



MINISTRY OF
JUSTICE
Tāhū o te Tare

Provider Manual Part 1b – Limited approvals

Operational Policy

DRAFT

Document owner: Provider Services, Legal Aid Services, Legal and Operational Services

Version: 1.0

Last updated: April 2016

Contents

Overview of Limited Approvals	4
Purpose	4
Regulatory framework	5
Applications for Limited Approval	7
Process	7
Application Assessment, Decision and Review	9
Application assessment and recommendation	9
Criteria for approval	10
Secretary for Justice's decision	10
Review of Secretary for Justice's decision	12
Appendix 1– Glossary of Terms	13
Appendix 2 – Application Form	15

DRAFT

Overview of Limited Approvals

Purpose

This policy outlines the circumstances in which the Secretary may grant an approval to provide legal aid services or specified legal services, limited to a specific proceeding or a specific type of proceeding. It also outlines the application process and the information the Secretary will consider when deciding whether to grant a limited approval.

Limited approvals

Limited approvals are client focused, and granted to ensure continuity of services with minimal disruption to clients, the court process, and the provision of legal aid services or specified legal services. Limited approvals allow the Secretary to take the special circumstances of a specific case or type of case into account when granting an approval to provide legal aid services or specified legal services.

A provider with a limited approval is only able to provide legal aid services or specified legal services in a specific proceeding or a specific type of proceeding. Because of this, the Secretary may consider it appropriate to waive the requirement for an applicant to:

- provide certain information specified in Regulations in support of their application; and/or
- meet all of the competence and experience criteria in the Schedule.

While the Secretary may waive certain requirements, the Secretary must still be generally satisfied that the applicant is experienced and competent in each area of law for which they have applied for approval.

Glossary

A glossary of the key terms used in this part is attached as [Appendix – Glossary of Terms](#).

References

In this part, references to 'the Act' and to specific sections refer to the Legal Services Act 2011, and references to 'the Regulations' and to specific regulations and 'the Schedule' refer to the Legal Services (Quality Assurance) Regulations 2011.

Regulatory framework

Regulations

Regulation 6B allows the Secretary to waive one or more of the competence and experience criteria in the Schedule to allow an applicant for approval as a lead provider or to provide specified legal services to act:

- in a proceeding that relates to another proceeding in which the applicant is acting, or has acted; or
- in a proceeding, or type of proceeding, for which the applicant has specialist skills or experience; or
- in a proceeding, or type of proceeding, taking place in a region with a shortage of existing providers with the necessary skills and experience to act in the proceeding, or type of proceeding.

Before waiving a competence or experience requirement, the Secretary must:

- take into account—
 - a) the nature of the requirement(s) to be waived; and
 - b) the extent to which the applicant fails to meet the requirement(s); and
- be satisfied that—
 - a) the applicant is suitable to act in the proceeding, or type of proceeding, to which the waiver relates; and
 - b) it would be more efficient for the applicant, rather than another lawyer, to act in the proceeding or type of proceeding.

The Secretary may require the applicant to provide any information that the Secretary considers necessary to determine the application, including either or both of the following:

- proof (in addition to that required by any other provision of the Regulations) of the applicant's current legal knowledge and experience;
- an explanation of how granting a waiver to the applicant would assist in meeting a need for legal aid services or specified legal services.

Regulation 10 also allows the Secretary to impose a condition restricting the approval to a specific proceeding or a specific type of proceeding.

Examples of situations suitable for limited approval

The list below outlines examples of the kinds of situations which limited approvals were designed to address. It is not an exhaustive list. Applications for limited approval are considered on a case-by-case basis. The Secretary may grant a limited approval in other circumstances if satisfied that those circumstances meet the regulatory requirements.

Examples of situations in which limited approvals may be appropriate include:

- where the applicant has an existing criminal lead provider approval and requires a civil lead provider approval for attendance on:
 - coronial proceedings;
 - an application for forfeiture resulting from a criminal case they have acted on;
 - an application as a respondent to an order made under the Public Safety (Public Protection Orders) Act 2014 resulting from or related to a criminal case they have acted on; or
 - judicial review proceedings related to a criminal case they have acted on.

