

Justice Sector Projections

Legal Aid Projection
2023-2028

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Executive summary

Each year the Ministry of Justice looks at long-term trends to project what may occur across the criminal justice system over the next few years. The legal aid projection forms part of this set of projections. As with the other justice sector projections, the future trends are projected based on the latest data, legislation, policy and operational settings. The projection only includes the impact of changes to legislation, policy and practice that have been formally approved, funded, and have a clear implementation plan.

The projection provides an assessment of the impact of current settings of the justice system. It provides both a starting point to inform policy development and a yardstick against which the impacts of any future changes can be assessed and evaluated. Significant changes in the criminal and family justice systems have been implemented and will be taking effect in the next few years. These include working in partnership with Māori to embed te ao Māori approaches into how key justice sector agencies operate to address the harm Māori communities experience through crime and criminal justice. These changes have the potential to create a very different future over the long-term and expenditure on legal aid will be affected accordingly.

The projection uses data for the fiscal year ending 30 June 2023. It was finalised in September 2023 and is based on expert views and expectations of system settings and behaviours at the time.

The two national COVID-19 lockdowns in 2020 and 2021 impacted legal aid expenditure in different ways, some of which continue – for example, border closures during lockdowns led to a backlog in refugee claims, a source of legal aid expenditure in the Civil jurisdiction, which is only now being processed. The consequences of these impacts are becoming sufficiently clear to allow more confident assessment of ongoing trends. As always, the projection offers a baseline view of what is expected at a particular point in time, against which subsequent change can be measured. Subsequent projections will take stock of ongoing developments and deliver an evolving view of future trends.

A significant factor in this year's projection remains the decision in Budget 2022 to provide greater funding for legal aid over the next few years (see Appendix 1). The decision affected both remuneration rates for providers (which increased the cost of cases) and eligibility thresholds for applicants (which increased the number of applications). This delivers a significant upward pressure on expenditure.

Under the present settings, legal aid expenditure is projected to reach \$339.6m by 2027-28. This is 24% above the actual expenditure of \$272.9m for 2022-23, compared to a 70% increase over the preceding five-year period.

The principal contributor to this increase is expenditure on private providers of legal aid in the criminal jurisdiction, which is projected to rise by 24% (or \$38.7m) by 2027-28, compared to a 101% increase over the preceding five-year period. The increase to 2027-28 is mainly

driven by the increase in remuneration, whereas the increase over the last five years was mainly driven by increasing numbers of court events. Changes in eligibility are not expected to affect the criminal jurisdiction as most applicants qualify on other grounds.

The legal aid projection also covers family and civil legal aid, each of which is subject to distinct changes to legislation, policy, and practice. The projections for these jurisdictions only include changes that have been formally approved, funded, and have a clear implementation plan. Remuneration and eligibility changes affect both the family and civil jurisdictions.

Legal aid in the family jurisdiction is projected to increase by 21% (or \$14.1m) from 2022-23 to 2027-28. This is the result of both extra cases due to eligibility changes and increased costs due to remuneration changes.

Legal aid in the civil jurisdiction is projected to increase by 27% (or \$2.9m) from 2022-23 to 2027-28. This is the result of both extra cases due to eligibility changes and increased costs due to remuneration changes. There is currently an elevated number of claims in the civil jurisdiction due to the clearance of a backlog of refugee claims and it is not yet clear how long that will take to pass through the system.

Expenditure on private providers of legal aid for Waitangi Tribunal claims is projected to rise by 21% (or \$3.7m) by 2027-28. This increase is driven by the ongoing programme of Kaupapa enquiries.

The recent increase in remuneration rates for Duty Lawyers means that expenditure on this service is expected to increase by around 15% in a single step in 2023 but will then remain broadly stable.

The remaining component of legal aid expenditure – Police Detention Legal Assistance – is also projected to remain broadly stable.

The Legal Aid Projection Overview

This document presents a projection of legal aid expenditure for the years 2023-24 to 2027-28. It is part of the set of projections linked to the main Justice Sector Projection.

Legal aid¹ is an important part of New Zealand's justice system, ensuring that people are not denied justice because they cannot afford a lawyer. It is demand-driven and there is a legislative requirement for aid to be granted if someone is eligible. If more eligible people become involved in court proceedings in any jurisdiction, then legal aid must be supplied, and expenditure increases as a result. Legal aid expenditure is effectively not capped, and a reliable projection is needed to understand the impacts of this.

The funding for legal aid is part of the funding for the Ministry of Justice as a whole and includes two components: the actual aid for applicants, and the administrative costs associated with administering the system. Most legal aid, including all aid in the family and civil jurisdictions, and in support of Waitangi Tribunal claims, is paid to private providers. The Public Defence Service (PDS), which operates in the criminal jurisdiction in most large centres, is a separate allocation within overall funding for Justice.

The projection covers the amount, in dollars, of expenditure on private providers of legal aid in the following areas:

- Criminal jurisdiction;
- Family jurisdiction (including the Family Legal Advice Service);
- Civil jurisdiction;
- Waitangi Tribunal claims;
- Duty Lawyer scheme; and
- Police Detention Legal Assistance scheme.

Orders of costs in the family and civil jurisdictions (under section 41 of the Legal Services Act 2011) are included in the totals for the relevant jurisdiction. Expenditure on cases handled by the PDS is not within the scope of the projection.

While legal aid is described as being granted, it is a loan in many cases. A proportion of those who receive it are expected to pay some or all of it back, meaning that there is an amount of legal aid debt to be recovered. This quantity is also not within the scope of the projection.

¹ Further details about legal aid can be found on the Ministry's website:
<https://www.justice.govt.nz/courts/going-to-court/legal-aid/>

The criminal jurisdiction, Duty Lawyer and Police Detention Legal Assistance scheme sections of this projection are aligned with the assumptions used in the prison population projection.

The future trends for the justice sector are projected based on the latest data, legislation, policy, and operational settings. The projection only includes the impact of changes to legislation, policy and practice that have been formally approved, funded, and have a clear implementation plan.

The 2021 projection was developed using data for the fiscal year ending 30 June 2021. The later months of 2021 saw further restrictions and local and national COVID-19 lockdowns. In addition, a major protest outside Parliament saw significant diversion of Police resources, also leading to a drop in court inflow into the criminal jurisdiction.

The 2022 projection took stock of these recent developments and delivered a refreshed view of future trends based on data to 30 June 2022. The 2021-22 fiscal year showed a fall in expenditure from the previous year as many flows into the system dropped during COVID-19 lockdowns, depressing the demand for legal aid. The 2022 projection was, to an extent, provisional, as it remained to be seen how the system would respond. Would numbers return to pre-COVID levels, and on what timescale?

