



MINISTRY OF  
**JUSTICE**  
*Tāhū o te Ture*

# Part 2 – Audit and monitoring

Operational Policy

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# Contents

<b>Overview of Audits</b>	<b>6</b>
Overview	6
About this part	6
Purpose	6
Statutory authority	6
Integrity of process and auditing standards	7
Auditing principles	7
Selection of providers for audit	7
Compliance with audit	7
Legal professional privilege	8
Glossary of terms	9
References	9
In this part	9
<b>Chapter 1 – Limited Audits</b>	<b>10</b>
Overview	10
Process	10
Legal references	11
Purpose and scope of limited audits	11
Purpose of limited audits	11
Scope of limited audits	11
Legal aid jurisdictions	11
Legal professional privilege	12
The limited audit process	12
Selecting files for limited audit	12
Notifying the provider	12
Timeframe	12
Ministry records	12
Checking information and identifying areas of concern	12
Provider meets expectations	13
Right of reply if initial view is does not meet expectations	13
Provider does not meet expectations	13
<b>Chapter 2 – Full Audits</b>	<b>14</b>
Overview	14

Process	14
Scope of full audits	15
Scope of full audit	15
Full audit process	15
Selection of audit site	15
Notice period	15
Timeframe	15
Full audit methodology	15
Full audit report format	15
Provider given draft for comment	16
Serious audit findings and corrective actions	16
<b>Section C – Special Audits</b>	<b>17</b>
Overview	17
About special audits	17
Referral	17
Special audit process	17
Files to be audited	17
Notice period	18
Timeline	18
Provider given draft for comment	18
Provider does not meet expectations (that is, has a rating of poor or very poor)	18
Summary of process	18
<b>Appendix 1 – Glossary</b>	<b>20</b>
Glossary of Terms	20

# Overview of Audits

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## Overview

### About this part

This part of the Provider Manual describes the Ministry of Justice's (the Ministry's) auditing processes for providers of legal aid services or specified legal services. The Ministry's auditing processes include:

- limited audits on providers carried out by Ministry auditors and
- full and special audits carried out by external auditors.

### Purpose

The purpose of the Ministry's audit processes is to ensure that legal aid services are delivered in an effective and efficient manner, in accordance with legislative, contractual and professional obligations.

### Statutory authority

Section 68(1) of the Legal Services Act 2011 (the Act) sets out the following functions of the Secretary for Justice (Secretary):

- a) Establish, maintain and purchase high-quality legal services in accordance with this Act;
- b) To perform any functions that are conferred or imposed on the Secretary by or under this Act;
- c) To perform any other functions relating to legal services that are conferred or imposed on the Secretary by or under any other Act.

The audit process is governed by sections 91, 92 and 113 of the Act. These provisions outline the powers, functions and duties of the Secretary to conduct audits of approved providers of legal aid services or specified legal services:

- section 91(1) of the Act enables the Secretary to audit providers at any time<sup>1</sup>
- section 91(2) of the Act requires audits to be conducted by an auditor, ie a person employed or appointed by the Secretary for the purpose of conducting audits
- section 92(1) requires a provider who is subject to an audit to cooperate with the auditor
- section 113 of the Act makes failure to comply with an audit/auditor an offence where the auditor is unable to satisfactorily conclude the audit.

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<sup>1</sup> This includes the providers who were previously listed/approved by the Secretary.

## **Integrity of process and auditing standards**

To ensure integrity of process, the Ministry will:

- ensure that all findings, opinions, and recommendations are based on established and accurately understood facts, the relevant law, and applicable standards
- act openly and transparently – subject to the need to respect personal privacy and observe any other obligations of confidentiality
- observe the principles of natural justice.

## **Auditing principles**

The Ministry is committed to improving the quality of legal aid services and we manage audits in accordance with good practice auditing principles.