- where the applicant has an existing approval and requires a Court of Appeal and Supreme Court lead provider approval for attendance for an appeal against a pre-trial ruling to be heard in the Court of Appeal;
- where the applicant has been assigned to represent a client in a criminal matter and the provider approval level increases (e.g. due to additional charges with a higher maximum penalty being laid) but the essential facts of the case have not changed and there is insufficient time to assign a new lawyer;¹
- where the applicant has been acting for a client on a private basis but the client is now eligible for legal aid. This includes lawyers acting as an instructing solicitor;²
- where there is a general unmet need for legal aid services or specified legal services in a specific region;
- where the applicant has specialist skills or experience which are relevant to a particular proceeding or type of proceedings.

DRAFT

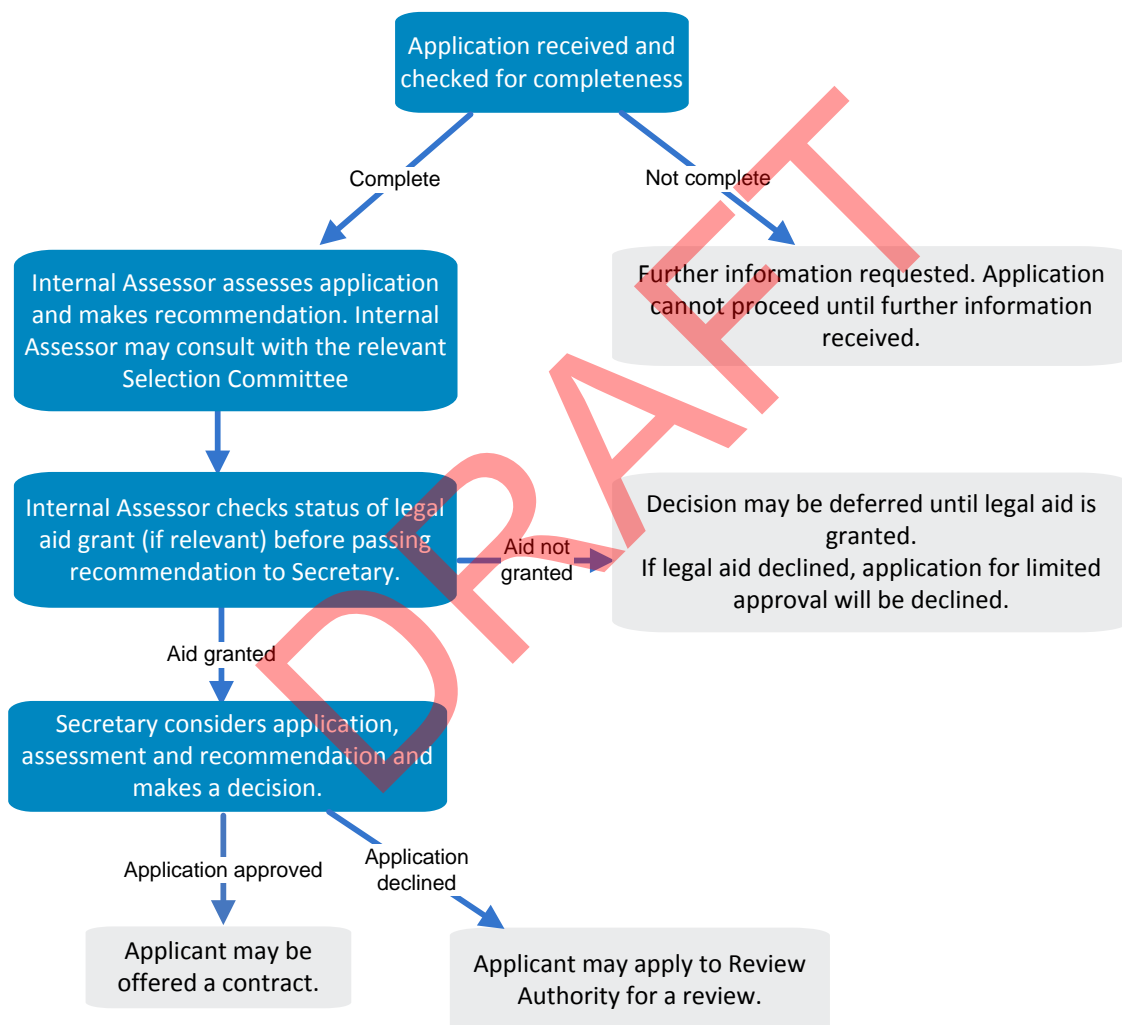
¹ Increases from Criminal PAL 1 to Criminal PAL 2 will not be considered, as assignments at these levels are made by rotation through a roster and are therefore subject to the [Granting Decisions](#) policy.