In addition, the 2022 Budget increased thresholds for eligibility for the first time in several years. There was also an increase in some remuneration rates for legal aid providers. (See Appendix 1 for details.) While these changes were reflected in the 2022 projection, we now have more data about the way in which they have been accommodated by the system.

The rate of election for jury trial continues to have an impact. This affects legal aid when defendants choose jury trials over judge-alone trials at an increased rate. Cases on the jury trial tracks require more than twice the number of court events than judge-alone cases, and therefore increase the cost of legal aid. In addition, trials themselves are reported to be requiring more time and the greater involvement of experts, further adding to legal aid expense.

The projection of legal aid expenditure is based on the expenditure recorded in Ministry of Justice financial records, which do not precisely align with court workload. In particular, they reflect how rapidly lawyers submit invoices for payment after provision of service. Different lawyers do so on different timescales, although there is a seasonal trend in that there are increases in the numbers of invoices submitted close to the end of both calendar and fiscal years.

The projection also looks at the trends in accruals. These are estimates of future expenditure in cases not completed at the time of the projection. The changes in remuneration and eligibility led to a large increase in accruals in 2022-23. The recent nature of the changes means that the projection of accruals is likely to be less than accurate until the full impact has been accommodated in the system.

The legal aid process

Legal Aid Services (LAS) contributes to justice sector outcomes by designing and delivering legal services and enhancing access for those people who need those services but cannot afford them. LAS aims to deliver these legal services in a way that is sustainable, dynamic, straightforward, and responsive to the needs of its primary customer (the legally aided person).

LAS receives and assesses applications for legal aid and administers the resulting grants of aid. Legal aid is available in all jurisdictions of the court (criminal, family and civil) as well as for claims before the Waitangi Tribunal. Legal aid also supports the Duty Lawyer scheme (which provides a lawyer at court for those criminal defendants without legal representation) and the Police Detention Legal Assistance scheme (which provides initial legal advice for persons detained by the Police).

LAS is part of the wider Operations and Service Delivery Group in the Ministry of Justice. The Ministry of Justice also oversees the PDS which provides professional, independent criminal legal aid representation to clients throughout New Zealand. This projection does not cover the PDS.

Pressures on legal aid may arise when new legislation changes either operational procedure or introduces new categories of offence. At any given time, there are policy and legislative items under consideration that are likely to affect expenditure on legal aid during the lifetime of the projection, but which are still unknown as regards scale or timing. This projection does not include such items. This report may, however, comment on these items and their potential impact on legal aid expenditure at the appropriate points. Subsequent projections will include new developments as they become clear.

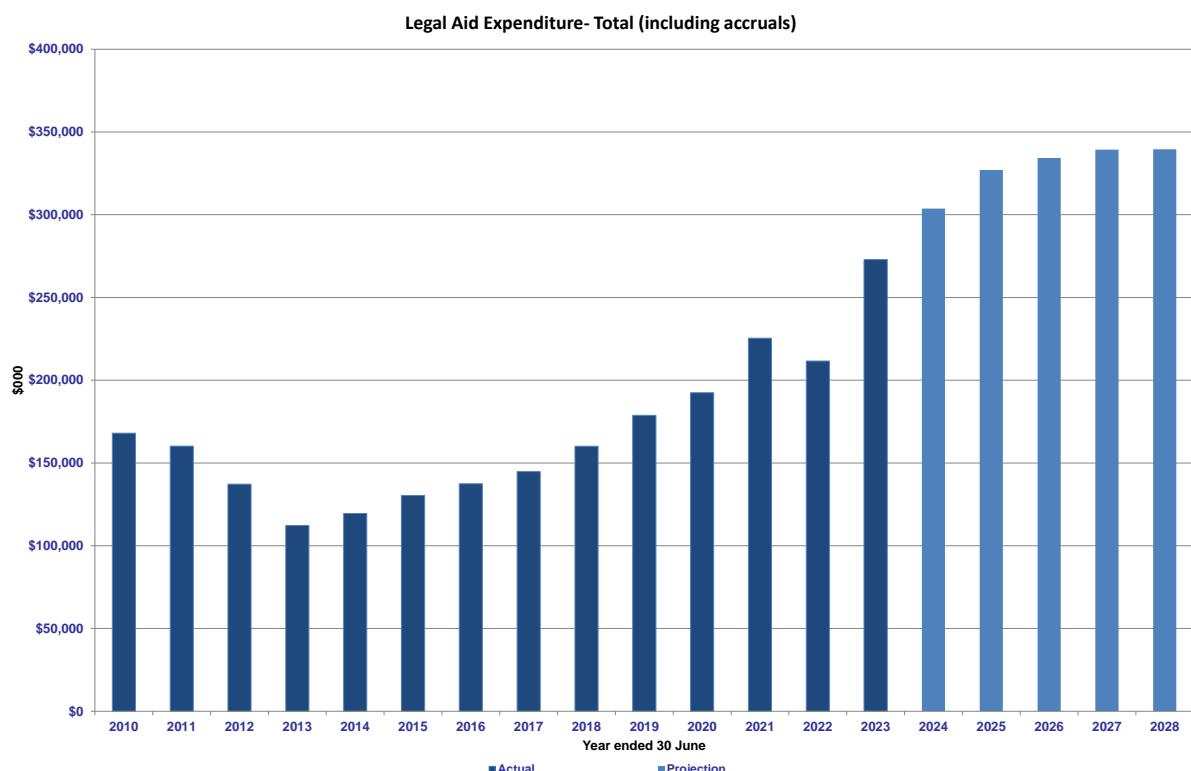
The eligibility criteria for people accessing legal aid vary from jurisdiction to jurisdiction and are considered on an individual case basis. Maximum levels of income for the receipt of legal aid across the civil and family jurisdictions have been increased from January 2023 as a result of decisions from Budget 2022, meaning that a greater number of people can apply for and be granted legal aid. Remuneration rates for non-fixed-fee items have been increased in all jurisdictions meaning that providers will be able to claim larger amounts. Fuller details of these changes are given in Appendix 1.

Other changes might affect the type of legal assistance supported. For example, lawyers in Care of Children Act proceedings in the Family Court were reintroduced in July 2020 after an absence of six years. Those eligible for family legal aid resumed using this service, leading to a spike in applications, which has now been absorbed into the projection.