In conducting audits, auditors must:

- act professionally, report findings accurately and in a consistent and unbiased manner and undertake audits in accordance with Ministry requirements and procedures
- endeavour to undertake the audit with the least inconvenience possible to the provider and firm
- provide any suggestions for improvement that might be useful
- respect legal professional privilege and only use or disclose information received during the course of the audit for the purpose of the audit
- undertake auditing work that is within their abilities, qualifications and competence
- avoid any activity or personal relationships that may be seen as a conflict of interest or that may influence their judgement
- ensure that any activity entered into does not conflict with the Ministry's best interests or prevent the objective performance of the auditor's function
- adhere to the requirements of legislation, regulations, and good practice standards
- not promote or represent any business interests, including those that provide practice management goods or services, whilst conducting audits
- not accept any inducement, commission, gift or any benefit from any interested party
- act in a way that protects the Ministry's reputation
- co-operate fully with any inquiry about the audit and the provider's performance.

## **Selection of providers for audit**

The number of providers to be audited is determined yearly. Providers are selected for limited or full audit based on their risk profile or may be randomly selected.

Factors that may influence a provider to be selected for audit include:

- Ministry data analysis
- number of complaints received, number of substantiated complaints, or New Zealand Law Society findings of unsatisfactory conduct or misconduct
- referral for audit by Ministry employees and other legal professionals
- recent progression to a higher Provider Approval Level or new approval category
- poor or very poor performance rating in a previous limited or full audit
- length of time since previous audit, or never been audited
- any other flag that indicates concerns.

## **Compliance with audit**

To co-operate with the auditor, the provider must:

- give the auditor access to all relevant documents
- answer any questions fully, frankly, promptly, and in the form required by the auditor and
- permit, and if necessary, assist the auditor to make copies of documents.

**Reference:** Section 92(1)

The table below outlines the process that takes place if a provider fails to co-operate with an auditor.

Stage	Description
1	The Secretary warns the provider in writing that: <ul style="list-style-type: none"><li>• the required level of co-operation is not being provided and</li><li>• the Secretary may suspend any claims for payment until satisfied the provider is co-operating with the auditor.</li></ul>
2	If the provider's co-operation continues to fall below the required level and is not likely to meet the requirements, the auditor advises the Secretary of this.
3	The Secretary then: <ul style="list-style-type: none"><li>• suspends payments of any claims currently lodged by the provider</li><li>• notifies the provider that payments will remain suspended until the Secretary is satisfied that the provider is co-operating with the auditor</li></ul>
4	The Secretary may terminate the audit of the provider and may seek to charge the provider with an offence under section 113, which is punishable by a fine not exceeding \$5,000.

### Legal professional privilege

Information contained in the provider's files is legally privileged, however section 109 of the Act provides that legal privilege does not prevent, limit or affect the provider producing a file, record or document requested during audit.

Information that is subject to legal professional privilege and produced for the purposes of an audit or investigation must not be used in:

- any proceedings against the client; or
- any way that is detrimental to the client.

**Reference:** Sections 92 and 109

### Disclosure of information

The Ministry will only disclose information from any audit in accordance with the principles of the Privacy Act 2020 (Privacy Act) and the requirements of the Official Information Act 1982 (OIA).

The Ministry will hold final audit reports and associated information on the provider's file and these will only be accessible by Ministry staff to fulfil their responsibilities.

If the audit report is required to be released under the OIA, the Ministry will delete any reference that might identify the provider or the legally aided persons unless the public interest in disclosure outweighs the individuals' privacy. It would be highly unusual for public interest to outweigh personal privacy in the context of legal aid audits.

The Ministry may publish the overall results of the annual audit programme in a consolidated format on its website.

### Audit record retention

Auditors will comply with the Ministry's document retention policy and retain a copy of the completed audit tool, any interview notes or recordings and any other documentation they create that is used to inform the audit findings.

## Legal references

This policy contains the following references to the Act:

Section	Title
91	Secretary may audit providers
92	Compliance with audits
109	Disclosure of privileged communications under section 92 or 96

## Glossary of terms

A glossary of the key terms used in this part can be found in Appendix 1 – Glossary.

## References

References to 'the Act', 'regulations' or legislative provisions refer to the Legal Services Act 2011 and Legal Services (Quality Assurance) Regulations 2011. Any other Act mentioned is named in full.

