

Part 1 & 2 – Listed Provider Approvals Process – for approvals as a Lead Provider, Secondary Provider or Non- Lawyer Provider, and one off listing approvals

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Purpose

- 1 This document outlines the Legal Services Agency's (the Agency) procedure for managing applications for approval as Listed Providers.
- 2 This procedure is consistent with the purpose and functions of the Legal Services Act 2000 (the Act) and operates in accordance with the principles of fairness, transparency, consistency and natural justice.

Scope

- 3 This procedure applies to all applications for approval for listing as a:
 - Lead Provider (including one-off listing approvals)
 - Secondary Provider
 - Non-lawyer Provider

Definitions

- 4 Unless otherwise stated, the following definitions apply for the purpose of this procedure:

Application Review Hearing	A hearing that may be requested by an applicant under section 72(6) of the Act, where he/she does not accept the Agency's decision and revised decision for listing approval.
Act	Means the Legal Services Act 2000
Agency	Means the Legal Services Agency, a body corporate established by Section 91 of the Legal Services Act 2000
Application Review Panel	A Panel convened under section 72(6) of the Act to consider an Applicant's request to be heard by the Agency in relation to those parts of the Agency's revised decision for listing approval that the Applicant does not accept.
Approval Authority	The Agency employee(s) delegated to approve or decline applications for listings.
Cancellation	Where, under section 73 of the Act, one or more of a Listed Provider's listing approvals are cancelled, the Provider is no longer approved to provide those Legal Services.
Conditional Approval	In accordance with section 69 of the Act, a conditional approval is approval as a Listed Provider subject to conditions, which must be noted on the legal service list [section 70(2)]
Contract for Services	The agreement between the Agency and Listed Provider to supply professional Legal Services. In accordance with the Listing Criteria, all Listed Providers must hold a current Contract for Services with the Agency in order to provide services under the Legal Aid, Duty Solicitor, Police Detention Legal Assistance Schemes and any other approved schemes.
Employer	A person/body who employs persons under a <i>Contract of Service</i> or <i>employment agreement</i> . This includes a firm of solicitors or barristers and solicitors that employs other solicitors or barristers and solicitors or non-lawyers and barristers who employ other barristers.
Inactive Provider	Means a Provider whose listing approvals status is "inactive" on the Legal Services List and is temporarily unable to have legally aided matters assigned to him/her or supply Legal Services on behalf of the Agency.
Lawyer	A person that has been admitted to the roll of Barristers and Solicitors of the High Court of New Zealand and holds a current practising certificate.
Lead Provider	A lawyer or employment advocate who meets the General Listing Criteria and has

	been approved to take on legal aid matters unsupervised.
Legal Services	In relation to legal aid, means legal advice and representation; and includes assistance <ul style="list-style-type: none"> (i) with resolving disputes other than by legal proceedings; and (ii) with taking steps preliminary or incidental to any proceedings; and (iii) in arriving at or giving effect to any out-of court settlement that avoids or brings to an end any proceedings.
Legal Services List	The list of people approved by the Agency to provide Legal Services under one or more schemes, also referred to by the Agency as the Provider List.
Listed Provider	In relation to the provision of particular services under one or more schemes, means a natural person who is listed as approved to provide those services.
Listing Criteria	In accordance with section 71 of the Act, criteria developed by the Agency for determining when a person may be approved to provide Legal Services.
Litigation Experience Level	Legal work (before a court, administrative tribunal, judicial authority or any other body that has the legal authority to make decisions that affect the clients legal rights or responsibilities) undertaken by an individual in the capacity of a Barrister and/or Solicitor while holding a practising certificate issued by the New Zealand Law Society (refer to Litigation Experience Level Guidelines in Appendix Four)
Local Consultative Groups (LCG's)	Regional groups established under section 101 of the Act to assess information provided by applicants for listing approval and provide recommendations to the Agency. Members of LCG's will have an understanding of the experience and competence required for each area of law.
Non-lawyer Provider	An employment advocate, legal executive (qualified and non-qualified) or law clerk listed as approved to provide services under the legal aid and other schemes.
Reconsideration (revised decision)	Where the Agency receives submissions following the decline of an application for listing approval and reconsiders its decision in accordance with section 72(4) of the Act.
Schemes	Means any or one or more of the following: <ul style="list-style-type: none"> (i) the legal aid scheme; (ii) the duty solicitor scheme; (iii) the Police Defence Legal Assistance scheme; (iv) an approved scheme.
Secondary Provider	A lawyer who meets the General Listing Criteria and has been approved to supply Legal Services subject to a condition of being supervised and responsible to a Lead Provider managing the legal aid matter.