Total legal aid expenditure is projected to increase, driven by changes in eligibility, increases in remuneration and longer criminal trials

Figure 1 shows that expenditure on legal aid covering all jurisdictions and schemes (including accruals) is projected to increase from \$272.9m in 2022-23 to \$339.6m in 2027-28 (a 24% increase). This compares to an increase of 70% between 2017-18 and 2022-23.

Figure 1: Total legal aid expenditure



Total legal aid expenditure is projected to rise over the projection period. The principal drivers across all jurisdictions are the increase in eligibility and the increase in non-fixed fees. In the criminal jurisdiction additional expenditure is projected because trials are taking longer.

It is worth examining why the increase in the future is less than that in the past. The criminal jurisdiction provides the largest component of legal aid expenditure, so trends there tend to drive the overall expenditure.

The increase in criminal expenditure in the past five years was driven by increased remuneration rates for providers but more consistently by increased numbers of court events. The increase projected for the next five years also includes a component due to increased remuneration and is further driven by increased expenditure on trials. The increase in event numbers affected a wide range of cases. Trials, on the other hand, while expensive, are not as common, and hence the overall impact on future expenditure is less.

Table 1 summarises the expenditure on each component, excluding accruals.

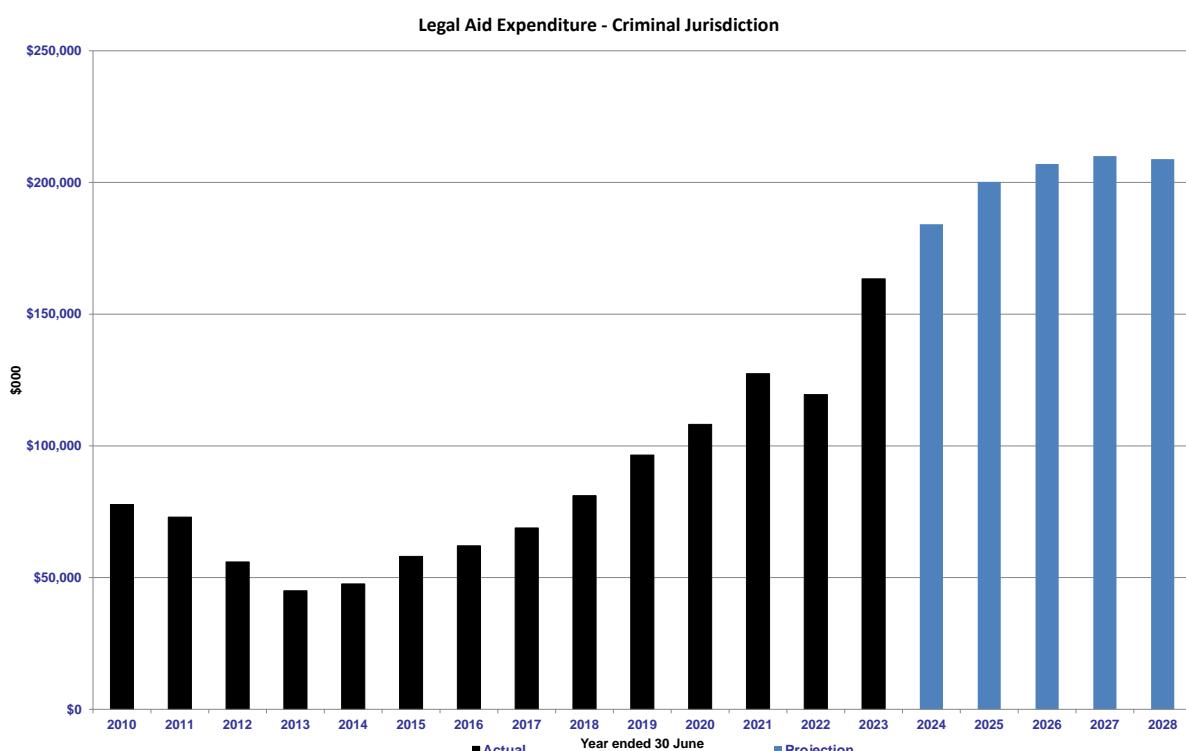
Table 1: Projected expenditure on legal aid to 2027-28

Fiscal year	Criminal	Family	Civil	Waitangi	Duty lawyer	PDLA	Total
2023-2024	\$173.6m	\$72.9m	\$11.2m	\$19.1m	\$13.8m	\$0.8m	\$291.4m
2024-2025	\$184.8m	\$76.6m	\$12.5m	\$19.9m	\$13.9m	\$0.8m	\$308.3m
2025-2026	\$193.7m	\$77.2m	\$12.7m	\$20.3m	\$13.9m	\$0.8m	\$318.7m
2026-2027	\$195.1m	\$78.1m	\$12.9m	\$20.1m	\$14.0m	\$0.8m	\$321.7m
2027-2028	\$195.0m	\$78.9m	\$13.0m	\$21.4m	\$14.0m	\$0.8m	\$323.2m

Criminal legal aid will rise because of increased remuneration and longer trials

Figure 2 shows that expenditure on privately-provided legal aid in the criminal jurisdiction is projected to increase from \$163.4m in 2022-23 to \$202.1m in 2027-28 (a 24% increase). This compares to an increase of 101% between 2017-18 and 2022-23.

Figure 2: Legal aid expenditure in the criminal jurisdiction



The criminal jurisdiction is comprised primarily of high volume, relatively low-cost cases. The projection for the criminal jurisdiction incorporates the relevant features of the same trends in prosecutions that are used in the other parts of the Justice Sector Projection related to criminal courts. Activity in the criminal court system is also a useful basis for projecting demand for the Duty Lawyer and Police Detention Legal Assistance schemes.

The principal cause of the reduction in expenditure observed in 2021-22 was a drop in legally-aided cases entering the system as a result of national and local COVID-19 lockdowns. Since then, numbers of legal aid cases have been rising again, and they are roughly back to pre-COVID levels. The assumptions for the 2023 projection must reflect what happens going forward. While there have been increases in recent months, the prison projection still expects broadly flat numbers of cases in the immediate future.

The number of category 3 cases is expected to remain flat, while the number of category 2 cases is expected to fall. However, the proportion of category 2 cases attracting legal aid has been increasing in recent years, offsetting the fall in numbers. The projection has assumed that the numbers of legal aid cases in future years will be at the current level.

Within that, however, the proportion of more serious cases will continue to increase. These more serious cases often require substantially more effort and court events² as they progress. There is also a continuing trend of guilty pleas occurring later in the process which further increases the number of court events. This in turn increases the cost of a case and therefore the amount of legal aid required. Trials themselves are taking longer and there is a greater use of experts to provide various psychological and other forensic reports.