## In this part

This part contains the following chapters and appendices

Chapter	
1	Limited Audits
2	Full Audits
Appendix 1	Glossary

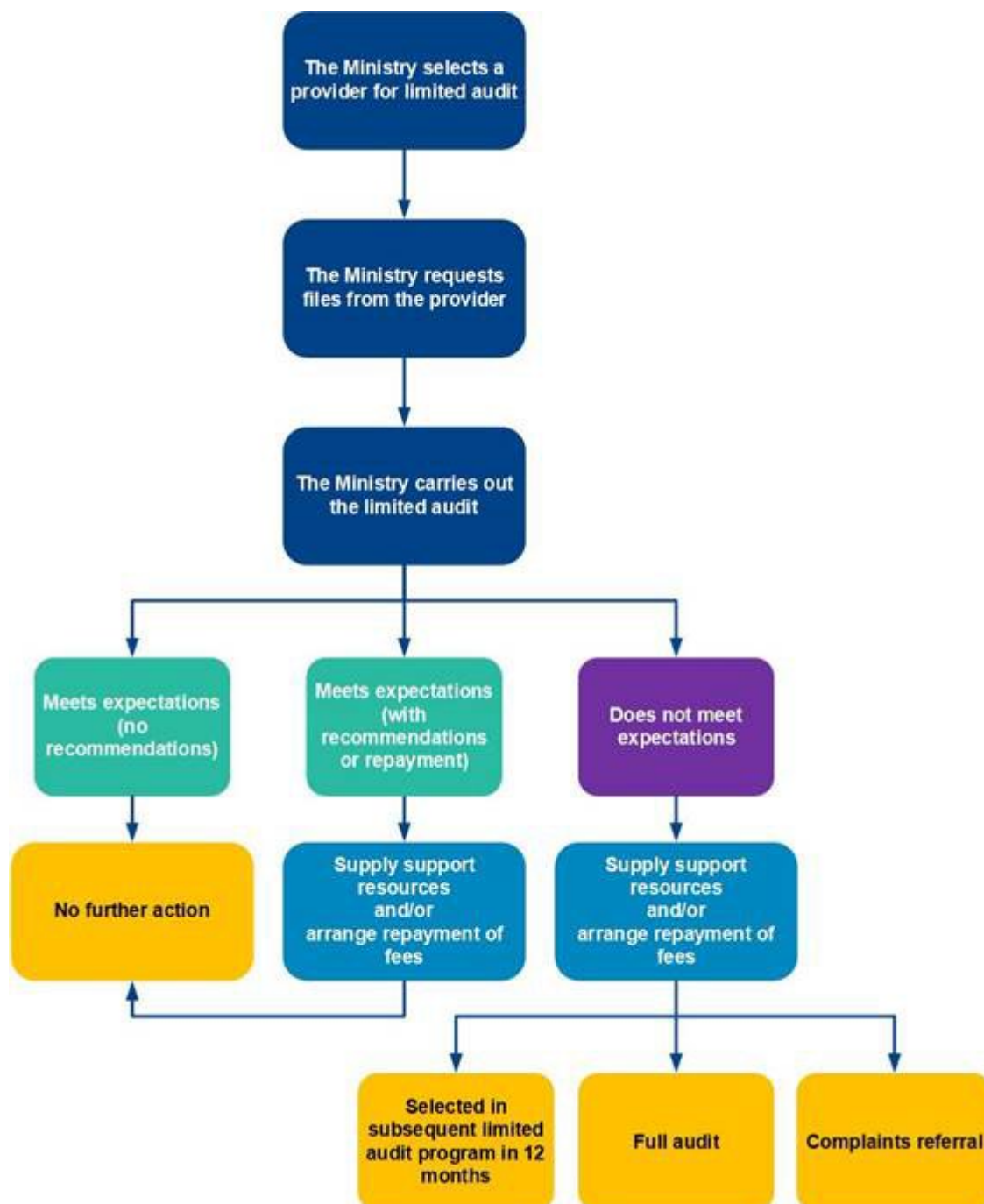


# Chapter 1 – Limited Audits

## Overview

### Process

The diagram below shows the high-level limited audit process:



## Legal references

This chapter contains the following reference to the Act:

Section	Title
91	Secretary may audit providers
92	Compliance with audits
109	Disclosure of privileged communications under section 92 or 96

# Purpose and scope of limited audits

## Purpose of limited audits

The purpose of limited audits is to ensure that providers are compliant with:

- the Act
- the contract with the Ministry (including the Practice Standards for Legal Aid Providers)
- their professional obligations, and
- the Ministry's policies and procedures.