General Approach for Applications

- 5 Section 69 of the Act requires that a person must be 'listed' with the Agency to provide Legal Services under any of its schemes.
- 6 Section 71(1) of the Act enables the Agency to develop new or amended Listing Criteria for determining when a person may be approved to provide specified Legal Services.
- 7 The Agency determines all applications to provide Legal Services in accordance with the [Criteria for Approval as a Listed Provider \(Listing Criteria\)](#) a copy is available in [Appendix One](#).
- 8 The Listing Criteria specifies the:
 - General Listing Criteria (GLC);

- minimum elements for each area of law that an applicant must demonstrate to obtain approval;
 - competence and experience applicants must demonstrate to take sole responsibility for matters in the area of law for which they are applying; and
 - requirement to hold a current Contract for Services (Contract) with the Agency in order to provide Legal Services under one or more of its schemes.¹
- 9 In addition, under section 72 of the Act, applications must be submitted in the *prescribed manner* and are reviewed for completeness before being considered in accordance with this process.
- 10 In accordance with section 101 of the Act, the Agency has established Local Consultative Groups (LCG) that meet on a regular basis, to consider an applicant’s suitability for listing. Membership of the LCG is drawn from the legal community and local legal aid grants office.²
- 11 The LCG provides a recommendation to the Agency however, the decision on whether to approve, decline or defer an application is made by the Agency.
- 12 Approvals take effect on the execution of a Contract with the Agency. The Contract outlines both parties’ rights and obligations to each other and to legally aided clients.
- 13 Where a Contract is in place and further approvals are sought, listings take effect once approved by the Agency (from the date of the decision).
- 14 [Appendix Two \(Listing Process – flowchart\)](#) provides a visual overview of the application process.

General Listing Criteria

- 15 The GLC requires:
- applicants to hold a current practising certificate issued by the New Zealand Law Society;
 - applicants not to have had their practising certificate suspended, nor have been struck off, nor declared bankrupt at any time over the previous five years. (This requirement may be waived where the Agency judges the circumstances documented will not impact on the practitioners fitness to practise as a legal aid Provider);
 - applicants will not have had a criminal conviction where the nature of that conviction might adversely affect the relationship with aided persons, or the integrity and credibility of the legal aid schemes; and
 - applicants will have no history of upheld complaints sufficient in aggregate to either be a risk to the integrity of the Agency’s schemes or contravene the Agency’s Service Standards.

¹ Where lawyers are employed by the Public Defence Service, they must enter into a current “Agreement for Listed Provider Employed by the Legal Services Agency” for the provision of services under the Agency’s schemes.

² The Agency does not ordinarily send applications for Duty Solicitor, Police Detention Legal Assistance, Secondary and non-lawyer to LCG, although the Agency may seek LCG input/knowledge in some cases.

Listing Approvals

16 Approvals to provide Legal Services are classified into the following schemes:

- Legal Aid
 - Criminal (Criminal Proceedings Category 1 - 4)
 - Family
 - Civil-General
 - Mental Health
 - Refugee
 - Waitangi Tribunal
 - Maori Land/ Maori Appellate Courts
 - Supreme Court
- Duty Solicitor
- Police Detention Legal Assistance (PDLA)

Types of Listed Providers

17 There are 3 distinct types of Listed Providers:

(a) Lead Provider

- Lawyers – are listed providers who have demonstrated that they meet the GLC, have been approved in one or more specified areas of law and have received approval from the Agency to have legal aid matters assigned to them and are responsible for the overall management and conduct of the legal aid case including the substantive hearing. An approval for Lead Provider may under section 69(2) of the Act be conditional.
- Employment advocates – see non-lawyers below.

(b) Secondary Provider (lawyers) are listed providers who have demonstrated that they meet the GLC but who are unable to demonstrate that they have the experience and/or competence to be approved as a Lead Provider. This approval is subject to the condition that he/she is supervised by and is responsible to the Lead Provider managing the legal aid matter.

(c) Non-Lawyer are listed providers who have one or more of the following listing approvals:

- employment advocate (Lead Provider)
- qualified legal executive
- non-qualified legal executive/para-legals
- law clerk

Litigation Experience Level

18 Applicants applying for Lead Provider³ or Listed Providers applying to increase their litigation level are required to complete Part 3 of the Application form.⁴ The information provided is assessed by the Agency and a recommendation is made to the Approval Authority.

³ Litigation experience levels are not applicable to Lead Providers who are Employment Advocates only
Lead Providers who are lawyers.

