



MINISTRY OF
JUSTICE
Tāhū o te Ture

Provider Manual

Part 1b – Temporary approvals

Operational Policy

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Overview of Temporary Approvals

Purpose

This policy outlines the circumstances in which the Secretary for Justice (Secretary) may grant a temporary approval to provide legal aid services or specified legal services. It also outlines the application process and the information the Secretary will consider when deciding whether to grant a temporary approval.

Temporary approvals

Temporary approvals are client focused and time-limited approvals, and may be granted to ensure continuity of services with minimal disruption to clients and court processes. The purpose of a temporary approval is to ensure that legal aid services or specified legal services can be provided on an urgent basis by a competent and experienced provider, while an application for full approval is being assessed and/or is pending a decision by the Secretary.

An application for temporary approval may be prompted by a need for legal aid services or specified legal services for a specific proceeding, or the need for those services more generally (e.g. to meet an unmet need for those services in a particular region).

Glossary

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

Legislative 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.

Statutory and regulatory framework

Section 77(5) of the Act governs the granting of temporary approvals. Section 77(5) states that:

The Secretary may give a person a temporary approval to provide 1 or more legal aid services or specified legal services if -

- (a) the person has applied for approval to provide those services; and
- (b) the Secretary considers that giving the temporary approval is necessary to meet a need for those services.

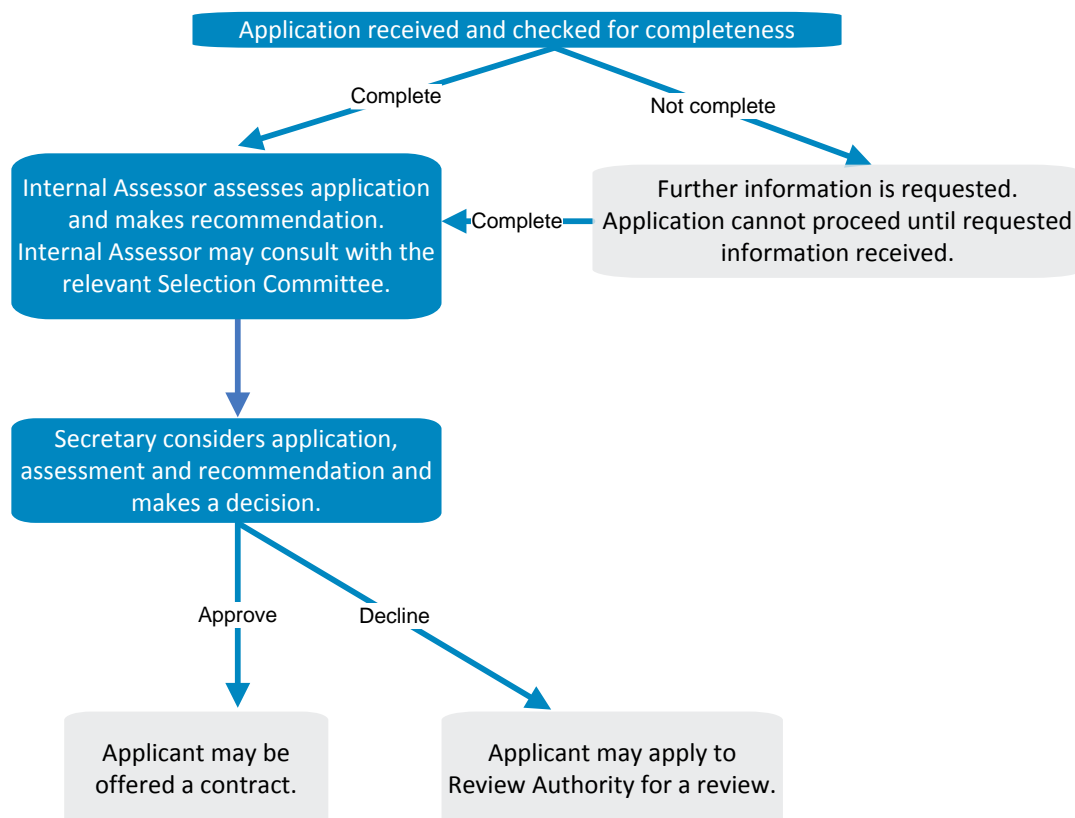
In order for a temporary approval to be granted, the applicant must:

