

NATIONAL REPORT OF NEW ZEALAND

**The 2018 International Forum on Legal Aid,
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AOTEAROA NEW ZEALAND

NZ population: 4,885,300

Māori population: 734,0000
(15% of total population)

GDP- 205.9 billion USD(2017)



HISTORY

CRIMINAL LEGAL AID

Criminal legal aid was first provided for in the Justices of the Peace Amendment Act 1912 which was then duplicated in the Justices of the Peace Act 1927. The next legislation was the Poor Prisoners' Defence Act 1933. The Offenders Legal Aid Act 1954 made further provision for criminal legal aid.

CIVIL LEGAL AID

Civil legal aid was first introduced in New Zealand in 1939 when the Legal Aid Act 1939 was enacted. The Act did not provide a detailed scheme for legal aid but left any such scheme to be defined by regulations made pursuant to the Act. No regulations were ever made and no scheme for legal aid came into force.

LEGAL AID ACT 1969

Until 1969, civil litigants had to rely on a formal undertaking by the New Zealand Law Society that it would ensure that no person with a reasonable case would be prevented from bringing or defending legal proceedings simply because she or he could not afford to pay for the services of a lawyer. By 1969 it was felt that the arrangement with the New Zealand Law Society was inadequate and the Legal Aid Act 1969 was enacted.

HISTORY

LEGAL AID ACT 1969

The 1969 Act made civil legal aid available, to those who met the financial eligibility test, in a wide range of cases including all civil cases and domestic proceedings in the Magistrates Court and all civil proceedings in the Supreme Court (except matrimonial proceedings).

LEGAL SERVICES ACT 1991

Following the Access to the Law reports and Te Whāinga i te Tika – In Search of Justice, the Legal Services Act 1991 was enacted. The Act consolidated and amended the Offenders Legal Aid Act 1954 and the Legal Aid Act 1969. The Act also made provision for the duty solicitor scheme, legal assistance schemes and the establishment and funding of community law centres.

The Legal Services Act 1991 also established the Legal Services Board as a Crown Entity to administer the civil legal aid scheme. Other functions of the Legal Services Board included administering the criminal legal aid scheme, the duty solicitor scheme and the police detention legal assistance scheme.

HISTORY

Under the Legal Services Act 1991 there were 19 Legal Service Districts with each having a Committee (s 114). Each Committee would then appoint a District Subcommittee for the processing of civil legal aid (s 122).

The District Subcommittee's tasks include:

- granting legal aid and approving payment of bills;
- considering applications by lawyers for increases in legal aid grants;
- imposing contributions and charges on aided persons; and
- preparing written cases for the Legal Aid Review Authority in respect of appeals.

HISTORY

LEGAL SERVICES ACT 2011

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 to an aided person
- In relation to salaried (in-house) lawyers –
 - Deciding the allocation of cases amongst salaried lawyers
 - Overseeing the conduct of legal proceedings conducted by salaried lawyers
 - Managing the performance of salaried lawyers

RATIONALE –POLITICS OF KINDNESS; RESPECT; CARE; AND PROTECTION OF RIGHTS



State supported aid arises from the basic responsibility of the state to ensure justice for its citizens, and this responsibility is not truly fulfilled so long as any citizen is prevented by lack of means from having [her or] his grievances aired and determined fairly and adequately by the courts.

The same concept is behind Article 7 of the Universal Declaration of Human Rights, which provides that all shall be entitled, without discrimination, to the equal protection of the law. This requires that the balance of justice should not be loaded in favour of the [person] with means, the large corporation, or the State itself.

SITUATIONAL ANALYSIS

Acting Legal Services Commissioner Sarah Turner confirmed in October 2018 confirmed that the data shows payments to 1,205 firms whose legal aid lawyers undertook work on a range of cases in the criminal, civil and family courts and a number of specialist courts and tribunals.

The Ministry's Annual Report shows \$160 million was spent on legal aid, an increase of \$16 million on the year before.

“Legal aid ensures people who cannot pay for a lawyer are provided with legal representation in court. We pro-actively publish this information once a year to ensure transparency and accountability of the spending of what is a significant amount of public money.”

There are currently about 1900 lawyers approved to provide legal aid services working for firms or for themselves, as a firm in their own right.

TRENDS

Ministry figures, released under the Official Information Act, show the number of "family lead providers" for legal aid fell from 1850 in June 2007 to 942 by June 2016. During that same period, the number of taxpayer-funded family court lawyers invoicing more than \$200,000 shot up from five to 44.