- 19 There are three litigation experience levels, and they contribute to the calculation of a Lead Provider's rate of remuneration.
- 20 These are:
- Level 1 - less than four years' litigation experience
 - Level 2 - between four and nine years' litigation experience
 - Level 3 - more than nine years' litigation experience
- 21 Legal work is only considered as part of the calculation of litigation experience where the experience was obtained post admission and with a Practising Certificate. For the purpose of determining an applicant's litigation experience level, the Agency assesses the applicant's employment history, including consideration of any extended period away from the practice of law or employment as a lawyer in another jurisdiction.
- 22 [Appendix Four \(Litigation Experience Guidelines\)](#) provides a detailed guide of how the Agency assesses litigation experience.

Procedure Content and Guidelines

- 23 Generally, the listing approval process has five distinct phases;⁵ however consultation with LCG's is only sought in approvals for Lead Provider applications.⁶
- 24 The flowchart in [Appendix Two](#) illustrates the process.
- 25 These phases are designed to define clearly the activities undertaken and the roles and responsibilities of participants within each phase, and enable the legal profession to have input via the LCG's.
- Phase 1 – Application and Evaluation
 - Phase 2 – Consultation (for Lead Provider applications)
 - Phase 3 – Agency Decision
 - Phase 4 – Revised Decisions and Application Review Hearings (Where requested)
 - Phase 5 – Contract award and Contract Execution⁷

Phase 1 – Application and Evaluation

- 26 The Agency requires applicants to submit originals of the [Listed Provider Application forms, \(Application form\)](#), a copy is available in [Appendix Three](#); however the application process differs depending on the type of Listed Provider and approvals sought.

Lead Provider, Duty Solicitor, Police Detention Legal Assistance and Supreme Court applications (lawyers)

- **Lead Provider** applicants are required to complete parts 2, 2.1, 2.2, 3, 4 (x 2) and 8 of the application form, provide a statement of their experience in the area of law for

⁴ Applicants applying for Supreme Court listing are also required to complete the Lead Provider application.

⁵ The phases for the approval process are more complex where an applicant is seeking a combination of types of approvals, for example, Lead Provider approvals in criminal and Secondary Provider approvals in family or Lead Provider in family and one off approval in family.

⁶ The Agency may seek LCG comment in other applications, although not generally Duty Solicitor and PDLA applications.

⁷ Contract award represents the final phase of the approval process for applicants who do not have a Contract or current Contract with the Agency.

which they are applying (cover letter), and for new applicants, a copy of his/her current practising certificate.⁸

- **Duty Solicitor** applicants are required to complete parts 2, 3, 4 (x 2) and 8 of the application form but not parts 2.1 and 2.2.
- **PDLA and Supreme Court** applicants are required to complete parts 2, 3 and 8⁹ of the application form but not parts 2.1 and 2.2.

Note - Part 8 (Direct Crediting details) of the application form is only required where the information has not been supplied previously or has changed.

- 27 On receipt of an application for Lead Provider approval, Provider List Administration (PLA) submits the application to an Adviser Service Contracts (Adviser) to check that the application has been completed correctly, and that any required documentation has been attached. Where all required information is provided, the Adviser submits the application to PLA who acknowledges and registers the application.
- 28 On receipt of an application for Duty Solicitor, PDLA¹⁰, and Supreme Court, PLA acknowledges and registers the application and submits the application to an Adviser to check that the application has been completed correctly, and that any required documentation has been attached.
- 29 This ensures that all applications are accounted for at the completion of the process.
- 30 If insufficient information is provided or the application is incomplete, the Adviser has the discretion to:
 - Hold the application pending receipt of information from the applicant; or
 - Return the application to the applicant for completion, on the basis that the application has not been made in the prescribed manner or is insufficient.¹¹
- 31 PLA then forwards the application to an Adviser to assess the information provided and the applicant's competence and experience against the relevant criteria. This may include contacting the applicant for more detail, conducting telephone reference checks¹² or requesting further examples of experience.
- 32 Once the Adviser has determined that the applicant has submitted sufficient information, the application is prepared for distribution to the LCG in the applicant's region.
- 33 Where the application is incomplete or has not been received by the closing date, it will not be forwarded to the LCG that month.

⁸ The Agency may however request a copy of an existing Provider's current Practising Certificate.

⁹ The Agency policy on telephone reference provides that telephone reference checks will be required for all Criminal Proceedings Category 3 and Criminal Proceedings Category 4 applications and a percentage of all other applications.

¹⁰ If the applicant does not have Criminal PC2 approval then the application will go to LCG for comment.

¹¹ For example, where the statutory declaration has not been completed.

¹² See Fn 9 above.

