

2014 International Forum on Legal Aid

October 25-27 2014, Taipei, Taiwan



National Report – New Zealand

1.

Country	Legal Aid organisation name	Date of Establishment	Poverty line and % of population in poverty	Total no of practising lawyers & Legal Aid lawyers (including in house and private practice)
New Zealand	Legal Aid Services, Ministry of Justice	Legal Services Agency established in 2000, merged into Ministry of Justice in 2011	New Zealand does not have an official national poverty line	1858 private legal aid lawyers and 142 in house Public Defence Service
Population	GDP	Total no of applications received in the past year	Total no of applications approved in the last year	Total no of applications refused in the past year
In 2014 New Zealand has an estimated population of just over 4.5 million , up from the 4,027,947 recorded in the 2006 census	The Gross Domestic Product (GDP) in New Zealand was worth 182.59 billion US dollars in 2013	In 2013-14 financial year 80,157 applications for legal aid were received.	In 2013-14 financial year 70,796 applications for legal aid were approved.	In 2013-14 financial year 6974 applications for legal aid were refused and 2503 were rejected (duplicates or not in prescribed manner)

2. Please describe the main provider(s) of legal aid services in your country

(a) What is the nature of the provider's organisation?

Legal Aid Services is a business unit within the New Zealand, Ministry of Justice (a government department)

(b) If supervised by another authority, how does the provider maintain independence in decision making and in carrying out its duties and responsibilities?

The Legal Services Act 2011, disestablished the former Legal Services Agency and merged the services previously provided by the Agency into the Ministry of Justice. The 2011 Act created a new statutory position the Legal Services Commissioner. The Legal Services Commissioner must act independently when performing the following functions:

- granting legal aid in accordance with the Act and the regulations:

- determining legal aid repayments where legal aid is granted:
- assigning a provider of legal aid services or specified legal services to an aided person:
- in relation to salaried(in house) lawyers,—
 - deciding the allocation of cases among salaried lawyers:
 - overseeing the conduct of legal proceedings conducted by salaried lawyers:
 - managing the performance of salaried lawyers:

3. Please describe the legal aid organisation and the recent business figures:

(a) Organisational structure

Legal Aid Services is a business unit within the Legal and Operational Services division of the Ministry of Justice. The Deputy Secretary/Legal Services Commissioner is the overall lead for the division. Legal Aid Services are led by the General Manager, Legal Aid Services, Michele McCreadie.

Grants staff

Grants officers are responsible for the management, consideration and decision making on criminal, family, civil and Waitangi Tribunal applications for legal aid. Their decisions are independent of the Deputy Secretary and under the delegation of the Legal Services Commissioner. Grants officers prepare submissions to the Legal Aid Tribunal (LAT).

There are 11 legal aid offices nationwide employing approximately 150 staff. The 11 offices are located in three regions: Northern, Midland and Southern.

National Specialist Advisors

There are six internal and 30 external National Specialist Advisors (NSAs). All are experienced litigation lawyers specialising in family, civil, criminal and Waitangi Treaty law. NSAs provide recommendations to grants staff when a case falls outside the standard processes, or is complex or high profile. The NSAs also carry out file examinations and assist in managing litigation involving Legal Aid Services.

Debt Management Group (DMG)

DMG are responsible for managing, securing and recovering outstanding legal aid debt. DMG staff register and release caveats and statutory land charges over clients' property and in some cases work with lawyers to release relevant securities. DMG have an establishment of 31 staff.

Operations Support and Improvement Team

The Operations Support and Improvement Team is responsible for implementing, maintaining, reviewing and enhancing LAS information systems, policy and procedures. The team provides daily support to LAS staff, the media and the general public and oversees litigation cases for Legal Services as well as monitoring the decisions coming from the Legal Aid Tribunal for policy and practice matters. The team has an establishment of 12 staff.

Provider Services

The Provider Services team is responsible for the management of legal aid lawyers contracts, approvals, cancellations, audits and complaints investigation. The team has an establishment of 8 staff.

(b) Analysis of the matter types aided in the past year

- Criminal cases – 54,927
- Family cases – 23,172
- Civil cases -1,986
- Waitangi Tribunal cases 72

(c) What is the number and percentage of cases conducted by in house/staff attorneys and legal aid lawyers in private practice?