BY THE NUMBERS:

- 1,850: The number of family lead providers for legal aid in June 2007
- 942: The number of family lead providers for legal aid in June 2016
- 17,985: Family legal aid grants in 2006-07
- 18,354: Family legal aid grants in in 2015-16
- 1,238: Lawyers who invoiced for family legal aid work in 2006/2007
- 861: Lawyers who invoiced for family legal aid work in in 2015-16
- 5: Lawyers who invoiced for more than \$200,000 in family legal aid work in 2006-07
- 44: Lawyers who invoiced for more than \$200,000 in family legal aid work in 2016

PROVIDER STATUS AND PROCESS

- Legal Services can only be provided once a lawyer has been approved by the Secretary for Justice 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 may be approved as a lead provider for two to five years and as a supervised provider for up to two years. When approvals expire they are required to reapply for approval in order to continue providing legal aid services.
- 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, and problems with schools, universities and other educational institutions.
- Legal Aid is not available for companies or groups of people in class actions (except in some cases, such as Waitangi Tribunal Matters.

GROWING DISILLUSIONMENT

On 7 November 2014 the Chief Judge of the High Court, Justice Helen Winkelman, gave the Ethel Benjamin address on the subject of civil law: Access to Justice- Who needs Lawyers? She illuminated the most critically important legal conversation of our time for civil law at least.

“Access to Justice is not just a human right for individuals. It is central to our constitution and social wellbeing. Access to justice enables the rule of law. One of the rules tenets is that all are treated equally and all are equally accountable under it. The rule of law ensures that we live in a safe, peaceful, harmonious, free and democratic society.

Over the past three years I have wondered increasingly if I am in a nightmare and have woken in Charles Dickens England. On a daily basis I clear my email and phone messages or answer the phone to at least one person in dire and desperate need of legal assistance, often with an extraordinary legal problem and always having found no-one



GROWING DISILLUSIONMENT

“I believe that the cost cutting inherent in the 2011 Legal Aid reforms in some cases may have put a fair trial in jeopardy. It is difficult to objectively assess this jeopardy. I rely upon my own knowledge and experience and anecdotal information from the concerns of others in the criminal justice system including lawyers in making this assessment.”

Retired High Court Judge Sir Ronald Young




ACCESS TO JUSTICE?



The Legal Services Act 2011 – SIX YEARS ON

Clients/Claimants/Applicants


- Eligibility test doesn't capture all the people with real issues
 - Denied the right to choose their own lawyer
 - Forced into a self-representation situation
 - Tighter repayment rules
 - Interest is now charged – 8%
 - Closure of six of the eight legal aid centres
 - Waiving legal professional privilege
 - User charge of \$50 for most civil and family applicants
 - Income thresholds are too low
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ACCESS TO JUSTICE?



The Legal Services Act 2011 – SIX YEARS ON

Counsel

- Large numbers of lawyers have withdrawn from the legal aid system
 - Growing Advice Deserts across the Country (Blenheim, Wairarapa, and the West Coast were the worst. There were just three lawyers doing regular family legal aid work in Blenheim.)
 - Pay rates and fixed fees are inadequate
 - Lack of young lawyers electing to do legal aid work
 - Availability of experienced legal aid lawyers in some parts of the country is at crisis levels
 - Burdensome administration
 - Lawyers organising as cooperative (Legal Aid Providers Authority:LAPA) to find lawyers to assist those having difficulty locating legal assistance
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BARRIERS FACED BY MĀORI

- **Unfamiliar with entitlements to legal aid**
- **Cultural values are disregarded by the justice system**
- **Poor Literacy and limited access to technology**
- **Young people will plead guilty to a charge without understanding the full implications of doing so**





BARRIERS FACED BY WOMEN

- **Over-represented in part-time work and in low paid occupations**
- **Make up 57% of beneficiaries**
- **Potentially highly negative impact of legal aid debt recovery**
- **Legal aid thresholds can exclude women with minimal income**
- **Ineligibility may force women to self-represent in family cases**
- **Court processes are open to abuse**

WAITANGI TRIBUNAL LEGAL AID

- **Financial circumstances aren't considered**
- **No repayment requirement**
- **Treaty claims are big cases and are among the most expensive legal aid cases**
- **Tight restrictions and discretionary decision-making**
- **Low hourly rates for lawyers– less than half the normal market rate**
- **The number of Treaty lawyers is declining**
- **Appear to be trying to reduce spending in this area**
- **Contrast this regime with the funding matrix for High Court proceedings for the Marine and Coastal Area Act – approximately \$70 million for 303 applications**



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Annette Sykes

Aotearoa, New Zealand

Mā tōu rourou

Mā tāku rourou

Kā ora ai te iwi