- 34 In most instances applications for **Duty Solicitor, PDLA¹³ and Supreme Court** do not go to the LCG for input¹⁴, however where applicants do not meet the Listing Criteria, the Agency may submit the applications to the LCG for a recommendation.
- 35 Applications that go to LCG close on the 15th of the month¹⁵ for all regions except Canterbury and Waikato/Bay of Plenty, which close on the 28th of the month.¹⁶ Generally PLA will forward applications each month to LCG members and allow LCG members at least 5 working days to review the application prior to the teleconference or committee meeting.
- 36 At the teleconference the LCG will make a recommendation. The Adviser will then make a recommendation to the Approval Authority for his/her decision, taking into consideration the totality of the application and the LCG's recommendation.
- 37 The applicant is informed of the Agency's decision in writing up to 6 weeks of the Agency receiving a complete application.¹⁷

Secondary Provider and Non-lawyer applications

- 38 The Agency assesses applications for approval as a Secondary Provider or Non-Lawyer against the relevant criteria and in most instances without input from the LCG's, consequently there is no closing date for these applications.
- **Secondary Provider** applicants are required to meet the GLC and complete Part 5 of the application form, provide a statement of their experience (cover letter), current Curriculum Vitae or resume and attach a copy of their practising certificate or proof of payment for their practising certificate.
 - **Non-lawyer Providers** are required to complete Part 6 of the application form, which includes having their Primary supervisor sign the form (excluding employment advocates). As they are not lawyers, they are not required to meet the GLC.
- 39 PLA acknowledges and registers the application and submits the application to an Adviser to check that the application has been completed correctly, and that any required documentation has been attached. This also ensures that all applications are accounted for at the completion of the process.
- 40 Where all required information is provided, the Adviser submits a recommendation to the Approval Authority for his/her decision.
- 41 If insufficient information is provided or the application is incomplete, the Adviser has the discretion to:
- Hold the application pending receipt of information from the applicant; or
 - Return the application to the applicant for completion, on the basis that the application has not been made in the prescribed manner or is insufficient.¹⁸

¹³ See Fn 10

¹⁴ There is no closing date for these applications.

¹⁵ The LCG do not meet in January, therefore the last applications for the year close on the 15 November. The applications are then received for the 15 January and the first LCG meetings for the year are held in early February.

¹⁶ The close off dates for these regions may vary in according to when the Committee for these areas meet.

¹⁷ Generally, the length of time taken depends on how soon before the closing date an application is received and whether the application is complete.

42 The applicant is informed of the Agency's decision in writing within 2 weeks of the Agency receiving a complete application.¹⁹

Phase 2 - Consultation with LCG's

43 The Agency has established LCG's to assist with the assessment of applicants for listing as legal aid Providers. The Agency consults with the LCG on Lead Provider applications²⁰ and on other applications as required. The consultation process differs depending on the type of Provider and approvals sought.

LCG teleconferences

44 Generally speaking, it is intended that the LCG will in relation to the criteria:

- provide general comments on the applicant's competence and ability to practise in the area(s) of law for which they are applying, including applicants' abilities in Court, their interaction with clients and other counsel and in particular impart their local knowledge of the applicant;
- note any observations of the applicant's skill, and, if adverse comments are made, provide examples to demonstrate any concern;
- assess whether the applicant's experience is relevant to the area of law for which they are applying;
- advise what further information may be required if the recommendation is for deferral of a decision; and
- advise what further experience the applicant requires if the recommendation is for decline.

45 The Agency does not record attendance by LCG members, and comments made are not attributed to individual members but are recorded as part of the LCG's recommendation. The Agency may record differing views.

46 Once the Agency has received the LCG's recommendation, the Agency continues with the application process and makes a decision about an application except, for example, where further information may be required from the applicant, for example as a result of the LCG's feedback.

Lead Provider, Duty Solicitor, Police Detention Legal Assistance and Supreme Court applications

47 Duty Solicitor, Police Detention Legal Assistance²¹ and Supreme Court applications are not generally sent to the LCG for consideration. However where these applications do not meet the criteria, the Agency may send these applications to the LCG for comment.

48 All other Lead Provider applications are sent to the LCG for comment.

49 LCG members are appointed by the Agency after consultation with the relevant District Law Society/New Zealand Law Society. LCG members are generally senior practitioners and

¹⁸ For example, where the statutory declaration has not been completed.

¹⁹ Generally, the length of time taken depends on whether the application is complete.

²⁰ Except Duty solicitor and PDLA which is referred to LCG as required.

²¹ See Fn 10

either have been or are Listed Providers with the Agency with where possible at least litigation Level 3 experience. On appointment, LCG members generally serve for a minimum 2 year term.²² The Agency assesses the membership of the group as required.