- submit an application (or have already applied) for full approval, including providing all the relevant information required under the Act, the Regulations, and Part 1 of the Provider Manual;
- meet the minimum requirements for full approval (for either lead or supervised approval) in respect of professional entry requirements, experience and competence requirements, service delivery systems, and the fit and proper person criteria (regulations 5, 6, 9, 9A, 9B and 9C and the Schedule).
- submit a completed *Application for temporary approval as a legal aid provider* form, including information demonstrating that a temporary approval is necessary to meet the need for the relevant legal aid services or specified legal services for a specific proceeding or more generally.

Applications for Temporary Approval

Process

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



When to apply

Applications for temporary 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 matter without the requisite approval will be in breach of section 75 of the Act and may be referred to the complaints management process.

Application for full approval

All applications for temporary approval must be preceded or accompanied by an application for full approval.

Most of the information necessary for consideration of a temporary approval – i.e. information about professional entry requirements, experience and competence requirements (including work samples and references), service delivery systems, and the fit and proper person criteria - will be

contained in the application form for full approval. (See Part 1, chapter 2 (Application requirements) of the Provider Manual for more detail about these matters).

Prescribed manner

Applications for temporary approval must be made in the prescribed format using the *Application for temporary approval as a legal aid provider* form. The application must include information about:

- the reasons why a temporary approval is required (i.e. the unmet need for services that the temporary approval will address) and any urgency requirements;
- the reasons why the applicant is suitable to be granted a temporary 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).

Application Assessment, Decision and Review

Application assessment and recommendation

Functions of the Internal Assessor

The Internal Assessor is responsible for:

- determining whether an application is complete;
- performing checks on an application where appropriate;
- making an assessment of an 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 an application for temporary approval, and the associated application for full approval, for completeness. If either 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 (in that order of importance). The Internal Assessor may verify information provided in the application, including with the New Zealand Law Society and the relevant legal aid office.

The Internal Assessor makes a recommendation in writing to the Secretary 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, chapter 3 of the Provider Manual). An application for temporary approval will not be formally considered by a Selection Committee.

Timeframes

All complete applications for temporary approval will be assessed by the Internal Assessor within five working days. For urgent matters, an application will be assessed within one to three working days.

Criteria for approval

Criteria for full approval

All applicants for temporary 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.

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

Additional considerations

For a temporary 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 temporary 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

Approving or declining 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).

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

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 a temporary approval; in this case the approved provider must provide the legal aid services or specified 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 temporary 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).

Expiry of the temporary approval

A provider's temporary approval will expire once a decision is made by the Secretary on their application for full approval. The Secretary can cancel or modify a temporary approval, or impose interim restrictions, in the same way as a full approval (see sections 101 – 103 of the Act).

If the Secretary declines an application for full approval, with the consequence that the provider's temporary approval also expires, the provider may apply to the Secretary for a limited approval to allow the provider to continue providing services on existing proceedings until they are completed (see Part 1a of the Provider Manual – Limited Approvals).

Reference: Sections 77(3)(c) and 101 – 103.

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.

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 the 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](#).

Appendix – 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 temporary approval and **applicant** has the corresponding meaning.

Internal Assessor

A Ministry employee who is responsible for assessing applications for approval.

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:
- (i) with resolving disputes other than by legal proceedings;
 - (ii) with taking steps that are preliminary to any proceedings;
 - (iii) with taking steps that are incidental to any proceedings; and
 - (iv) 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.