Limited audits enable the Ministry to:

- perform financial checks on the file (to ensure fees and fixed fees are correctly applied and claimed)
- identify any red flags that would contribute to a risk profile and provide a pathway to the full audit programme and
- identify any education needs and support opportunities for providers.

## Scope of limited audits

The scope of limited audits is to identify:

- whether the work invoiced by the provider was actually completed
- how many hours were invoiced by the provider (within a specified timeframe)
- how many cases were assigned to the provider (within a specified timeframe)
- whether work undertaken by other providers engaged by the lead provider on a legal aid assignment was invoiced accurately
- whether the work invoiced by the provider was justified, or is able to be justified
- whether the provider advised the Ministry of any change to the merits of the case (where relevant)
- whether the provider advised the Ministry of any change to the financial eligibility of the legally aided person, or to other conditions of the grant
- whether any disbursements incurred were necessary, and billed on an actual and reasonable basis,
- any other aspect of the provider's conduct that the Ministry deems appropriate to check.

## Legal aid jurisdictions

The limited audit process applies to the following legal aid jurisdictions:

- Criminal
- Family
- Mental Health

- Civil

### **Legal professional privilege**

Laws privileging communications between a provider and a legal aid client do not apply to the disclosure of information required for auditing purposes.

Information that is subject to legal professional privilege and produced for the purposes of an audit or investigation must not be used in:

- any proceedings against the client; or
- any way that is detrimental to the client.

**Reference:** Sections 92 and 109

## The limited audit process

### **Selecting files for limited audit**

Five of the provider's files will be randomly selected using a selection tool. Where practicable, all files will have been closed within the last six months for relevancy.

### **Notifying the provider**

The Ministry will notify the provider that they have been selected for a limited audit and ask them to send the pre-selected files. The Ministry gives a minimum of 10 working days' notice to providers that they have been selected for a limited audit and the list of files they need to provide.

Providers are required to meet the cost of couriering/sending their requested files to the Ministry.

### **Timeframe**

The duration of limited audit depends on the co-operation of the provider. They are generally expected to be completed within six weeks, from the initial notification of the provider to the return of files to the provider.

### **Ministry records**

Files may be requested from the Legal Aid Office for review as part of the assurance checking process.

### **Checking information and identifying areas of concern**

The Ministry assesses the content of the files against the relevant checklist and limited audit criteria for the area of law that the file relates to, as well as some generic checks that will be done regardless of jurisdiction.

This assessment will determine whether the provider appears to be compliant with:

- the Act
- their contract with the Ministry
- the Practice Standards for Legal Aid Providers
- their professional obligations and
- the Ministry's policies and procedures.

This assessment results in a "meets expectations" or "does not meet expectations" result.

### **Provider meets expectations**

If the files provide sufficient evidence to demonstrate that the provider is compliant, the provider “meets expectations” and no further action is required.

In this case, the Ministry:

- records the findings
- returns any requested documentation to the provider and
- returns the Ministry file to the Legal Aid Office.

If minor compliance issues are identified, the Ministry will communicate those issues to the provider and provide advice about how to improve. Where relevant, recommended templates or fact sheets may also be provided to help the provider.

If the auditor finds that the provider has incorrectly claimed one or more fees, the auditor may still find that the provider meets expectations if the auditor is satisfied that the error was unintentional. However, the provider may be required to repay the incorrectly claimed fee(s).

The risk profile tool used to select providers for audit considers the provider’s recent limited audit history. If a provider meets expectations in a limited audit, it will reduce the likelihood that the provider will be selected for audit again within the short term.

### **Right of reply if initial view is does not meet expectations**

If the initial result of the limited audit is does not meet expectations, the provider will be provided with a copy of the draft report and proposed actions and given the opportunity to make submissions before the report and actions are finalised.

### **Provider does not meet expectations**

If the provider does not meet expectations, the Ministry will consider one of the following options:

- referring the provider to the complaints process
- referring the provider to the full audit programme and
- increasing support through mentoring from another provider, good practice templates, or support material.

In this case, the Ministry:

- records the findings
- advises the provider of the areas where they have not met expectations
- returns any requested documentation to the provider.

Not meeting expectations of the limited audit contributes to a provider’s risk profile, which may be used to identify a provider for full audit selection.