- 50 In accordance with section 29(1)(b) of the Privacy Act 1993, the Agency does not advise applicants of the names of LCG members or their individual comments.
- 51 PLA sends the relevant parts of the application to members of the LCG of the region from which the applicant is from for comment. The Adviser generally confers with LCG members by teleconference on a monthly basis, meeting in the first full week of the month. The relevant Agency Grants Regional Manager Chairs the meetings and an Adviser attends by telephone link as note-taker.
- 52 The exceptions to this process are the Canterbury and Waikato/Bay of Plenty LCG's. These meetings are held without Agency representation, and usually in the second week of the month. The Regional Manager of these regions is sent the applications for their comment.
- 53 Where LCG members are unable to attend, the Adviser will seek comment by telephone/email or post.

Secondary Provider and Non-Lawyer applications

- 54 Secondary Provider and Non-Lawyer applications are generally not sent to the LCG for consideration; however this is at the discretion of the Agency.

Phase 3 – Agency Decision

The decision-making process

- 55 The process differs depending on the type of Listed Provider and approvals sought.

Lead Provider, Duty Solicitor, Police Detention Legal Assistance and Supreme Court applications

- 56 The Adviser evaluates the totality of the application, and where LCG comment is sought considers the LCG recommendation and submits a recommendation for approval/deferral or decline of the application to the Approval Authority for his/her decision.
- 57 In making a decision, the Adviser (where appropriate):
 - notes whether the applicant meets the GLC;
 - considers whether the applicant meets each of the minimum elements of the criteria for each area of law applied for, and if not, provide any comments on whether this impacts on the applicant's suitability for listing;
 - considers the LCG's recommendation;
 - considers referees' comments;
 - notes any other considerations (for example, where the applicant has not completed a required course, but has completed a course that could be considered equivalent, or

²² LCG members can be re-appointed or be rolled over to continue their membership at the discretion of the Agency.

where the applicant has not met the prescribed criteria and requests the Agency exercise its discretion to grant an approval);

- considers whether the totality of the application satisfies the Agency's Listing Criteria and that the applicant has the competence and experience to take responsibility for matters in the area of law for which they are applying; and
- considers imposing conditions or deferring the approval;
- determines the applicant's litigation experience level.

Application approved

58 If the application is approved, the Approval Authority submits the approval to PLA for processing.

Application deferred

59 If the application is deferred, the Adviser informs the applicant in writing of the reasons for the decision, and will contact the applicant when the deferral time has elapsed, either approving or declining the application. The Adviser also advises PLA so the register can be updated.

Application declined

60 If the application is declined, the Adviser informs the applicant in writing of the reasons for the decision and may provide some advice about what further steps should be taken before reapplying. The applicant is also advised of their right under section 72(4) of the Act to request that the Agency reconsider the application, to submit further information and the process to follow if they wish to do so. The Adviser also advises PLA so the register can be updated.

Agency Discretion

61 In exceptional circumstances and on a case by case basis, the Agency may exercise its discretion and waive elements of the criteria. For example, where the applicant is an experienced litigator waiving completion of entry level courses.

Conditional approvals

62 At the Agency's discretion, the Agency may consider imposing further conditions on approvals [sections 69 and 72(3)(a)(ii) of the Act]. This usually only occurs where the applicant has not fully met the Listing Criteria.

63 The most common use of a *conditional listing approval* is where the applicant has not yet completed the mandatory training course. The Agency may issue an approval conditional on the training being successfully completed by a nominated date. If the condition affects a Listed Provider's ability to accept assignments, the Adviser informs the local grants office of the conditions on the listing approval.

64 Once the relevant condition has been satisfied, the Listed Provider is required to request in writing that the condition be lifted. The Adviser then checks that the condition has been satisfied and makes a recommendation to the Approval Authority for a decision. Where the recommendation is approved, the Approval Authority submits the decision to the PLA for

processing. PLA sends the Listed Provider an updated Schedule A to the Contract removing the condition. PLA will retain a copy of the updated schedule A for the Listed Provider's file.

- 65 Where the recommendation is not approved, the Approval Authority submits the decision to the Adviser for processing, to be processed in the same was as a decline.

Extension or Removal of a condition

- 66 In certain circumstances, the Listed Provider may request an extension or removal of a condition and in those circumstances is required to write to the Agency outlining the reasons for the request. An amendment to a conditional approval of this kind is at the Agency's discretion. In accordance with section 72(3) of the Act, when an approval or conditional approval is granted, the applicant is advised in writing and amendment made to the Legal Services List and Listed Providers Schedule A of the Contract.

Non compliance with condition

- 67 Under section 73(1)(f) of the Act, where an applicant fails to comply with conditions of approval imposed on a Listed Provider's listing, the Agency may cancel that Listed Providers listing approval for the area of law to which the condition is attached (see the Suspension Consideration and Review process).