However, at present the number of court events per court case has been stable for over a year. As a result, the current projection is not looking at trends in the number of court events to drive expenditure projections. Work is continuing in the Criminal Process Improvement Programme to develop court processes that involve fewer court events. If this work is successful, legal aid expenditure will not grow as projected.

There is a current initiative in the District Court to clear a backlog of cases, which will change the flow of cases through the system and have knock-on effects not only on the supply of legal aid but also, for example, on the prison population. It should not increase the cost of individual grants but could see payment being required sooner.

The increase seen from 2016 was partly composed of a staged three-year increase in legal aid fixed fees for private providers in the criminal jurisdiction and partly from a rise in the number of court events in individual cases. The subsequent expenditure increase from 2018-19 to 2019-20 was mainly driven by the continuing increase in numbers of court events.

The 2022 Budget increased non-fixed fee payments for criminal providers and certain fixed fees for hourly rates, which will increase case costs. As we are not currently anticipating an increase in court events as well, this payment increase is the only key driver of expenditure, and the projection does not rise as rapidly as seen in the past.

The accompanying increase in eligibility will not increase the number of legally-aided criminal cases, as the changes only apply to civil and family cases.

To summarise, in future years, numbers of more serious cases leading to legal aid grants are expected to remain broadly stable. Trials are expected to increase in length, which will add to criminal legal aid costs. The use of experts to provide evidence and reports will remain at a higher level, providing further upward pressure. By the final year of the projection, there are no strong assumptions regarding trends, so the expenditure levels off. The small drop in the final year is the result of a change in accruals rather than in expenditure itself.

² A court event is frequently a hearing, but legal aid is also used to fund out-of-court work such as preparation or the costs of specialist evidence. We use ‘event’ here to cover all the variety of legally-aided work.

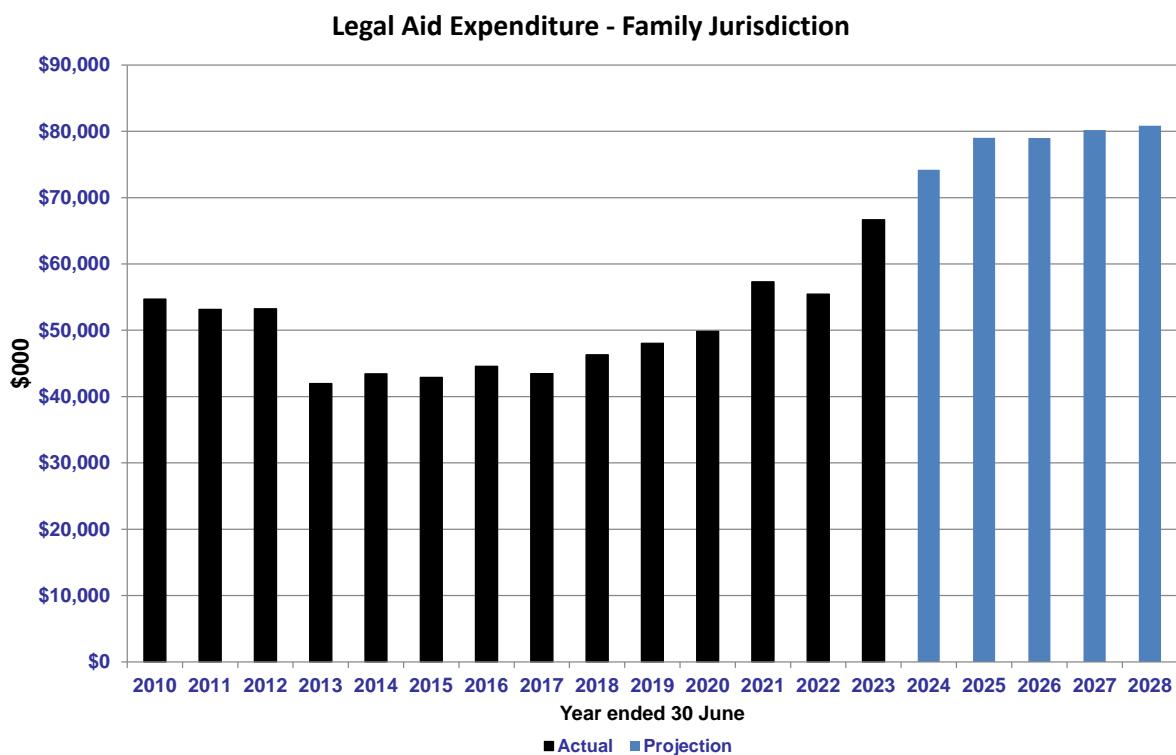
It is expected that therapeutic courts will involve greater numbers of events as judges monitor interventions, while events before conviction will be longer to accommodate a greater focus on the needs of the defendant. Both changes will increase legal aid costs. Following the initial step up in 2022, the remaining staged remuneration increases, though smaller, will add to the upward trend.

The number of cases taken by the PDS is expected to remain constant, but at a significantly lower level than in previous projections. This is because PDS are currently supporting the court initiative to clear the backlog of cases and are not taking on as many new cases. Any extra cases will therefore be managed by private providers, resulting in an upward pressure on non-departmental expenditure. This initiative does not currently have an end date, but the situation will be reviewed in subsequent projections.

Family Court legal aid will increase mainly due to increased eligibility and remuneration for providers

Figure 4 shows that expenditure on legal aid in the family jurisdiction is projected to increase from \$66.7m in 2022-23 to \$80.8m in 2027-28 (a 21% increase).

Figure 4: Legal aid expenditure in the family jurisdiction



From July 2020, lawyers were readmitted to Family Court proceedings involving the Care of Children Act 2004. This led to a short-term spike in inflow and expenditure in the year ending June 2021.

The 2022 Budget increased the maximum levels of income for the receipt of legal aid, meaning that a greater number of people could apply for and be granted aid. These changes followed similar changes in Family Court eligibility in 2016.

The 2023 projection allows the review of assumptions made last year, and the opportunity to revise the projection. The assumption about the number of grants in 2022 was based on the number of people who would now qualify based on what is known about the distribution of

incomes. However, simply being in a position to receive legal aid does not mean a person will require it. The increase in the number of grants since the eligibility change has been about half of what was assumed last year.³ This year's projection has accommodated this lower-than-anticipated increase.

The 2022 Budget also increased payments for legal aid providers in the Family Court. These changes were the principal drivers of the increased expenditure on Family Court legal aid and continue to drive expenditure upwards with further staged increases in future years.