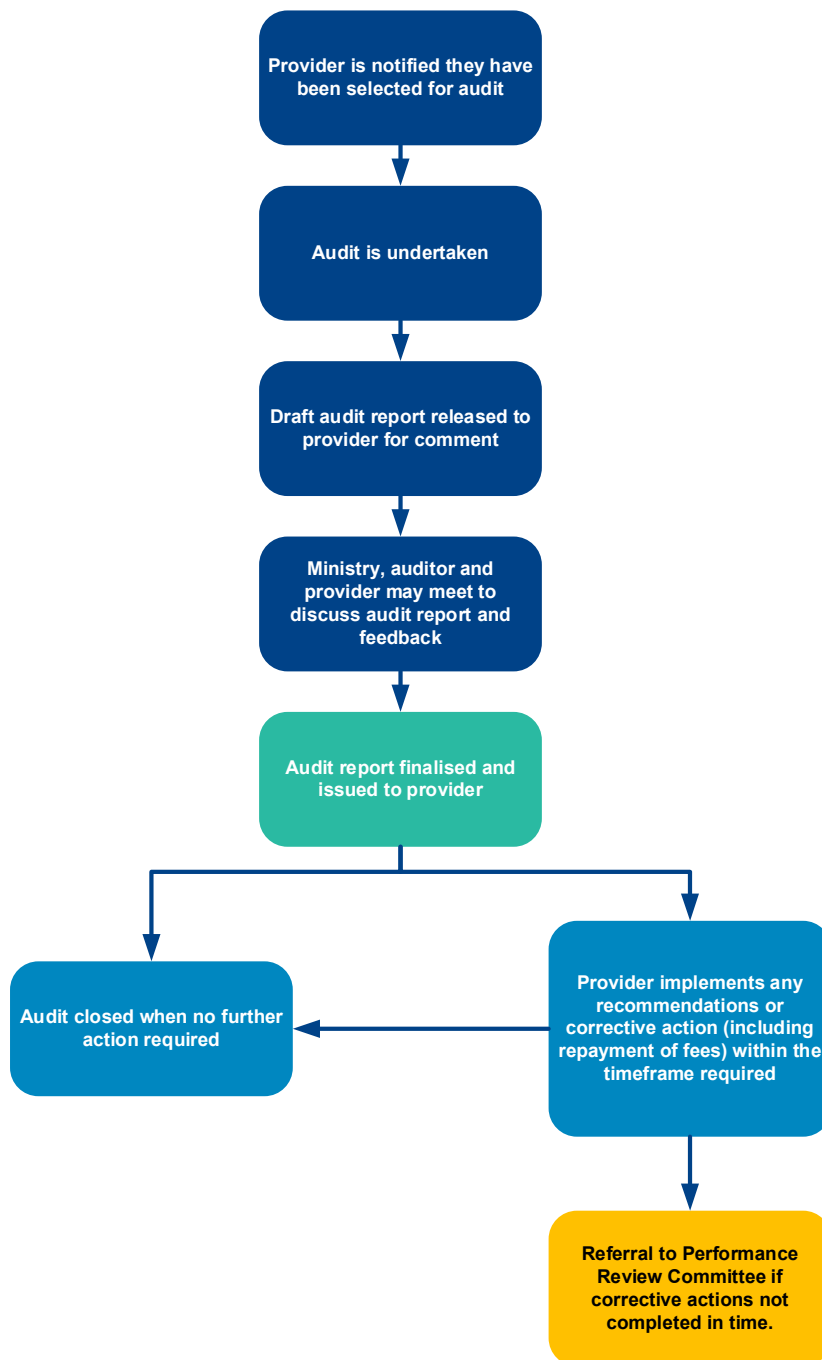
# Chapter 2 – Full Audits

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## Overview

### Process

The diagram below shows the high-level process for full audit.



# Scope of full audits

## Scope of full audit

Full audits evaluate the performance of selected providers, as well as their compliance with professional, legislative, and contractual obligations.

The full audit may include an assessment of the provider's compliance with:

- any conditions imposed on the provider's approval
- legislative requirements
- their contract with the Ministry
- the Practice Standards for Legal Aid Providers
- guidelines and policies issued or made by the Secretary or the Legal Services Commissioner
- any substantial or unresolved complaints concerning delivery of legal aid services or specified legal services.

# Full audit process

## Selection of audit site

A full audit may be conducted remotely or in person.