Secondary Provider and Non-Lawyer applications

- 68 The Adviser assesses the application and submits a recommendation to the Approval Authority for his/her decision.
- 69 The Approval Authority then submits the decision to PLA for processing.
- 70 Where the application is deferred or declined the Adviser informs the applicant in writing of the reasons for the decision and may provide some advice about what further steps should be taken before reapplying. The applicant is also advised of their right under section 72(4) to request that the Agency reconsider the application, to submit further information and the process to follow if they wish to do so. The Adviser then informs the PLA.

Phase 4 – Revised Decisions and Application Review Hearings

- 71 The process for reviewing Agency decisions is the same regardless of the type of decision being reviewed, [sections 72(4) – (7) of the Act].

Requests for revised Agency decision

- 72 In accordance with section 72(4) of the Act, where an applicant does not agree with all or part of the Agency's initial decision, he/she can request that the Agency reconsider its decision by making a *revised decision*.
- 73 The applicant must advise the Agency in writing of the reasons for requesting the revised decision and provide any additional information in support of their application. Further information may include, but is not limited to:
- details of relevant courses completed; or
 - examples evidencing competence and experience.
- 74 PLA acknowledges receipt of a request for a revised decision in the same manner as receiving an initial application.

- 75 Regardless of the type of application, the decision is reviewed by a different Adviser (Adviser 2) to the Adviser (Adviser 1) who evaluated and made the recommendation on the original application.
- 76 The Adviser manages the decision-making process in one of two ways, depending on the initial assessment process.
- If the LCG recommended approval at the first consideration, the Adviser 2 will not forward the new information to the LCG for an updated recommendation. Adviser 2 considers all the information provided in the initial application, together with any new information provided.
 - If the LCG did not recommend approval at the initial assessment or the recommendation was not unanimous, the Adviser 2 will submit the entire application, together with any new information, to the LCG for an updated recommendation at the next LCG teleconference.

Making a revised decision on a request for reconsideration

- 77 In making a revised decision, Adviser 2 assesses the application in the same manner as at initial assessment, but noting that it is a revised decision. Any new information, including the updated LCG recommendation, if applicable, is also noted.
- 78 If the application that has been reconsidered is approved or conditionally approved, the Adviser will follow the same process as when approving an initial application.
- 79 If the application that has been reconsidered for listing approval is again declined, the Adviser informs the applicant in writing of:
- the reasons for the revised decision;
 - the opportunity to reapply when they consider that they meet or exceed the criteria, if they accept the decision; and
 - the right to be heard and process thereon, if they do not accept all or part of the Agency's revised decision, (in accordance with section 72(6) of the Act). (The applicant can provide further information for consideration prior to the hearing).

Requests for Application Review Hearings

- 80 Under section 72(6) of the Act, where the Agency declines an application for listing approval following a revised decision, the applicant can *request to be heard*. This request must be in writing.
- 81 On receipt of a request to be heard, the Agency acknowledges the request and advises the applicant of the process and timeframe for the hearing.
- 82 The Agency advises the applicant that the hearing is held in Wellington, and that the applicant's costs in attending the hearing should they wish to do so are not met by the Agency.

The Application Review Panel

- 83 The composition of the Application Review Panel generally consists of up to two Agency staff:

- the Manager Service Contracts (Chair)
- at least one senior Agency staff member²³

84 The Agency may also request a Listed Provider with experience in the area of law for which the applicant is applying to attend and consider the information at the hearing, in an advisory capacity to the Panel. This lawyer is from a region different to that of the applicant.

85 An Adviser also attends as note taker.

86 The Panel members will not have been involved in any previous decision-making relating to the matter.

Organising the Hearings

87 The Application Review Hearing is held in Wellington.

88 The Agency arranges a hearing date that suits Panel members the applicant and where applicable the external lawyer.

89 Once a date has been set for the hearing, the Agency invites the applicant to make any further submissions. This may include further examples of experience or other supporting information.

90 This information must be received by the Agency no later than 12 working days before the hearing.

91 The Agency collates all documentation and sends it to each Panel member, the applicant and where applicable the external lawyer, at least 10 working days prior to the hearing.

92 The documentation generally includes:

- Index of documents
- Agenda for the hearing
- Application Review Panel Guidelines²⁴
- Criteria for Approval as a Listed Provider
- Applicant's Contract
- All documents relating to the application and the Agency decision/s

The Hearing

93 The purpose of the hearing is for the Panel to hear oral submissions from the applicant (if the applicant wishes to be heard) and to determine whether the applicant should be granted a listing approval in the area(s) of law for which they have applied.