From November 2023, there will be a change to the way Compulsory Treatment Orders (CTOs) are handled in the Family Court. The orders will need to be renewed at six-monthly intervals, with each renewal being treated as a new grant of legal aid. This will increase the number of legal aid grants in the family jurisdiction by around 16%.

However, the cost of these renewals is expected to be at the lower end of the range of case costs. A large inflow of comparatively inexpensive cases will bring the average case cost down by around 12%. The overall impact, which is a small increase, has been captured by adjusting trends in both case inflow and average cost.

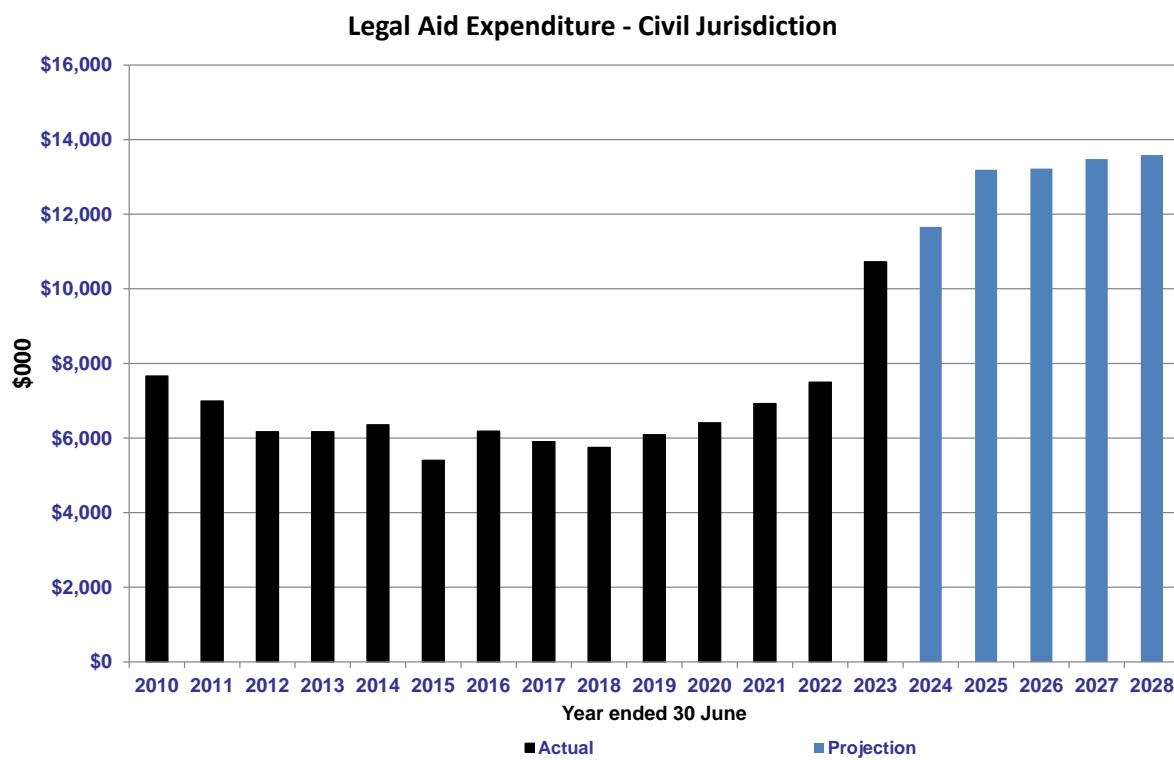
The 2023 projection therefore includes an upward component from the CTO changes, and a downward component from the smaller-than-expected inflow. The result is that the 2023 projection is very slightly lower than the 2022 projection.

³ There are also suggestions that the numbers of providers in the Family jurisdiction may be insufficient to ensure that people wanting legal aid can find a provider able to work on their case.

Civil Court legal aid is projected to increase due to increased eligibility and remuneration for providers

Figure 5 shows that expenditure on legal aid in the civil jurisdiction is projected to rise from \$10.7m in 2022-23 to \$13.6m in 2027-28 (a 27% increase).

Figure 5: Legal aid expenditure in the civil jurisdiction



The Budget 2022 increases in both eligibility and remuneration mean that, after a relatively level period, legal aid expenditure in the civil jurisdiction will continue to increase. The 2023 projection allows the review of assumptions made last year, and the opportunity to revise the projection.

COVID-19 and the many impacts of this may give rise to increased civil court activity in certain areas, particularly bankruptcy and insolvency matters. As some of these may require legal aid it is possible that expenditure on civil legal aid will rise if this eventuates.

One impact of the pandemic is a spike in the number of refugee claims in 2023, which has driven what is expected to be a short-term increase in expenditure. This is believed to be a response to the reopening of borders, and the processing of a backlog of claims that had

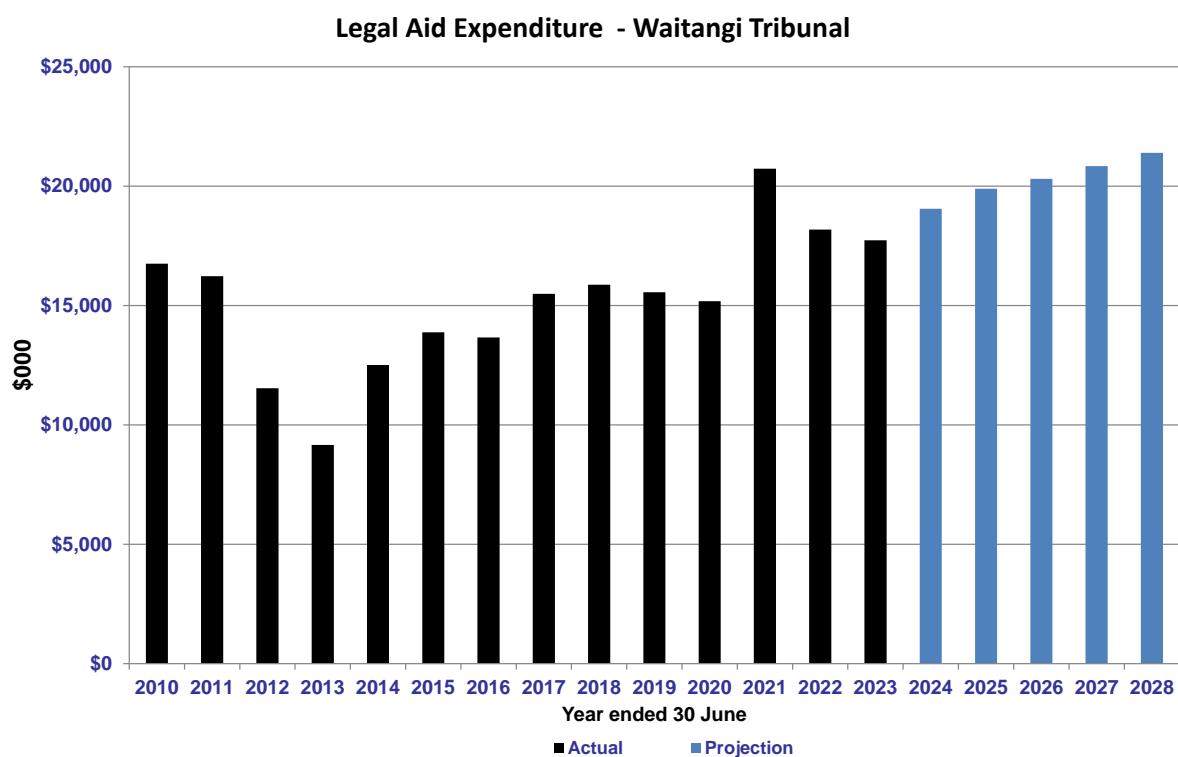
built up over the preceding months. The spike is expected to be short-term as cases pass through the system and the number of refugee claims returns to normal.

