

25 July 2016

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Dear Penny

### **Legal aid consultation: Legal Aid Provider Contract for Services and Practice Standards**

Thank you for the opportunity to comment on proposed changes outlined in the consultation document *Legal Aid Provider Contract for Services and Practice Standards — renewal and refresh* (consultation document).

The Law Society's Legal Services Committee and Family Law Section have considered the proposed changes and note that they reflect the legal aid legislative and operational framework. The Law Society considers that the proposed changes achieve the purpose of improving and streamlining the provider contract in a way that will help providers to understand their rights and obligations. A few specific comments are noted below.

#### **Provider Contract**

##### *Notify the Secretary about judicial sanctions*

Paragraph 25 of the consultation document and clause 3.8.4 of the contract outline the proposed obligation on the provider to notify the Secretary's contract manager if "a judicial officer has imposed a sanction on the provider". The word "sanction" has not been defined.

The Law Society supports the obligation to notify where a serious issue is raised by a judge about the competence of a provider. It is important for the provider to understand what constitutes a "sanction" sufficient to trigger this obligation. The Law Society recommends that the obligation be clarified by including a definition of "sanction" in clause 26 of the provider contract.

##### *Inform the Commissioner about costs orders*

Paragraph 31 of the consultation document and clause 3.10.3 of the contract outline the proposed obligation on the provider to inform the Commissioner when the court has made, or is considering making, a costs order under section 45 of the Legal Services Act 2011. The purpose of the obligation is to "avoid situations where the Commissioner is 'surprised' by previously unanticipated costs commitments". The Law Society supports timely notification to the Commissioner where a costs

order has been made. However, an obligation to notify where the court is 'considering' making an order is likely to be practically inefficient as it may not be clear whether the court is merely raising the possibility of a costs order rather than actually intending to make an order. The Law Society recommends that the obligation to notify where the court is considering making a costs order be deleted.

### **Practice Standards**

Paragraphs 29 and 30 of the consultation document and clause 24.4 of the Family Practice Standards outline the obligation that a lawyer "must ensure that any proceeds of proceedings are received by the lawyer or his or her firm and particularly that any proceeds in the form of money is paid into the lawyer/firm's trust account".

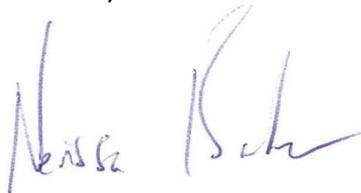
The obligation is expressed in mandatory terms. In some circumstances, it will be beyond the power of the provider to control the payment of proceeds of proceedings into his or her trust account. For example, this could arise where the other party pays the proceeds of proceedings direct to the provider's client, contrary to arrangements made between the provider and the other party's lawyer. The Law Society recommends that this obligation be amended to provide that the lawyer "*must take all reasonable steps to ensure...*".

Clause 24.5 contains a typographical error: the word "change" should be amended to "charge".

### **Conclusion**

We hope these comments are helpful and if further discussion would assist, please do not hesitate to contact Bronwyn Jones ([bronwyn.jones@lawsociety.org.nz](mailto:bronwyn.jones@lawsociety.org.nz) / 04 463 2906).

Yours sincerely

A handwritten signature in blue ink, appearing to read "Nerissa Barber". The signature is fluid and cursive, with the first name "Nerissa" and the last name "Barber" clearly distinguishable.

Nerissa Barber  
**Vice President**