

Consultation Paper

Proposed limited approval and temporary approval policies for legal aid providers

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Purpose

1. We are seeking 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 Aid Services (Quality Assurance) Regulations 2011 that improve and streamline the legal aid provider approval processes.
3. Details of our proposed changes are outlined in this paper, and proposed drafts of the relevant Ministry of Justice documents are presented in the following appendices:
 - 3.1. appendix one – the revised Temporary Approval Operational Policy and application form (renamed to Part 1a from Part 6); and
 - 3.2. appendix two – the new Limited Approval Operational Policy and application form (new Part 1b).
4. Please email your feedback to Legal Aid Provider Services at legalaidprovider@justice.govt.nz by 15 June 2016.

Background to current policies

5. On 1 November 2015, the Legal Services (Quality Assurance) Amendment Regulations 2015 (Regulations) were enacted. The Regulations allow the Secretary for Justice (the Secretary) to approve lawyers who do not normally do legal aid work (or who are approved to do a different type of legal aid work) on a one-off or limited basis.
6. The discretion in the regulations relates to the experience and competence requirements that must be met by a lawyer seeking to provide legal aid services or specified legal services. In some instances a lawyer, while suitable to represent a particular client given their knowledge of the case and overall legal experience, might not meet all of the approval criteria to provide that type of legal aid work on an ongoing basis (e.g., because they specialise in another area of law).
7. New regulation 6B allows the Secretary to waive 1 or more relevant experience and competence requirements to allow a lawyer to act in a proceeding (or type of proceeding) if—
 - 7.1. the lawyer has acted, or is acting, in a related proceeding; or
 - 7.2. the lawyer has specialist skills required for the proceeding, or type of proceeding; or
 - 7.3. the lawyer is able to provide services in a region with a shortage of suitable providers.
8. The new discretion in the regulations is intended to apply in special circumstances which are supported by a new (proposed) operational policy through amendment to the Provider Manual.
9. Special circumstances which may give rise to a limited approval may include where a lawyer approved to do criminal legal aid work represents a client in a straight-forward civil matter linked to the criminal proceedings and does not intend to provide civil legal aid services on an on-going basis.
10. This approval is intended to replace the previous temporary approval system which required lawyers to make a standard application to the Secretary for lead provider approval to provide legal aid services in the relevant category. The standard application process is designed for lawyers who do a lot of legal aid work and may include providing information that is not required for lawyers who seek to undertake legal aid on a limited basis. This led to experienced, competent lawyers choosing not to apply and turning down cases.
11. The temporary approval policy was previously Part 6 of the Provider Manual. As a result of the change to the Regulations, the purpose and scope of temporary and limited approvals has been clarified in two separate operational policies.

Proposed Limited Approval Operational Policy

12. We are seeking feedback on the proposed Limited Approval Operational Policy and its impact on legal aid providers.
13. The policy reflects the changes to the Regulations and provides examples of the special circumstances which limited approvals are designed to address.
14. The policy also outlines the application process and discusses how the Secretary will make a decision on an application for limited approval.
15. An application form (included in the policy) has been designed to reflect the information required in order for the Secretary to make a decision on a limited approval application.

Proposed changes to the Temporary Approval Operational Policy

16. We are seeking feedback on the proposed changes to the Temporary Approval Operational Policy and their impact on legal aid providers.

Clarifying the purpose of a temporary approval

17. The policy clarifies that the Secretary can only approve a temporary approval to someone under section 77(5) when they have made an application for full approval, and where that application is awaiting determination from the Secretary.
18. The updated policy reflects current practice around temporary approvals and their purpose under the Legal Service Act 2011.

Outlining the information applicants must provide to the Secretary

19. In order for a temporary approval to be granted, the policy clarifies that an applicant must:
 - 19.1. provide information in support of their application, as specified in the Regulations; and
 - 19.2. meet all of the competence and experience criteria as set out in Regulation 6 and the Schedule to the Regulations.
20. A temporary approval may be granted where an applicant provides information that meets all of the competence and experience criteria as set out in Regulation 6 and the Schedule to the Regulations, and demonstrates that there are circumstances which mean that the applicant needs approval while their application is being assessed and/or is pending a decision by the Secretary.
21. The application form has been revised to reflect the information required in order for the Secretary to make a decision on a temporary approval application.

Technical and formatting changes

22. The Temporary Approval Operational Policy (previously Part 6 of the Provider Manual) has been edited to reduce its lengths. The changes include:
 - 22.1. removing any unnecessary flow charts, tables, and duplication; and
 - 22.2. updating terminology to reflect current usage, for example changing 'Grants Office' to 'Legal Aid Office'.
23. In addition, the temporary approval application forms have been amended to reflect current Ministry style.