A further source of increased expenditure is the coronial enquiry into the Christchurch masjid attacks. This is leading to a few very large legal aid claims, which are substantial enough to affect other underlying trends. It is not possible to accommodate its impact with any confidence. While the enquiry was suspended for legal process reasons during most of 2022-23, it is resuming in October 2023. Most of the claims have been lodged, so the impact here will be on costs rather than inflow. While some of these costs may be invoiced and paid in 2023-24, it is likely that there will be an ongoing impact into 2024-25.

Waitangi Tribunal legal aid is projected to increase due to Kaupapa Inquiries

Figure 6 shows that expenditure on legal aid for Waitangi Tribunal claims is projected to increase from \$17.7m in 20221-23 to \$21.4m in 2027-28 (a 21% increase).

Figure 6: Legal aid expenditure on Waitangi Tribunal claims



Legal aid for Waitangi Tribunal cases is subject to a different set of drivers from the other jurisdictions. At any given time, there are only a small number of complex and high-cost grants of legal aid for cases before the Tribunal. This is also an area where issues concerning legal aid are decided by evolving case law. There are, however, relatively few historic claims still under consideration, and these are being steadily resolved. As they have completed, the Tribunal's work has shifted to contemporary claims (such as those relating to water and geothermal resources).

Waitangi legal aid claims are not made in as predictable a pattern as in the court jurisdictions; nor is it easy to determine the likely cost of a given claim. As a result, neither inflow nor average cost are readily projected, and instead we project overall expenditure. This part of the projection is therefore subject to a high degree of uncertainty.

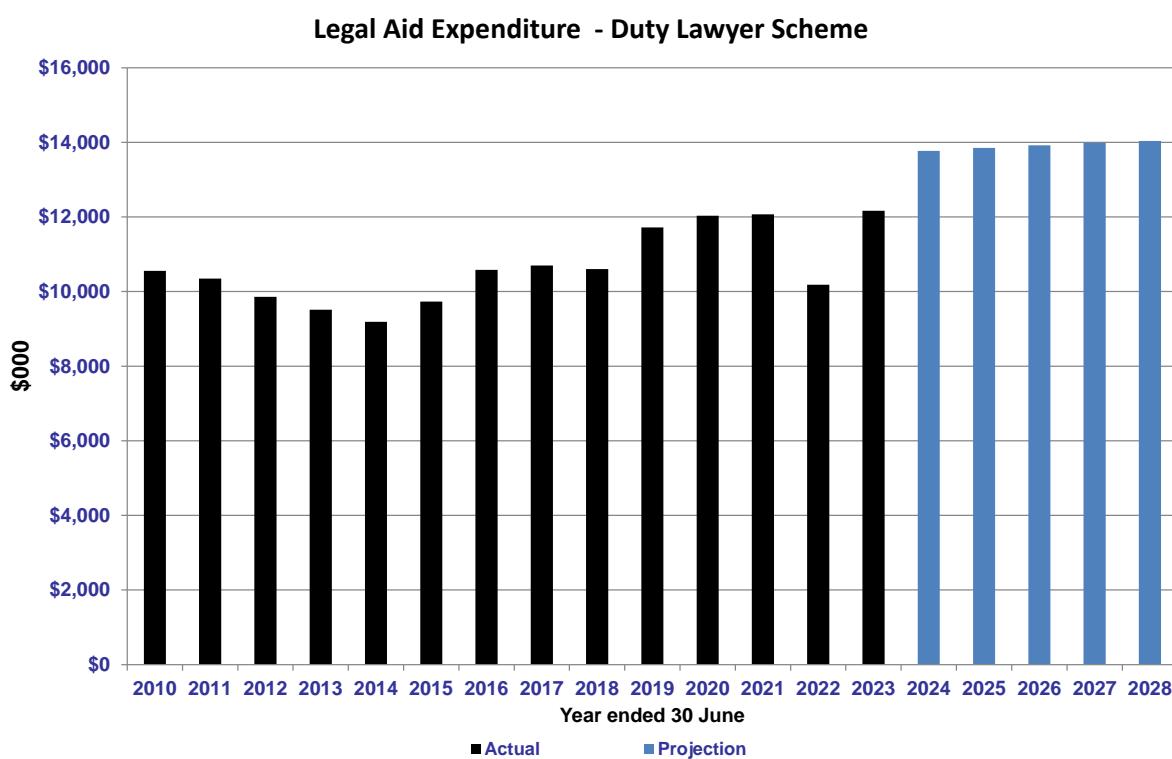
A continuing strand is the impact of the Kaupapa Inquiry programme. This is expected to generate work over several years covering up to thirteen themes (or Kaupapa) dealing with nationally significant issues affecting Māori as a whole. Current Inquiries include Health, Mana Wāhine, and Housing, while the Justice Kaupapa Inquiry was launched in August 2021. The Justice Kaupapa Inquiry will look at the provision of legal aid in all jurisdictions.

The increase seen in 2020-21 did not carry over into 2021-22, probably because of COVID-19 limitations. After consultation with the Operations and Service Delivery Group within the Ministry of Justice, the various factors have been accommodated by assuming a continuing increase in Waitangi Tribunal legal aid expenditure at a similar level to last year's projection.