During a remote audit, the provider sends their files to the auditor for review. The provider and the auditor will take care at all times to ensure files are addressed correctly to prevent a privacy breach.

In an in-person audit, the assessment is carried out by the auditor at the provider's place of work.

The Ministry will determine whether a remote or in-person audit is required based on the provider's risk profile and other practicalities including the availability and location of auditors and the provider.

## Notice period

The Ministry gives a minimum of 10 working days' notice to providers that they have been selected for a full audit and the list of files that need to be provided for audit.

## Timeframe

The duration of an audit depends on the co-operation of the provider. Full audits are generally expected to be completed within 55 working days, from the initial appointment of the auditor and notification of the provider to the return of files to the provider.

In exceptional circumstances, the Ministry may, on behalf of the auditor, agree to an extension of the audit period.

## Full audit methodology

Auditors must conduct the audit in line with the methodology set in the Full Audit Methodology.

## Full audit report format

Full audit reports must include the following:

- an overall rating and conclusions
- key audit findings/observations

- recommendations and corrective action as required
- clear guidance on what action the provider must take to implement any recommendations or corrective actions.

Auditors must complete the audit report using the Audit Report template.

### **Provider given draft for comment**

The provider will be given a copy of the draft audit and proposed actions (if any), and will have 10 working days to comment. Any comments will be taken into account by the auditor in finalising the audit and by the Secretary in finalising the proposed actions (if any).

### **Minor compliance issues**

If minor compliance issues are identified, the Ministry will communicate those issues to the provider and provide advice about how to improve. Where relevant, we will issue recommendations for improvement and or provide templates or fact sheets to help the provider improve their practice.

If the auditor finds that the provider has incorrectly claimed one or more fees, the auditor may still find that the provider has an overall rating of acceptable, very good or excellent if the auditor is satisfied that the error was unintentional. However, the provider may be required to repay the incorrectly claimed fee(s).

### **Serious audit findings and corrective actions**

The Ministry may issue a corrective action for serious audit findings. Where the provider does not complete the corrective action within the required timeframe, and to the Ministry's satisfaction, the Ministry will, subject to section 79 of the Act, refer the provider to the Performance Review Committee.

If an audit identifies matters related to misclaimed fees or disbursements, the Ministry will take action to reclaim any overpayments.

If the audit identifies very serious issues that need to be dealt with immediately (eg private payment, fraud, non-compliance with conditions of approval) it will take action under the provider contract (such as issuing a default notice, or consider cancellation or variation of the providers approval) as necessary.

If the audit identifies issues that require further investigation, it may refer the provider to the complaints process or initiate a special audit.

### **Right of review if corrective action issued**

If the Secretary issues the provider with a corrective action, the provider may request a review of that decision within 10 working days.

### **Actions under the contract**

If the Secretary takes any actions under the contract, any right of review or consequences of non-compliance are as outlined in the contract.

# Section C – Special Audits

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## Overview

### About special audits

Special audits are targeted audits which may, for example, focus on:

- the processes and procedures employed by the provider; or
- specific provider attributes (audits may target high cost providers for example).

A special audit may be conducted when the Secretary has:

- identified a concern about a provider
- received a complaint about a provider
- undertaken a limited or full audit, and determined that a more in-depth and targeted assessment is required, or
- established a new legal aid or specified legal service.

## Referral

### Referrals from limited or full audit, or complaints processes

A provider may be audited under the special audits process when the Ministry has:

- identified a concern about the provider
- referred the provider from another Ministry process, such as:
  - a limited audit that requires further investigation
  - a full audit that requires further investigation
  - complaints management or
  - cancellation of approvals
- elected to audit a provider for any reason other than routine selection for quality and value audit.

## Special audit process

### Files to be audited

The Ministry may select the files to be audited, or the auditor may select the files while on-site at the provider's office.



### **Notice period**

The Ministry gives a minimum of one working days' notice to providers that they have been referred for a special audit.

### **Timeline**

The duration of a special audit is flexible and will be outlined in the Special Terms of Reference tailored for each special audit.

### **Provider given draft for comment**

The provider will be given a copy of the draft audit and proposed actions (if any) and will have 10 working days to comment. Any comments will be taken into account by the auditor in finalising the audit and by the Secretary in finalising the proposed actions (if any).

