

1 May 2018

Ministry of Justice  
DX SX10125  
Wellington

**Attention:** Miran Milosevic, Senior Advisor, Provider Services

**By email:** [miran.milosevic@justice.govt.nz](mailto:miran.milosevic@justice.govt.nz)

**RE: Legal Aid Audit Policy amendments – additional risk assessment metrics**

Thank you for the opportunity to comment on proposed changes outlined in the consultation document *Proposed changes to audit selection metrics in the legal aid Audit and Monitoring policy and Audit Terms of Reference* (consultation document).

The consultation document outlines minor changes to the Legal Aid Provider Audit and Monitoring Policy and Terms of Reference, to add the following additional risk assessment metrics used during the provider selection process:<sup>1</sup>

*Financial*

- Data suggesting above average billing – excessive invoices submitted
- Data suggesting above average number of amendments to legal aid grant sought – excessive number of amendments to legal aid grant submitted, and
- Data suggesting above average number of amendments to fixed fee cases sought.

*Workload*

- Above average number of case approvals rejected, and
- Above average number of case approvals refused.

As noted in its 2017 submission regarding the introduction of on-site audits,<sup>2</sup> the New Zealand Law Society supports changes intended to improve the efficiency and value of the Legal Aid audit programme.

The Law Society sought input from its Legal Services Committee and Family Law Section, as well as the profession, and makes the following brief comments on the proposed changes.

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<sup>1</sup> *Proposed changes to audit selection metrics in the legal aid Audit and Monitoring policy and Audit Terms of Reference* at [8].

<sup>2</sup> [https://www.lawsociety.org.nz/\\_data/assets/pdf\\_file/0011/114104/l-MoJ-Legal-Aid-onsite-audits-3-8-17.pdf](https://www.lawsociety.org.nz/_data/assets/pdf_file/0011/114104/l-MoJ-Legal-Aid-onsite-audits-3-8-17.pdf)

### Appropriate baseline data

The consultation document states that in order to calculate the new metrics, “appropriate baseline data will need to be established, based on the average billing/number of amendments to grant for particular matter types”.<sup>3</sup> However, the consultation materials provide no further information on how the “appropriate baseline data” will be obtained.

The Law Society notes that it may be difficult to calculate “appropriate baseline data”, given that no two files are identical. The consultation document does note the baseline data will be based on “particular matter types”, and the Law Society agrees that it is important ‘like for like’ measures are used, rather than simply taking the average over a number of files. This should include using the same practice area and type of case – such as judge-alone trials, jury trials or files with guilty pleas – to obtain the baseline data. Using ‘like for like’ measures will ensure that particular matter types that have higher than average billing, for example, will not automatically be flagged for audit.

### Workload

The consultation materials do not provide guidance on what is meant by the two metrics in the workload category, “*above average number of case approvals rejected*” and “*above average number of case approvals refused*”. The terminology has caused confusion for members of the profession and it is unclear whether this means grants or amendments to grants. The Audit and Monitoring Policy and Terms of Reference should clarify what these metrics involve and what is meant by ‘case approvals’.

### Amendments to grant

One of the new financial metrics will assess “*above average number of amendments to legal aid grants sought*”. Practitioners in the civil jurisdiction noted this may produce inaccurate results as often amendments to grant are sought due to the complexity of civil legal aid files. (Practitioners advised that it can be difficult to predict every step at the outset of a civil legal aid application and it is often more effective and efficient to apply for amendments to grant as needed, as the case proceeds.) The proposed metric may therefore result in a significant number of civil legal aid providers being flagged unnecessarily for audit. As discussed above, this may be resolved by using ‘like for like’ baseline data in the civil context.

We hope these comments are helpful to the Ministry and would be happy to discuss them further. If you have any questions please contact the convenor of the Legal Services Committee, Elizabeth Bulger, through the Committee secretary, Amanda Frank ([amanda.frank@lawsociety.org.nz](mailto:amanda.frank@lawsociety.org.nz) / ddi 04 463 2962).

Yours faithfully



Nerissa Barber  
**Vice-President**

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<sup>3</sup> *Proposed changes to audit selection metrics in the legal aid Audit and Monitoring policy and Audit Terms of Reference* at [9].