Expenditure on the Duty Lawyer scheme will remain broadly stable after increase in rates in 2023

Figure 7 shows that expenditure on legal aid for the Duty Lawyer scheme is projected to remain close to flat once the increase in rates from July 2023 has been incorporated: \$12.2m in 2022-23 to \$14.0m in 2027-28 (a 15% increase).

Figure 7: Legal aid expenditure on the Duty Lawyer scheme



The criminal courts are sitting for roughly the same number of hours each year, and Duty Lawyers' expenditure is driven by the number of hours of service provided rather than the absolute number of cases. The drop in 2021-22 is COVID-related – as an essential service, courts remained open much as usual, but with fewer courtrooms in use, and therefore fewer Duty Lawyers were needed.

Expenditure returned to previous levels in 2022-2023. In July 2023 an increase of 17% in Duty Lawyer fees (but not disbursements) came into effect. This has been captured as a more-or-less immediate step up in expenditure, with the subsequent level remaining flat.

The work of the Criminal Process Improvement Programme (CPIP) may lead to significant changes in the work of Duty Lawyers. There is also a review of the Duty Lawyer service

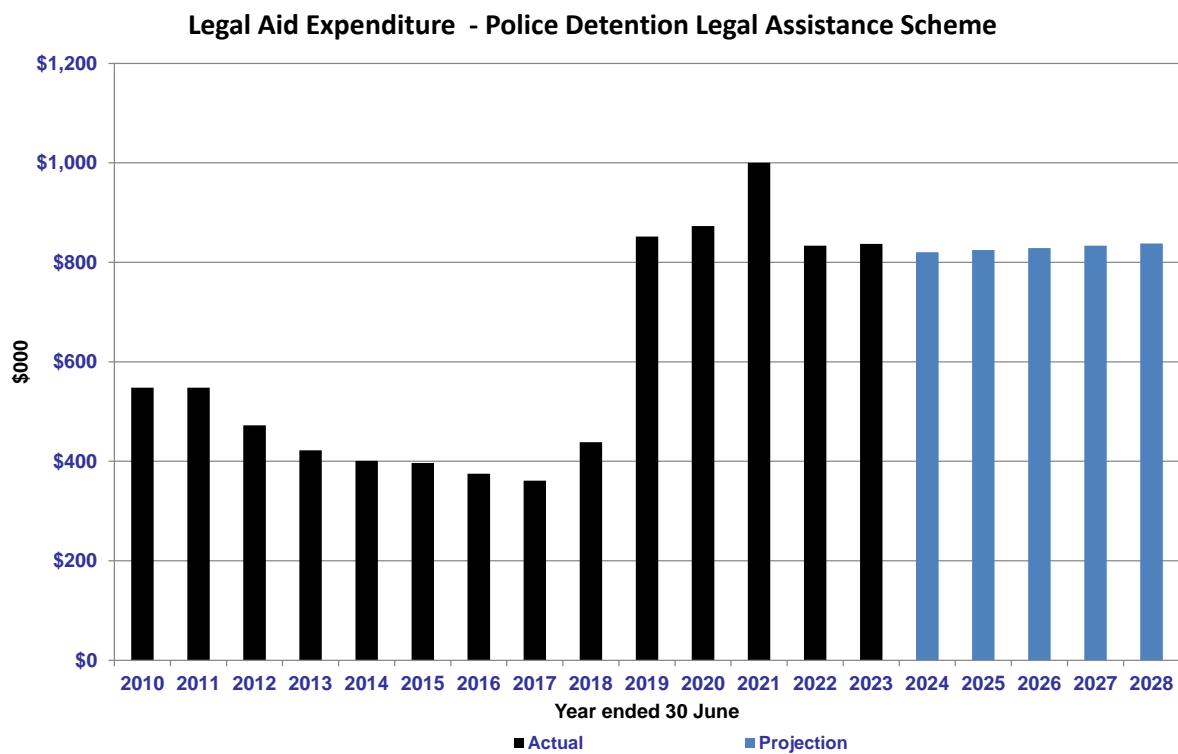
under way. The impacts of both initiatives are not yet known in sufficient detail to allow the projection to take account of them.

A further issue that causes some variance in private provision is the capacity of PDS to provide a specific level of cover. There may also be issues around private provider coverage in certain locations.

Expenditure on Police Detention Legal Assistance will remain stable

Figure shows that expenditure on legal aid for the Police Detention Legal Assistance scheme is projected to remain around \$0.8m between 2022-23 and 2027-28.

Figure 8: Legal aid expenditure on the Police Detention Legal Assistance scheme



The large step up in expenditure on the Police Detention Legal Assistance scheme followed an increase in the remuneration rates from 30 April 2018. The increase reflected both the new rates and a greater use of them – it appears that the improved rates encouraged more lawyers to provide the service. However, there remain some concerns regarding the availability of providers of this service.

To address some of these concerns, a pilot scheme of a change in rostering approach to improve availability of lawyers offering this service was run at Christmas and New Year 2020-21, producing unusually high expenditure for two quarters of the year, and an initial spike in the annual total for 2020-21. This rostering approach is now run every year and has settled at a lower level of expenditure.

In the 2022 projection, it was expected that numbers of drivers charged with being under the influence of drugs would require PDLA services at Police stations from March 2023. This programme was dropped at very short notice, but there are suggestions that it may be reinstated from late 2024. As such it is more appropriate to include any impact in next year's projection when more details of timescale and cost should be available.

Appendix 1: Budget 2022 impacts

The Government has invested \$148.7 million over the next four years to make adjustments to legal aid settings. This comprises two components.

Increasing the hourly rates of legal aid lawyers

The funding provided a one-off 12 per cent increase to the hourly rates for legal aid lawyers. This 12 per cent increase has been available for grants made after 1 July 2022, and for work completed after this date on existing grants. This also applied to the series of fees available for hearing and waiting time in the fixed fees schedules across all jurisdictions.⁴

The rates for the Duty Lawyer Service were not included in this increase.⁵ Instead, a review of the Duty Lawyer Service was started in August 2023. This review will explore existing coverage and rostering issues, particularly on weekends and public holidays.

Legal aid settings regarding eligibility and repayments to change

In addition to the increase in hourly rates, the investment also funded changes to key policy settings. These changes included:

- Increasing eligibility thresholds by 15% on 1 January 2023 and increasing them by a further 1.9% per year (for three years) so that they keep pace with wage inflation, ensuring that a greater proportion of people will qualify for legal aid.
- Increasing the repayment thresholds by 16.5% on 1 January 2023 and likewise increasing them by a further 1.9% per year for three years thereafter, and no longer charging interest on legal aid debt. This will mean that more legal aid recipients will have a lesser repayment obligation.
- The removal of the \$50 user charge for civil and family legal aid from 1 January 2023.

