providers."

A copy of the report, *Analysis of the supply, distribution and assignment to legal aid providers in New Zealand 2005/06* is on the Agency's website at www.lsa.govt.nz.

"This report shows that demand for legal aid has grown, that most legal aid lawyers have significant experience, and that overall, the number of providers listed to do legal aid work is similar to the previous year."

Complaints about provider conduct

A new process to investigate and manage provider conduct will be implemented by the Agency in May 2007. The Agency has been operating under an interim process when investigating and managing complaints received and concerns that a Provider may have failed to comply with their obligations while providing services.

The process will be conducted in accordance with the principles of fairness, transparency, consistency and natural justice.

In all matters a Provider will be given the opportunity to make submissions in response to a complaint. The Agency will keep the Provider fully informed of decisions through all stages of the process, and will provide copies of its written decisions and consequences, where appropriate, to the Provider.

Key elements of the process

- Matters will be dealt with, in the first instance, by the local Grants Office or Debt Management Group (the closest contact to the Provider).
- More serious matters will be referred directly to the Agency's Head Office.
- Timely consideration and management of matters by the Agency.
- Matters may be referred to the Law Society where the complaint or concern relates to the 'Rules of Professional Conduct for Barristers and Solicitors'.
- Involves a structured notice system to manage justified matters; the notices will outline:
 - Details of the Provider's failure to comply with their obligations
 - A statement of the Agency's expectations
 - Possible consequences and it may request that immediate remedial action be taken.
- Where a Provider has been issued with more than one notice, other Agency actions may also include:
 - Reassignment of a legal aid file
 - Imposing a condition on the Provider's listing approval(s)
 - Undertaking a special audit of the Provider's legal aid services
 - Suspension Consideration, only as a last resort, where the matter has not been resolved after a final notice.

The documented process will be available on the Agency's website at www.lsa.govt.nz in early May. The process will also form part of the Agency's Legal Aid Provider Manual and will be provided to all manual holders in due course.