In 2013-14, 28% of criminal legal aid cases were conducted by the Public Defence Service 'in house' salaried lawyers.

All family, civil and Waitangi legal aid cases are conducted by legal aid lawyers in private practice.

4. Please describe your country's legal aid funding arrangements:

(a) What are the sources and amount of legal aid funding? Are there caps on annual spending?

Up until 2010 legal aid expenditure was demand driven. As part of the budget process in 2010 a baseline (appropriation) was established. The appropriation is adjusted to match throughput via a five year forecast of legal aid expenditure reviewed and re-forecast on an annual basis with quarterly updates. The appropriation and forecast expenditure are set at the start of each financial year. The appropriation is not a capped budget. Any under spend is transferred to the centrally managed Justice Sector Fund and then returned to legal aid if required.

(b) Has your organisation experienced large scale spending cuts? If so, what were the strategies for responding to such situation?

In New Zealand legal aid expenditure increased significantly from \$111m in 2006/07 to \$173m in 2009/10. This expenditure was too high to sustain over the medium and longer term. The New Zealand government took steps to reduce expenditure alongside initiatives to reduce offending which along with the overall reduction in crime have helped to lower legal aid costs

Three broad areas of work were undertaken to control expenditure:

- New purchase approaches to restrict the cost per case (grant)
- Eligibility changes to reduce the number of grants
- Changes to repayment policies and user charges to improve revenue

(c) What is the percentage of funding spent on paying lawyers' fees and costs and on administration expenses respectively?

- In 2013-14 legal aid expenditure (lawyer's fees and costs) was \$119,321,526
- In 2013-14 the cost of the administration of legal aid was \$29,156,000 however this includes a number of other costs outside of the operational administration of legal aid eg corporate costs such as ICT, Communications, Finance and the cost of administration of other services such as Community Law Centres and Family Dispute Resolution.
- A more accurate cost of the administration of legal aid services would be around \$21million.

(d) Does assistance extend to covering costs such as court costs; government charges and costs awarded against the legal aid recipient?

Court costs – in civil and family cases court filing fees are paid as a disbursement to the legal aid lawyer. In civil cases the court will waive security of costs if the person is legally aided.

Costs awarded against the legally aided person - An order of costs can be made against an aided person in extraordinary circumstances in family and civil proceedings. When such an award of costs is made it is usually modest and may be established as part of the legal aid debt and paid as part of the overall debt. The aided person can submit a request to write-off this debt.

A second option and more usual option for the court is to make a 'but for' order. That is 'but for the person being legally aided I would have ordered costs of'. The successful party can then apply for costs to be paid. Legal aid has discretion as to whether we pay and how much.

5. How does your organisation evaluate performance? What are the effective tools or methods of evaluation? If your organisation has established branch offices, how are their performances evaluated?

We use a range of measures to monitor and evaluate performance across both legal aid granting and debt recovery functions. Externally, we report on the quality of legal services as assessed by independent quality and value audits, timeliness in assessing applications for criminal legal aid and total debt recoveries.

We use additional measures internally within our service. We monitor legal aid processing by decision timeliness, decision accuracy, work on hand, productivity and cost efficiency. Each of the 11 legal aid offices have targets for work on hand, timeliness and quality. The debt recovery operation is monitored against target recoveries, service levels, productivity and cost efficiency.

The legal services management system, the finance system, internal quality reviews, the debt management system and a call centre telephony system are all used to collect this performance information. Performance management information is available on a 'real time' basis to legal aid managers and staff. Management reports are reviewed by the leadership team on a monthly basis.

6. Please describe the methods of service delivery in your country?

(a) Are the bulk of the approved cases conducted by in-house/staff attorneys or by lawyers in private practice?

In 2013-14, 28% of criminal cases were conducted by the Public Defence Service 'in house' salaried lawyers.

All family, civil and Waitangi legal aid cases are conducted by legal aid lawyers in private practice.

(b) What are the conditions of registering as a legal aid lawyer?

Legal aid services can only be provided once a lawyer has been approved by the Secretary for Justice (Secretary) to provide legal services in that area of law. The areas of law a lawyer can apply for are:

- Criminal
- Family
- Civil
- Court of Appeal and Supreme Court
- Waitangi Tribunal, Maori Land Court and Maori Appellate Court
- Mental Health,
- Refugee and Protected Persons
- Duty Lawyer
- Police Detention Legal Assistance.

