

Limited and Temporary Approval Operational Policies for Legal Aid Providers

External consultation response report

Table of contents

Introduction.....	1
Consultation comments	2
Clarification of the purpose of temporary and limited approvals	2
Secretary for Justice and Review Authority timeframes for decision-making.....	2
Effects of gaining a limited or temporary approval	3
Conclusion	3

Introduction

1. On 2 May 2015, we sought comment from the legal profession on the proposed addition and changes to the Legal Aid Provider Manual to incorporate Part 1a – Temporary Approval Operational Policy and Part 1b – Limited Approval Operational Policy.
2. Overall, the proposed additions and changes reflect recent amendments to the Legal Services (Quality Assurance) Regulations 2011 that improve and streamline the legal aid provider approval process.
3. The consultation documents were circulated to the New Zealand Law Society (NZLS), the New Zealand Bar Association, the Criminal Bar Association, and the Auckland District Law Society Inc. The NZLS published the consultation documents in their weekly e-newsletter Law Points. The only response received was from the NZLS’s Legal Services Committee.
4. The consultation has resulted in minor changes from the proposed policies, outlined below.

Consultation comments

Clarification of the purpose of temporary and limited approvals

Comment

5. The NZLS confirmed that there was confusion on when to use each of the policies. They stated that the distinctions between the policies could be clearer.

Our response

6. We note the comments of the NZLS. The distinction between the two types of approval stems from the regulatory starting point for each approval. Temporary approvals are enacted by section 77(5) of the Legal Services Act 2011, whereas limited approvals are a waiver of experience and competence requirements as set out in regulation 6B of the Legal Services (Quality Assurance) Regulations 2011.
7. Temporary approvals under section 77(5) were found to be an inflexible way to approve lawyers on a one-off case, when the lawyer was sufficiently experienced to do so. A waiver of experience and competence requirements, which was recently created through an amendment to the regulations, waives the potentially onerous requirement for a lawyer to demonstrate that they meet the relevant criteria for full lead provider application in order for a legal aid case to be assigned to a lawyer on a one-off basis.
8. Examples of situations suitable for limited approval are outlined on pages 5-6 of the Limited Approval Operational Policy. These situations cover where an applicant may have specialist skills or experience (e.g. a lawyer who is an acknowledged expert in the relevant area of law) and wishes to undertake a case for a legally-aided client.
9. Temporary approvals cover the situation where a lawyer has made (or has partially made) a full application for approval as a lead provider and needs an approval expedited as a result of urgent work. This situation will be rare.
10. Information outlining the purpose of limited approvals will be made clear on the Ministry's website.

Secretary for Justice and Review Authority timeframes for decision-making

Comment

11. The NZLS noted that the policies included tight timeframes for the Internal Assessor to report but none for the Secretary for Justice (the Secretary) or Review Authority. Given that temporary and limited approvals are often urgent timeframes should, if possible, also be recorded for the Secretary and Review Authority.

Our response

12. We agree with the comments of the NZLS in regard to stating a timeframe for the Secretary to make a decision about a temporary or limited approval. The limited and temporary approval operational policies will be amended to include timeframes (five days) for approval decisions by the Secretary for Justice.

13. The Review Authority is an independent judicial officer and it would be inappropriate to prescribe timeframes for his decision in this policy.

Effects of gaining a limited or temporary approval

Comment

14. The NZLS commented that the policies specify some of the effects of the approval – such as notification of approval to the NZLS – but the policies lack detail on some of the potential other effects, such as whether an approval would allow a lawyer admission to the criminal rotational roster assignment list and creating a listing on the Ministry’s website.

Our response

15. The effects of receiving a limited or temporary approval are being determined by the Ministry. Currently limited and temporary approvals are not listed on the Ministry’s website. We are willing to monitor this and take into account any feedback from lawyers.
16. Admission to the criminal rotational assignment list would be approved on a case-by-case basis, depending on the circumstances of the applicant. We do not envisage a scenario where admission to the criminal rotational assignment list would be relevant for most lawyers who gain a limited approval. However, it may be appropriate for lawyers who receive a temporary approval and wish to conduct criminal legal aid proceedings on an on-going basis while their full lead application is being assessed by the Secretary for Justice. Admission to the criminal rotational assignment list is ultimately the decision of the Legal Aid Commissioner rather than the Secretary for Justice, and is determined by the ‘Provider assignment’ policy in the Legal Aid Grants Handbook.

Conclusion

The consultation received has helped clarify and improve the proposed changes to the temporary and limited approval policies. We believe that the changes will make the policies more effective, transparent, and robust. We are grateful for the feedback received. The new policies are now available on the Ministry’s website.