94 The applicant is entitled to make oral submissions to the Panel in addition to any written submissions already provided. The Panel generally assigns one hour to hear from the applicant. This time may be extended.

95 If new information has been provided since the Agency's decision, the matter will be considered by the Panel. Alternatively, the applicant can ask the Panel to reconsider the material that has already been provided, and review the Agency's revised decision.

²³ The number of staff appointed to the Panel will depend on the nature of the decision being reviewed and the availability of Agency staff.

²⁴ The Application Review Panel Guidelines outline the process that the Panel should follow in order to ensure that it makes an appropriate decision, in line with policy and legislation.

The Panel's decision

- 96 The Panel makes its decision based on the information provided and any written/or oral submissions made by or on behalf of the Listed Provider. The decision is sent to the applicant within 15 working days of the hearing.
- 97 In accordance with section 72(7) of the Act, the decision made by the Panel is the final decision. If an applicant disagrees with the decision, he/she must submit a fresh application.²⁵

Phase 5 - Contract award and Execution

- 98 The process for giving effect to approvals is the same regardless of the type of Listed Provider or approval being granted. In accordance with sections 69 and 71(1) of the Act, the Listing Criteria requires a Listed Provider has a current Contract with the Agency to provide services under one or more of its schemes, therefore before listing approvals become effective a Contract must have been executed and approvals entered on the Legal Services List [section 70(3) of the Act].

Contract for Services

- 99 On approval, if the applicant is not a current Listed Provider he/she is sent two copies of the Contract and approvals are recorded in Schedule A of the Contract.
- 100 The applicant is required to sign, date and return both copies of the Contract to the Agency. On receipt of a complete Contract, the Agency then signs and dates both copies of the Contract.
- 101 Under section 70(3) of the Act the applicant is then activated on the Legal Services List and becomes a Listed Provider with a valid Contract from that date.
- 102 The Agency then sends a complete signed copy of the Contract to the Listed Provider, and retains a complete signed copy of the Contract for the Listed Providers file.
- 103 Where an applicant is an existing Listed Provider, any subsequent approvals or amendments to approvals are entered in the Legal Services List and are effective from the date of the approval decision. The Agency then sends a letter confirming approval and an updated Schedule A to the Listed Provider's Contract to replace the existing Schedule A.

Extension of Contract

- 104 Where the Agency intends on extending a Contract with a Listed Provider or offer a new Contract,²⁶ the Agency writes to the Listed Provider approximately 6 weeks before the Contract is due to expire to formally notify him/her of the forthcoming expiry of their Contract. The Agency sends a letter and form outlining the Contract extension and any amended terms. The Listed Provider is required to sign and date the form and return it to the Agency within the specified time indicating whether he/she wishes to extend the Contract and accept

²⁵ The Agency is not required to consider information where the applicant fails to submit any further or new information than that previously submitted in a new application.

²⁶ In accordance with the Contract, the Agency may terminate the Contract for any reason with one calendar months notice. There is no clause in the Contract requiring the Agency to extend or offer a new Contract to a Provider.

any terms or terminate the contract on expiry.²⁷ On receipt of the form, the Listed Provider's Contract will be either extended or terminated from the date specified in the letter/form.²⁸

Expiry of Contract

- 105 Where the Agency has been unable to contact the Listed Provider to extend a Contract or offer a new Contract, the PLA will make a note on the Provider's file. The Adviser will place a notice in the *Legal Services Agency Newsletter/Agency website*. If the Listed Provider fails to respond to the Agency, the Contract expires and PLA will amend the Legal Services List. Consequently, as the Listed Provider no longer has a current Contract with the Agency, the Provider no longer meets the Listing Criteria. The Provider's listings are inactivated and the Provider is not able to provide Legal Services under the Agency's schemes.
- 106 The Agency will in accordance with section 73(1)c of the Act and the *Suspension Consideration and Review Process* recommend cancellation of the Providers' listings. As the Listed Provider cannot be contacted the Agency is unable to advise them of their right under section 72(4) of the Act to request that the Agency reconsider the cancellation of their listings. However the Provider may request that the Agency reconsider the cancellation of their listings where that request is made within a reasonable time of the cancellation.
- 107 Once a Provider's listings have been cancelled, in order for a Provider to be re-listed to supply Legal Services under the Act, the Provider is required to re-apply for his/her listings in accordance with the Listing Criteria and sign a new Contract in the same manner as a new Provider. The fact the listing approvals became ineffective as a result of the expiry of the Contract and any other circumstances may be taken into account by the Agency in the assessment process.