A lawyer can apply to be a supervised or lead provider in all areas of law except Court of Appeal and Supreme Court. There are four levels of Criminal approval that depend on the seriousness of the offending and the lawyer's level of experience.

When a lawyer applies to become a legal aid provider we consider the application to determine whether the application meets the criteria set out in the Legal Services (Quality Assurance) Regulations 2011. The criteria include, relevant skills, experience and business systems to effectively manage and represent legally aided persons. The application may also be sent to a Selection Committee for consideration.

Selection Committees are made up of senior lawyers in different regions who provide advice and make recommendations on the suitability of lawyers to provide legal aid services in each area of law. The Secretary makes the final decision and may impose conditions, such as mentoring, on a provider's approval. If a lawyer's application is declined or conditions are imposed, the lawyer can apply to have a decision reviewed by the Review Authority whose decision is binding on both parties.

A lawyer may be approved as a lead provider for two to five years and as a supervised provider for up to two years. When a provider's approvals expire they are required to reapply for approval in order to continue providing legal aid services. The re-approval process is shorter than the initial approval application as we already hold much of the information required. The primary focus of the re-approval process is to ensure that providers have maintained active involvement in the area of law they are applying for, and that no adverse complaints or issues have been raised.

We also utilise limited and temporary approvals. A limited approval is granted to a lawyer to provide legal aid services in a specific case, or in an area where the need is required. The lawyer has to demonstrate a need for the service that cannot be met by the existing legal aid provider pool. A temporary approval can be granted once a lawyer has submitted a full application to become a legal aid provider and is waiting for the outcome of their application.

(c) What are the rules and procedures of assigning approved cases to legal aid lawyers?

In less serious criminal cases PAL (Provider Approval Level) 1 and PAL2 (formerly criminal summary) cases are assigned to legal aid lawyers by system driven, strict rotation. The Public Defence Service is present in the 14 highest volume criminal courts, working from 10 offices across New Zealand. 50% of PAL 1&2 cases in the courts where the PDS is present are assigned by rotation to the Public Defender. In PAL 3&4 more serious cases the legally aided person is able to choose their lawyer who must be approved as a legal aid provider. If the legally aided person does not prefer (choose) a lawyer then they will be assigned a lawyer again by strict rotation, 50% of non preferred cases are assigned to the PDS.

In Family and Civil cases the legally aided person chooses their legal aid lawyer who usually assists them to apply for legal aid. Once the application is approved the case will be assigned to that lawyer if they have the required legal aid approval.

(d) How do the salaries and fees paid to legal aid lawyers compare with the general market?

We do not have information on the fees paid to lawyers by private clients. Those rates will vary significantly depending on the service being provided, the type of firm or individual lawyer and the experience level of the lawyer.

7. Please describe the types of legal aid services provided in your country and the types of matters aided?

Police Detention Legal Assistance – if a person within New Zealand has been arrested, held (detained) without being arrested or are being questioned about an offence, they are able to talk to a lawyer for free under the Police Detention Legal Assistance scheme.

Duty Lawyer services - a duty lawyer is a lawyer on duty at the criminal courts. They provide free legal help to people who have been charged with an offence and don't have their own lawyer.

Criminal legal aid - may be available if you are charged with an offence that could be punished with a prison term of six months or more. Legal aid may also be available if you are appealing your conviction or sentence for one of these offences. Legal aid is less likely to be available for minor charges as the duty solicitor can assist you in these matters.

Family legal aid - may be available for family disputes or problems that could go to court. This includes:

- disputes over relationship property, child support or maintenance, and care of children
- protection orders
- care and protection orders for children and young persons
- adoption

- paternity
- mental health (compulsory treatment orders)

Legal aid is not available for problems that wouldn't go to court (such as drawing up a will), or for divorce proceedings.

Family Legal Advice Service - is free legal advice to help an individual understand the legal aspects of settling a dispute about caring for their children. This service can also help an individual fill out Family Court forms if needed.

Civil legal aid - may be available for disputes or problems that could go to court or a tribunal. This includes proceedings over debt recovery, breaches of contract, defamation, and bankruptcy.