### **Minor compliance issues**

If minor compliance issues are identified, the Ministry will communicate those issues to the provider and provide advice about how to improve. Where relevant, recommended templates or fact sheets may also be provided to help the provider improve their practice.

If the auditor finds that the provider has incorrectly claimed one or more fees, the provider may be required to repay the incorrectly claimed fee(s).

### **Provider does not meet expectations (that is, has a rating of poor or very poor)**

If the provider does not meet expectations, the Ministry may consider one of the following actions (or any other appropriate action):

- referring the provider to the complaints process
- referring the provider to the Performance Review Committee
- issuing the provider with a default notice under clause 8.2.1 of the provider contract requiring the provider to take some corrective action.

In this case, the Ministry:

- records the findings
- advises the provider of the areas where they have not met expectations and any outcomes or required actions, such as referral to the complaints process or Performance Review Committee, or issue of a default notice
- returns any requested documentation to the provider.

### **Right of review if default notice issued**

If the Secretary issues the provider with a default notice under clause 8.2.1 of the provider contract, the provider may request a review of that decision within 10 working days under clause 8.4.

### **Failure to comply with default notice**

Clause 8.5 of the provider contract sets out the consequences of failure to comply with a default notice, which include referral to the Performance Review Committee.

### **Summary of process**

The following table shows the process once the Ministry has selected an approved provider for a special audit.

Stage	Description
<b>The Secretary</b>	
1	Appoints the auditor (once it has been established that there is no conflict of interest).
<b>The Ministry</b>	
2	<p>Informs the provider of the following:</p> <ul style="list-style-type: none"> <li>• that the provider has been selected for a special audit</li> <li>• that an auditor has been appointed</li> <li>• the reason for the audit (i.e. the particular circumstances that have led to the audit)</li> <li>• the scope of the audit</li> <li>• the timeframe for the audit, and</li> <li>• the audit process.</li> </ul>
3	Requests that the provider make files available to the auditor on-site (at their office), or supply files to the Ministry.
4	If files are sent to the Ministry, the files are forwarded to the auditor.
<b>The Auditor</b>	
5	Reviews files, papers and any relevant information as necessary (this may take place on-site or at the Ministry).
6	Clarifies information with the provider as necessary.
7	Supplies a draft audit report to the Ministry.
<b>The Ministry</b>	
8	Forwards the draft audit report to the provider for comment.
<b>The Provider</b>	
9	Has the option to provide a response to the draft audit report within 10 working days.
<b>The Ministry</b>	
10	Sends the provider's response to the auditor.
<b>The Auditor</b>	
11	Assesses the provider's response and submits a final audit report.
<b>The Ministry</b>	
12	Notifies the provider of the findings of the audit and supplies a copy of the final audit report.
13	May request a response from the provider (depending on the auditor's findings).
14	Assesses the audit report and provider response and determines any appropriate follow up action.
15	Advises the provider of any outcomes or required actions.

# Appendix 1 – Glossary

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## Glossary of Terms

### ACT

Means the Legal Services Act 2011.

### COMPLAINT

Any expression of dissatisfaction with services provided. This includes all complaints regardless of their origin, i.e. which are categorised by the Ministry as ‘Ministry concerns’ or external complaints.

### CONTRACT

The agreement between the Secretary and an approved provider to supply professional legal services entered into under section 69 of the Act.

### LEGAL AID SERVICES

Means legal advice and representation in relation to legal aid described in the definition of legal services.

### LEGAL SERVICES

In relation to legal aid (or specified legal services) means legal advice and representation and includes assistance with:

- resolving disputes other than by legal proceedings
- taking steps that are preliminary or incidental to any proceedings, or
- arriving at or giving effect to any out-of-court settlement that avoids or brings to an end any proceedings.

In relation to anything other than legal aid, includes:

- legal advice and representation and includes assistance (as above), and
- the provision of legal information and law-related education.

### MINISTRY

Means the Ministry of Justice.

### PERFORMANCE REVIEW COMMITTEE

Means the Performance Review Committee established under section 79 of the Act.

### SECRETARY

Means the Secretary for Justice.

### SPECIFIED LEGAL SERVICES

Means legal services specified by the Secretary (see legal services), for example duty lawyer or police detention legal assistance.





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