⁴ The arrangement covering fixed fees was only agreed after the 2022 projection was essentially complete. The impact was small compared to the overall expenditure on legal aid.

⁵ An increase in Duty Lawyer rates came into effect on 1 August 2023 and has been incorporated into the 2023 projection.

Appendix 2: Accruals

The overall projection is based on expenditure recorded by the Finance division in the Ministry of Justice. The finance process includes a system of accruals, reflecting the presence of liabilities that have been incurred but not yet paid. The full projection takes accruals into account, so that the output matches the records of Finance division.

The adjustment for accruals is generally small: most years accruals are around \$1-2m out of an overall expenditure of around \$200m. This year, in the wake of the remuneration and eligibility changes in Budget 2022, accruals will be significantly larger as the costs of cases for which the Ministry is now liable have increased.

Accruals arise because cases are inevitably still in progress at whatever point one examines the accounts. This means that there will be amounts to pay to providers in the future – effectively, these are liabilities. Because it is not known precisely how long any specific case will take, the calculation of the liability is challenging and imprecise. The Ministry of Justice Finance Group uses a model to calculate the accruals for any given month, and the projection aims to forecast that model's output in the future. The model uses previous patterns in case lengths and payments to estimate accruals, and any change in amounts takes time to bed in.

There are two components to the accrual projection. One is the overall estimate of the accrual balance – the total amount of money the Ministry may be liable to pay. This quantity generally increases, reflecting increasing average case costs. The 2020 projection estimated the amount to increase far more than it did. It is believed that this discrepancy reflects lawyer behaviour in submitting invoices – at the end of a difficult year, many more invoices were handled in December 2020 than in 2019, suggesting that lawyers were taking the opportunity to access money to which they were entitled on a prompt basis.

The second component to the accrual projection is the monthly change – whether the accrual balance rises or falls in a given month. This quantity can be negative. This situation may occur when a case finishes sooner – and hence more cheaply – than projected by the Finance model. Another cause is when the timescale for providers to submit invoices is adjusted.

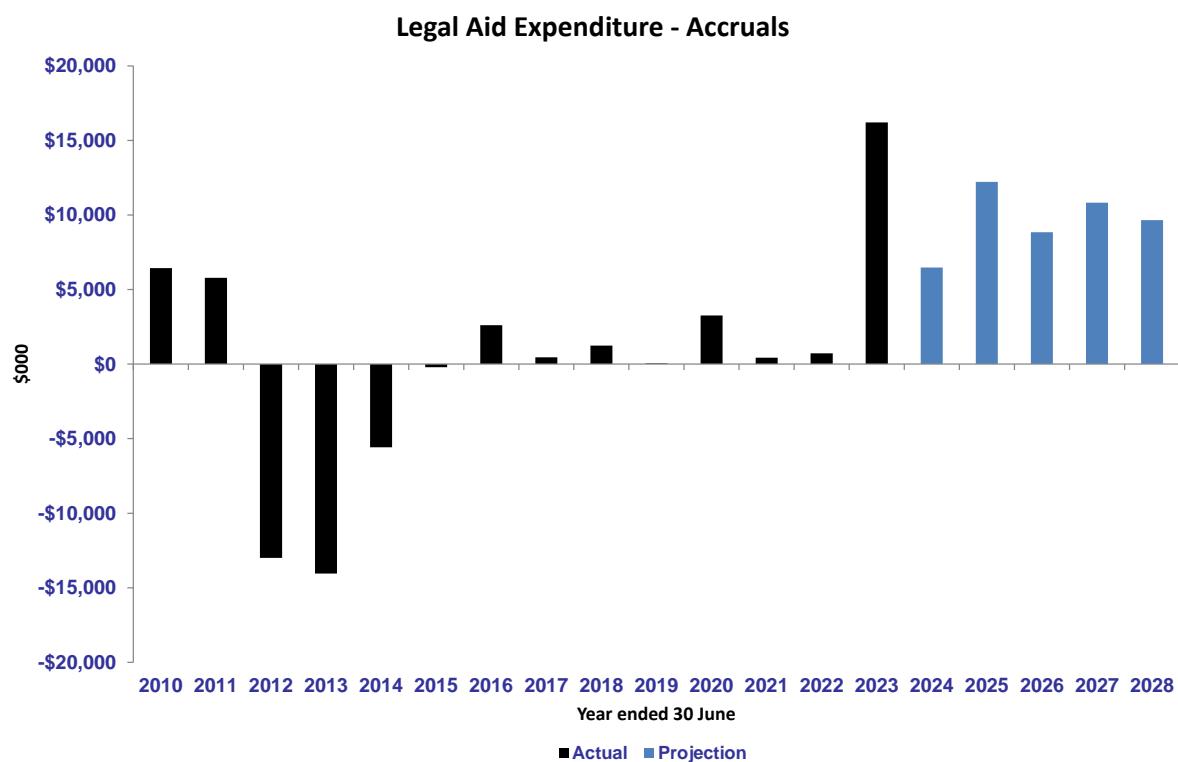
Figure shows the annual change in the accrual balance. Accruals vary according to a wide range of factors, including whether base expenditure is rising or falling, or if there are changes in the time allowed for the receipt of invoices. This results in a mix of positive and negative changes.

The 2022 Budget increased remuneration rates and eligibility thresholds, which implies an increase in average case costs. It also implies an increase in accruals – the cases still in progress are going to be more expensive when payment does come due. The pattern expected was a significant step up in accrual amounts, followed by a degree of stabilisation. The 2023 projection records the expected increase in accruals at the end of the 2022-23 fiscal year and anticipates higher accrual levels in outyears as the system stabilises.

Accruals for the criminal, family and civil jurisdictions are projected separately, although this report only considers the total. Each jurisdiction separately shows a similar pattern to the total.

Accruals are generally a minimal component of Waitangi Tribunal expenditure. Waitangi Tribunal accruals are not formally projected but are included when calculating the total annual Waitangi legal aid expenditure. There are no accruals related to the Duty Lawyer or Police Detention Legal Assistance schemes.

Figure 9: Legal aid change in the accrual balance



Ministry of Justice
Tāhū o te Ture

justice.govt.nz

info@justice.govt.nz

0800 COURTS
0800 268 787

National Office
Justice Centre | 19 Aitken St
DX SX10088 | Wellington | New Zealand



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