Reinstatement of listing approvals in exceptional circumstances

- 108 The Agency may in exceptional circumstances re-instate a previous Provider's listing approvals.
- 109 The previous Provider is required to make a request in writing outlining:
- the period of time that has lapsed since the expiry of the Contract
 - the Provider's role/occupation/activities during that period
 - any other relevant factors
- 110 The Adviser will take into consideration the exceptional circumstances outlined in the letter in making a decision and may refer the application to the LCG for comment in the same manner as other applications for listing.
- 111 The Adviser will make a recommendation on re-instating all or part of a Provider's previous approvals. This recommendation is submitted to the Approval Authority for his/her decision. The Applicant is informed of the decision in writing up to 6 weeks of receiving a complete application.
- 112 If the application has been approved or conditionally approved, the Adviser will follow the same process as when approving an initial application.

²⁷ Service Contracts will only accept completed forms up to one month after the expiry of the Contract.

²⁸ As confirmed by the Contract, it is the responsibility of the Provider to inform the Agency of a change in details, i.e. contact details.

- 113 If the application is deferred or declined, the Adviser informs the applicant in writing of the reasons for the decision and may provide some advice about what further steps should be taken before reapplying.
- 114 The applicant is also advised of their right under section 72(4) of the Act to request that the Agency reconsider the application, to submit further information and the process to follow if they wish to do so.

Recording and Reporting

- 115 A copy of the Provider's application, the listing decision and any correspondence relating to the application is retained on the Provider's file at the Agency's Head Office.
- 116 If an application review process is initiated, the Agency retains on file a copy of the Application Review Panel's decision and any correspondence relating to the process. If the application is approved or conditionally approved, the Agency also retains a copy of the Contract or updated Schedule A to the Contract on the Provider file.
- 117 On a monthly basis, the Agency records the number of applications and the corresponding areas of law. These figures may be reported. The Agency may record the approvals and declines in each geographical region and area of law. Applicants' names are not recorded.

One off Listing Process

Circumstances

- 118 A one-off listing approval will only be made where the following circumstances exist:
- the listed provider has demonstrated in his/her application that he/she has the experience to take on the legal aid case; and
 - there are no other appropriately listed providers available to take on the legal aid case; and/or
 - the listed provider can demonstrate that they have already undertaken significant work on the matter; or
 - the listed provider can demonstrate that they have an established relationship with the legal aid client.

Application

- 119 A Provider may apply to the Agency for a one-off listing approval where a Provider does not have the appropriate listing approval to be assigned or reassigned a specific legal aid case. Applications must be submitted to Provider List Administration.
- 120 All applications will be considered by the Agency with respect to their particular circumstances and the one-off listing approval policy.
- 121 A one-off listing approval cannot be made to a lawyer who does not have a current Contract for Services with the Agency.
- 122 A one-off listing approval only allows the Provider to be eligible to be assigned a specific legal aid case.

123 The provisions of section 72 of the Legal Services Act 2000 do not apply to applications for one-off listing approvals.

124 The [One-off listing process flowchart in Appendix Five](#) illustrates the process.

Agency Decision

125 Upon receipt of a Provider's application for a one-off listing approval, the Adviser checks the Provider's current listing approvals and makes an initial assessment of the Provider's application to determine if circumstances exist to justify an approval.

126 The Adviser will contact the local Grants office (Regional Manager and/or Grants Officer) to determine if there are any reasons as to why the Provider should not be granted the one-off listing approval. Where no reasons are identified, the Regional Manager or Grants Officer will be asked to confirm whether or not they will assign/reassign the matter to the Provider.

127 Depending on the urgency of the situation, the Adviser will also contact the LCG to determine if there are any reasons as to why the Provider should not be granted the one-off listing approval.

128 The Adviser makes an assessment of the application and submits a recommendation to the Approval Authority for a decision.

129 The Adviser notifies the Provider in writing of the Agency's decision (approval/decline), advising them that the decision has been made in conjunction with the Grants office. A copy of the letter is sent to the relevant Regional Manager and Grants Officer.

130 Where the application for one-off approval is approved the applicant is also advised that they will receive notification of the assignment of the legal aid case from the Grants office.

131 Where the application is declined, the applicant is asked to inform the client and to contact the relevant Grants Office to have the matter re-assigned.

Legislative Compliance

132 This process is governed by sections 69-73 of the Legal Services Act 2000.

Relevant Policies, Procedures and Guidelines

- Criteria for Approval as a Listed Provider (Listing Criteria)
- Supreme Court Listing Criteria (Interim)
- Non-lawyer Criteria (Interim)
- Litigation Experience Level Guidelines (attached)
- Application Review Panel Guidelines
- Suspension Consideration and Review Process