² Lawyers seeking approval for the purpose of acting as instructing solicitors on more than one legal aid matter will need to apply for approval as a supervised provider.

Applications for Limited Approval

Process

The diagram below illustrates how limited approval applications are submitted and assessed.



When to apply

Applications for limited approval should be made as soon as the need becomes apparent and before any legal aid services or specified legal services are provided. This ensures that the Secretary has adequate time to assess the application with minimal disruption to clients and court processes.

Providers who act on a legal aid case without the requisite approval will be in breach of section 75 of the Act and may be referred to the complaints management process.

Prescribed manner

Applications for limited approval must be made in the prescribed format using the *Application for Limited Approval form*. The form asks for details about professional entry requirements, experience and competence requirements (including work samples and references), service delivery systems, and the fit and proper person criteria (complaints history and convictions). (See Part 1, Chapter 2 (Application requirements) of the Provider Manual for more detail about these matters).

The application form must also include information about:

- the reasons why a limited approval is required (i.e. the unmet need for services that the limited approval will address) and any urgency requirements;
- the reasons why the applicant is suitable to be granted a limited approval, including any specialist skills or experience;
- if the application relates to a specific proceeding:
 - any upcoming scheduled appearances;
 - the applicant's relationship with the client (if any); and
 - the amount of work already undertaken on the specific proceeding (if any).

Applicants who have fewer than four years' experience in the area of law they are applying for approval in should provide the name and contact details of a mentor. Ideally, this mentor will hold a lead provider approval in the area of law to which the application relates. Where a mentor does not have a relevant approval, the Secretary will consider a mentor who has substantial skill and experience relevant to the proceedings. The naming of a mentor or the establishment of a mentoring arrangement does not override the requirements that an applicant must meet under Regulation 6B.

Legal aid eligibility

Applications for limited approval for a specific proceeding will only be considered where the client is eligible for a grant of legal aid or where there is an existing grant of legal aid. In those circumstances, the applicant must advise the relevant legal aid office managing the grant (or application for legal aid) that they are applying for limited approval.

The assessment and approval process may be deferred until confirmation is received that the client has been granted legal aid for the matter.

Application Assessment, Decision and Review

Application assessment and recommendation

Functions of the Internal Assessor

The Internal Assessor is responsible for:

- determining whether the application is complete;
- performing checks on applications where appropriate;
- making an assessment of the application; and
- making a recommendation to the Secretary for a decision.

Application completeness

Applications are considered complete when all the information required to make a decision has been provided.

The Internal Assessor reviews the content of the application for completeness. If the application is incomplete, the Internal Assessor will contact the applicant to seek the required information. When the required information is received the timeframe for assessing the application (see below) will begin.

Assessment and recommendation

The Internal Assessor will make an assessment of the application according to the requirements of the Act, the Regulations, and this policy. The Internal Assessor may verify information provided in the application, including with the New Zealand Law Society, referees, and the relevant legal aid office.

The Internal Assessor makes a recommendation in writing to the Secretary, including on whether to waive one or more of the competence and experience criteria in the Schedule, and must provide reasons for the recommendation.

Note: In making a recommendation, the Internal Assessor may obtain input from Selection Committee members (see Part 1 of the Provider Manual, chapter 3). The application for limited approval may be formally considered by a Selection Committee.

Timeframes

All complete applications for limited approval will be assessed by the Internal Assessor within five working days.

Criteria for approval

Criteria for full approval

An applicant for a limited approval must meet the minimum requirements for full approval in respect of professional entry requirements, experience and competence requirements, service delivery systems, and the fit and proper person criteria. However, as outlined in the Regulatory Framework section above, the Secretary may waive one or more of the competence and experience criteria in the Schedule in granting a limited approval for a specific proceeding or type of proceeding.