It also includes proceedings before tribunals or specialist courts such as the:

- Employment Relations Authority
- Employment Court
- Environment Court
- Human Rights Tribunal
- Legal Aid Tribunal
- Maori Land Court
- Refugee Status Appeal Authority
- Social Security Appeal Authority
- Taxation Review Tribunal
- Tenancy Tribunal
- Waitangi Tribunal

Legal aid is not available for Disputes Tribunal or Motor Vehicle Disputes Tribunal cases, some immigration matters (except refugee matters), reviews by Work and Income (although legal aid may be available to appeal a decision made by the Social Security Appeal Authority), and problems with schools, universities and other educational institutions (such as suspension meetings before the school's board of trustees).

Legal aid is not available for companies or groups of people (except in some cases, such as Waitangi Tribunal matters).

8. Please describe application procedures and the criteria for granting legal aid?

A person who would like to apply for civil or family legal aid should start by contacting the lawyer whom he or she would like to represent them. The applicant must first check that this lawyer is able to do legal aid work. Provided that the lawyer is able to take the case, the lawyer will help the applicant to complete a legal aid application form and submit it to Legal Aid Services for an assessment of eligibility.

If a person would like to apply for criminal legal aid, he or she can contact a duty lawyer at their local district court. The duty lawyer will assist the applicant in completing the legal aid application form.

When assessing an application for legal aid, for civil and family cases, we will consider whether the applicant has reasonable grounds for taking or defending the proceedings or being a party to the proceedings.

The merits decision for Criminal legal aid under s8(1)(c) is made by determining if the:

- offence is punishable by a maximum term of imprisonment of six months or more or
- interests of justice require the applicant to be granted legal aid (see 'Factors to consider under s8' below).

The thresholds for financial eligibility for legal aid are set out in the Legal Services Regulations 2011 (which are available online at www.legislation.govt.nz).

If the applicant exceeds either of the relevant gross annual income or disposable capital thresholds set out in the Regulations, legal aid will be refused, unless it can be shown that there are special circumstances that would nevertheless render a grant of legal aid appropriate. When assessing whether there are special circumstances, we will consider the likely cost of the proceedings to the applicant and the applicant's ability to fund the proceedings if legal aid is not granted.

9. In order to satisfy demand:

(a) Are there services or standards specifically designed to help disadvantaged groups such as women, children, indigenous people, labor and residents living in remote areas?

The Legal Services Act 2011 allows specified applications to have a lower threshold to be granted legal aid. It may also exempt the applicant from certain requirements such as paying a user charge, or making repayments. Specified applications include applications for legal aid for proceedings involving

- vulnerable persons such as victims of domestic violence
- persons subject to compulsory treatment orders
- applicants for refugee status
- children subject to protection orders
- persons who lack full mental capacity
- Treaty of Waitangi claims brought by Maori relating to actions or omissions of the Crown are also specified applications

(b) Are their special standards or rules for deciding whether (and how much) legal aid resources should be allocated to assist complex cases (eg environmental lawsuits or other class action lawsuits?)

High Cost Case (HCC) management in criminal cases aims to more closely manage from the outset criminal grants of legal aid which have the potential to become high cost. It seeks to reduce expenditure via transparent case management practices, with all funding decisions being approved on a staged basis in advance of work being undertaken.

Some of the most expensive legal aid cases are those for Waitangi Tribunal proceedings. The Tribunal is a permanent commission of inquiry charged with making findings and recommendations on Treaty of Waitangi claims brought by Maori relating to actions or omissions of the Crown. Unlike other Commissions of Inquiry which may be set up, legal

aid is available for claimants appearing before the Waitangi Tribunal. Separate operational policy defines the legal services that may be funded for Waitangi proceedings.

We are currently in the process of designing complex and high cost management frameworks for family and civil cases.

Class action lawsuits

The Legal Services Act 2011 requires that we must refuse aid in connection with a matter in which numerous persons have the same interest. We would not fund the application unless the whole group was eligible for legal aid which is unlikely.

10. How does your organisation monitor the quality of legal aid lawyers services?

We undertake an annual audit programme for legal aid providers under s 91 of the Legal Services Act 2011. This includes audits of both private legal aid lawyers and Public Defence Service lawyers. Audits are undertaken to ensure legal aid providers provide the required standards of quality and value when representing legal aid clients. The audits are an important way of ensuring confidence in legal aid services and also providing feedback to providers about areas for improvement.