Reference: Regulations 5, 6, 6B, 9, 9A, 9B and 9C and the Schedule.

Additional considerations

For a limited approval, the Secretary will also take into consideration:

- the number of lawyers approved and available to provide the relevant services in that region, including any specialist skills of the applicant; and
- in relation to any particular proceeding the applicant seeks limited approval for:
 - any urgency requirements;
 - any upcoming scheduled appearances;
 - the applicant's previous relationship with the client(s) (if any), particularly on related matters, and the cost efficiencies to legal aid as a result;
 - any unique legal or factual issues, or specialist skills required, that make the applicant particularly suitable to provide the relevant services; and
 - the amount of work already undertaken on the proceeding by the applicant (if any).

Secretary for Justice's decision

Approve or decline application and notifying the applicant

The Secretary will decide whether to approve or decline an application after considering:

- the information provided by the applicant;
- the recommendations of the Internal Assessor; and
- the applicable requirements of the Act, the Regulations, and this policy (in that order of importance).

The Secretary's decision is discretionary – there is no requirement that the Secretary grant a temporary approval to a person who meets the relevant criteria.

The Ministry notifies the applicant in writing of the Secretary's decision. The Secretary must provide reasons for the decision.

Reference: Section 77(4)

Conditions on approval

The Secretary may impose conditions on an approval; in this case the approved provider must provide the legal services in accordance with the conditions.

Reference: Section 77(2) and Regulation 10

Notifying the New Zealand Law Society

The Ministry notifies the New Zealand Law Society of the Secretary's decision in relation to approvals.

Reference: Section 77(7)

Contract requirement

Where the applicant is granted a limited approval to provide legal aid or specified legal services, he or she must enter into a provider contract with the Secretary before providing those services. If the applicant has an existing contract, an updated Schedule 1 to the contract will be issued.

Reference: Sections 68(2)(c) and (d), and 69(b)

Note: An approval does not confer an entitlement on the provider to provide the services to which the approval relates.

Reference: Section 77(3)

Geographic restriction

If a limited approval relates to a type of proceeding, and is based on a shortage of existing providers in a particular region with the necessary skills and experience to act in that type of proceeding, the Secretary may limit the approval to that region.

Expiry of the limited approval

A provider's limited approval will either be for a specific period of time, or for a specific proceeding. The limited approval will expire at the end of the relevant period, or on the specific proceeding being finalised.

The Secretary can cancel or modify a limited approval, or impose interim restrictions, in the same way as a full approval (see sections 101 – 103 of the Act).

Reference: Sections 77(3)(c) and 101 - 103

Extension of limited approval

A provider can apply for an extension of a limited approval by filling in a new *Application for Limited Approval as a legal aid provider* form. If specific information requested in the form has not changed since the original application (e.g. employment history), the provider can simply write "See previous application" in those fields. In Step 2 (Tell us which area you want approval in and why) of the form, the provider should explain why an extension of the limited approval is necessary.

The Secretary may in his or her discretion extend the duration of the limited approval, taking into consideration disruption to clients and court processes, and the provision of legal aid services or specified legal services.

Review of Secretary for Justice's decision

Review of the Secretary's decision

The applicant may request a review of the Secretary's decision by the Review Authority. The scope of any review is limited to the information originally submitted in the application and assessed in making the decision. An application for review must be lodged with the Review Authority within 20 working days from the date of notice of the Secretary's decision.

Where a review is requested, the Secretary's decision stands until the Review Authority makes a decision. The Review Authority's decision is binding on the Secretary and person to whom the decision applies.

Where new information is provided, it is considered to be a new application.

Reference: Sections 82, 85, and 86

For more information on the Review Authority refer to the Ministry of Justice [website](#).

DRAFT

Appendix 1– Glossary of Terms

* Denotes definition in the Legal Services Act 2011

Act

Means the Legal Services Act 2011.

Application

Unless the context requires otherwise, means an application for limited approval and **applicant** has the corresponding meaning.

Internal Assessor

This is a Ministry of Justice employee who is responsible for assessing applications for approval.

Lead provider

In relation to a grant of legal aid, means the provider identified in the grant as the lead provider for that matter.

Legal aid services *

Means legal advice and representation in relation to legal aid described in paragraph (a) of the definition of legal services.

Legal services*

- (a) In relation to legal aid means legal advice and representation and, subject to section 4(2) of the Act, includes assistance:
- with resolving disputes other than by legal proceedings;
 - with taking steps that are preliminary to any proceedings;
 - with taking steps that are incidental to any proceedings; and
 - arriving at or giving effect to any out-of-court settlement that avoids or brings to an end any proceedings.
- (b) In relation to anything other than legal aid, includes:
- (i) legal advice and representation (including the kinds of assistance described in subparagraphs (i) to (iv) of paragraph (a)); and
 - (ii) the provision of legal information and law-related education.

Ministry*

Means the Ministry of Justice.

Provider*

Means a person who is approved by the Secretary to provide legal aid services or specified legal services, or both.

Regulations

Means the Legal Services (Quality Assurance) Regulations 2011.

Secretary*

Means the Secretary for Justice.

Specified legal services*

Means legal services specified by the Secretary under section 68(2)(b) of the Act.

DRAFT

Appendix 2 – Application Form

DRAFT

Application for **limited approval** as legal aid **provider**

LEGAL AID SERVICES

When to use this form

Complete this form to get limited approval as a legal aid provider for a specific proceeding or type of proceeding. You must hold a practising certificate. You don't need to be a current legal aid provider.

Getting more information

If you need further help completing this form please phone Legal Aid Provider Services at the Ministry of Justice national office on **04 918 8800** or email **legalaidprovider@justice.govt.nz**

Sending in your application

Please email this form and any attachments (such as your practising certificate, client care letter or letter of engagement) to **legalaidprovider@justice.govt.nz** with '*Limited approval - Provider*' in the subject line. If you intend to print this form out for filling in or signing, please scan and email a pdf back to us.

Step 1 **Tell us your details**

Full name _____

Firm/Practice _____

Contact details

Email _____

Phone: Direct dial _____ Mobile _____

Postal address _____

Practising certificate status

Do you have a current practising certificate?

- No. *You are not eligible to make this application. Please contact us if you have any questions.*
- Yes. Is your practising certificate subject to any conditions
- No
- Yes. Please give us the details.

Legal aid provider status

Are you already a legal aid provider?

- Yes, I'm currently an approved legal aid provider. *Tell us your provider number* _____
Go to Step 2.
- No, but I have been a legal aid provider in the past. *Tell us your provider number* _____
*• Please attach your Certificate of Standing (either the original or a certified copy).
The certificate must be valid when we get this application.*
- No, I've never been an approved legal aid provider.
*• Please attach your Certificate of Standing (either the original or a certified copy).
The certificate must be valid when we get this application.*
*• Please attach a copy of your client care letter and/or your letter of engagement.
This must include reference to legal aid obligations.*
• Please fill in the next section.

If you are not already a legal aid provider, please tell us more about your legal experience.

(If you are already a legal aid provider, please go to Step 2.)

Date of admission as a barrister and solicitor in New Zealand _____

Date your first practising certificate was issued _____

Tell us about any legal employment history. Start with your most recent experience.

Dates: Start _____ End _____

Employer: _____

Did you hold a practising certificate?

- No
- Yes

Did you represent clients as a barrister or solicitor?

- No
- Yes

Dates: Start _____ End _____

Employer: _____

Did you hold a practising certificate?

No

Yes

Did you represent clients as a barrister or solicitor?

No

Yes

Dates: Start _____ End _____

Employer: _____

Did you hold a practising certificate?

No

Yes

Did you represent clients as a barrister or solicitor?

No

Yes

Dates: Start _____ End _____

Employer: _____

Did you hold a practising certificate?

No

Yes

Did you represent clients as a barrister or solicitor?