Clients and others can make complaints about legal aid providers. All complaints received must be investigated by our dedicated complaints investigator. The investigation of complaints may result in a range of outcomes/sanctions, including referral into our audit programme, to the New Zealand Law Society (NZLS), or to the Performance Review Committee.

We refer substantiated serious complaints to the New Zealand Law Society for further investigation. The NZLS sends us Standards Committee determinations on legal aid providers.

11. How does your organisation inform potential applicants (particularly residents living in remote locations) of the availability of legal aid services?

People needing legal help can find extensive information about legal aid services on the Ministry of Justice website. They can also find out about legal aid from legal aid brochures that are distributed in the community. These are supplied free to local community organisations such as Community Law Centres and Citizens Advice Bureaux. These brochures are also available in courts. Information about legal aid is also available by telephone from any legal aid office. An 0800 (free call) service will be in place from November 2014.

12. How does your organisation help to reduce the amount of disputes which resort to the courts? Does your organisation participate in law reform or offer legal education to the public? If so, please describe these activities or services.

Parenting through Separation is a free parenting information programme where participants get practical advice about helping them and their children deal with separation. It will also help participants plan how they will care for their children after separation. The programme can also help grandparents and or wider family members work out a dispute about how children will be cared for.

Family Dispute Resolution is a mediation service to assist parents or guardians resolve disputes about how to care for their children during separation. The Family Dispute Resolution Service aims to reduce the number of cases being heard in the Family Court. If agreement cannot be reached then the Family Court may be needed to make a decision. However, in most cases clients will need to demonstrate that they have attempted Family Dispute Resolution before their case is heard in Court.

Family Legal Advice Service is free legal advice available to eligible people to help them understand the legal aspects of settling a dispute about caring for their children. This service can also help an individual fill out Family Court forms if needed.

Community Law Centres lawyers and advocates give people free initial legal help so they can deal with their legal problems quickly. If the legal problem is complicated, the Community Law Centres may be able to provide ongoing legal help if they do not have the financial means. Community Law Centres also provide law related education to the general public. Law related education involves the delivery of education on law related matters in the form of course seminars or classes for the general public, groups with specific interests or individuals. Law related education may be provided either on demand or as a result of an individual initiative.

LawAccess website has easy to read information on areas of New Zealand law where people often experience problems. The site is a great starting point to search for information about the law and legal issues.

- 13. Please describe recent initiatives which made services accessible through the use of technology. If self help services are available, please comment on the effectiveness of these services.**

In 2012, we developed a vision for the future management of legal aid services a 'Future Operating Model'. The Future Operating Model was developed from the perspective of the legally aided person. The overall plan for the future is to 'automate the simple and focus people on the complex'. Section 16a Legal Services Act 2011 was introduced in Sep 2013 the new section enables the automation of non discretionary decisions for certain grants of legal aid. We are planning to move to on line application and automation of non discretionary decisions. However, the speed of implementation of this change is limited by the available financial resources and will need to be compliant with privacy and information security legislation and regulations.

- 14. Please describe the difficulties encountered by your country in promoting legal aid work in recent years and the strategies for responding to these difficulties.**

We have not experienced difficulties in promoting legal aid work in recent years, our focus over the past four years has been on reforming the legal aid system to improve the quality and increase the cost effectiveness of the services provided. Our focus over the next two years is to improve the efficiency and cost effectiveness of the administration of legal aid.

- 15. Has your country established any mechanisms of cooperation with legal aid organisations abroad?**

Legal Aid Services in New Zealand have developed a number of mechanisms of cooperation for learning and sharing best practice with overseas legal aid organisations. The General Manager, Legal Aid Services is a member of the National Legal Assistance (NLA) Australia, Directors Group and attends meetings two or three times per year. New Zealand is also able

to attend and participate in NLA sub groups. A strategic relationship to learn and share best practice has also been developed with the Scottish Legal Aid Board.

16. How does your organisation adopt United Nations legal aid principles and guidelines in policies and services?

The New Zealand Bill of Rights Act 1990 affirms the fundamental rights and freedoms set out in the International Covenant on Civil and Political Rights. All legal aid policies and guidelines must comply with the Bill of Rights Act 1990.