No

Yes

Step 2 Tell us which area you want approval in and why

I am applying for limited approval as a provider in the following area(s) of law:

- | | |
|--|---|
| <input type="checkbox"/> Criminal PAL 1 | <input type="checkbox"/> Civil |
| <input type="checkbox"/> Criminal PAL 2 | <input type="checkbox"/> Mental Health |
| <input type="checkbox"/> Criminal PAL 3 | <input type="checkbox"/> Family |
| <input type="checkbox"/> Criminal PAL 4 | <input type="checkbox"/> Family Legal Advice Service |
| <input type="checkbox"/> Duty Lawyer | <input type="checkbox"/> Māori Land Court and Māori Appellate Court |
| <input type="checkbox"/> Supreme Court or Court of Appeal | <input type="checkbox"/> Waitangi Tribunal |
| <input type="checkbox"/> Police Detention Legal Assistance | <input type="checkbox"/> Refugee and Protected Persons |

The proceeding or type of proceeding you want limited approval for

Tell us about the specific proceeding or type of proceeding you want limited approval for.

Why is a limited approval necessary (for example, are specialist skills or experience required or is there a lack of suitable providers in the region)? Tell us what makes you suitable to meet this need (note that more detail about your experience is required in step 3).

If your application relates to a particular proceeding, describe your relationship with the client, if any. For example, have you personally represented them in a related or ongoing case or proceedings?

Tell us the details of any upcoming scheduled appearances and any urgency requirements.

Tell us anything else you think we should know about the case (or proceeding) and client.

DRAFT

Legal aid application

Has legal aid been applied for?

No. If you are seeking approval related to a particular legal aid case, please fill in an *Application for legal aid*.

Yes. Has it been approved?

Yes. Tell us the legal aid number and the name of the client: _____

Not yet. When was an *Application for legal aid* made? _____

No. It has been declined. Tell us the details.

Referee and mentor

If you have less than 4 years' post-admission legal experience in the area of law you are applying for, you need a referee and a mentor. If you have more than 4 years' experience, go to step 4.

Tell us the details of a lawyer who can be contacted as a referee in support of your application.
They must be currently practising in the area of law you are applying for.

Full name _____

Email _____

Phone: Direct dial _____ Mobile _____

Tell us the details of a lawyer who is willing to provide professional support for the duration of your approval.
They must be currently practising in the area of law you are applying for.

Full name _____

Email _____

Phone: Direct dial _____ Mobile _____

Complaints and convictions

Complete this section if:

- you're not already a legal aid provider
- you're a legal aid provider, but, since you were approved under the Legal Services Act 2011, you have been convicted of any offence or been the subject of any substantiated or upheld complaint (under the Legal Services Act 2011 or Lawyers and Conveyancers Act 2006).

If you are currently a legal aid provider and haven't been convicted of an offence or been subject to a substantiated or upheld complaint, please go to step 4.

Have you ever been convicted of an offence? Answer no if you satisfy the requirements of the Criminal Records (Clean Slate) Act 2004.

No.

Yes. Please give us the details.

Have you ever been the subject of a substantiated or upheld complaint under the Legal Services Act 2000, Legal Services Act 2011, or Lawyers and Conveyancers Act 2006?

No.

Yes. Please give us the details.

Service delivery systems

You need to have service delivery systems in place so you can provide and account for your legal aid services in an effective, efficient and ethical manner. Please confirm that you have systems in place to:

- Manage client service requirements and expectations.
- Maintain accurate client files.
- Invoice your time accurately.
- Manage scheduling conflicts.
- Manage conflicts of interest.
- Manage complaints.

Step 4 Sign and date the form

Privacy statements

- I accept that the Secretary for Justice needs this information to assess whether I meet the criteria for approval.
- I accept that the Secretary for Justice needs this information to assess whether I will be offered a contract.
- I accept that the Ministry of Justice may verify the information I've provided.
- I note that I have the right to access information (that the Ministry of Justice holds about me) and ask for it to be corrected if I think it's wrong. I have been advised that a summary of evaluative information gathered by Selection Committees is held by the Ministry of Justice.
- I note that the Ministry of Justice will keep this information as long as it's required (and subject to the Ministry's record-keeping obligations).

Declaration

- The information I've provided in this application is accurate and complete.
- I consent to this information being used to assess whether I will be approved in the areas of law I've applied for and the functions associated with being an approved provider under the Legal Services Act 2011.
- I understand that when considering this application, the Ministry of Justice may ask for more information and make further enquiries.
- I understand that I must, as soon as practicable, tell the Ministry of Justice any information that might affect my eligibility to apply.
- I consent to receive all notices, documentation and correspondence from Legal Aid Services by email.

Signature

Date

Name