New Zealand Law Society
Te Kāhui Ture o Aotearoa

Legal Aid Review 2025

Submission of the New Zealand Law Society Te Kāhui Ture o Aotearoa

1 August 2025

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Introduction

1. The New Zealand Law Society Te Kāhui Ture o Aotearoa (the **Law Society**) welcomes the opportunity to comment on the Discussion Document released by the Ministry of Justice (the **Ministry**) for the 2025 Triennial Legal Aid Review (the **Review**).

2. This submission has been prepared with the substantial time and effort of the Law Society's Family Law Section, Access to Justice Committee, Criminal Law Committee, Immigration and Refugee Law Committee, and Civil Litigation and Tribunals Committee, as well as members of the profession who provided feedback.

3. As a part of this response, the Law Society engaged Deloitte Access Economics (**Deloitte**) to conduct an analysis of the costs and benefits of legal aid services, and their economic impact in New Zealand. The Law Society has for some time advocated for such work to inform the funding of legal aid, and in the current environment considered this work to be critical. Deloitte's report is addressed in the body of this submission and is **attached** in full. It has also been provided to each of the other legal organisations.

4. The structure of this submission largely follows that of the Discussion Document, though not all questions are answered directly. The key points of the Law Society's submission are:

    a. Reform of the legal aid regime, regardless of which proposals proceed, must be evidence-based. The mere fact of increased expenditure on legal aid is insufficient to justify cost-cutting measures or to preclude the allocation of additional funding.

    b. The causes of that increased expenditure must be properly examined. Decisions taken by all parts of the system – including policy decisions by Government – have contributed. As has inflation, the complexity of cases, and the increased number of legal aid grants.

    c. Investment in legal aid is a responsible financial decision, resulting in economic benefits and efficiencies for the justice sector, as well as wider government and societal outcomes. For every $1 invested in legal aid, $2.06 in benefits are generated. There is not, in the Law Society's view, a sound basis on which to decline further investment.

    d. Remuneration is inadequate and unfair, and it must be addressed. Lawyers are experiencing sector-specific cost pressures that are not experienced, on average, by consumers or other sectors. Input costs for providing legal services have grown significantly faster than both general consumer prices and wages, and stagnant legal aid rates mean that real remuneration for legal aid providers has deteriorated considerably over the past 15 years.

    e. There are improvements that can be made to administration and process requirements, quality assurance, provider approvals, and specialist reports. Cumulatively, such improvements are also critical to maintaining and growing the legal aid workforce, and ensuring the long-term viability of the legal aid system.

The present concerns are long-standing

5. In the Law Society's submission on the first (and until now, only) Triennial Legal Aid Review in 2018, we noted our concern that reforms made by the Legal Services Act 2011 (the Act) had diminished access to justice, and cited our 2010 submission on the (then) Legal Services Bill:[1]

> *Legal aid is central to a just and democratic society founded on the rule of law. It enables vulnerable members of society to have access to justice through legal advice and representation. The [Legal Services] Bill introduces fundamental change to New Zealand's established system of legal aid, and will impact first and foremost on legal aid applicants, as well as on practitioners through the legal aid scheme.*

6. The Law Society's submission went on to identify a range of concerns about the state of the legal aid regime in 2018:

   a. Increasing inequality between legally-aided and privately-funded litigants, and between legally-aided litigants and the state.

   b. The low level of remuneration and high administrative burden making it increasingly difficult to run a competent and financially viable legal practice that provides legal aid.

   c. A growing number of clients with more complex personal, behavioural and societal issues that require more time and attention.

   d. The long-term viability of the private legal aid bar, with many providers unable to afford employing juniors, leading to likely shortages of legal aid lawyers in the long-term.

   e. Provider shortages in areas such as refugee and protection, accident compensation, duty lawyers, and more generally a declining number of providers willing to continue regularly taking legal aid work.

7. Almost 15 years since passage of the Act, and seven years after the 2018 Review, these issues have only worsened.

8. The Law Society has consistently advocated for improvements to the system, both procedural and substantive, and particularly around remuneration. We have worked to develop an evidence base to support increased investment in legal aid and meaningful change, and refer here to our 2021 Access to Justice survey,[2] 2024 Costs of Practice report,[3] and now the economic evaluation and cost benefit analysis undertaken by Deloitte. We do this because of the fundamental importance of the legal aid regime – and our legal aid lawyers – to upholding the right to justice.

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1 Law Society submission the Legal Services Bill, 8 October 2010.
2 Law Society *Access to Justice Research 2021 Report* (October 2021).
3 Law Society *Benchmarking costs of law practice in New Zealand* (March 2024).

The current review process

9. We thank the Ministry of Justice and the Legal Services Commissioner for meeting with representatives of the legal profession during the consultation period for this Review (**Review meetings**). We also acknowledge the Commissioner's engagement with the legal profession last year, in which a series of workshops were held to identify low-cost, readily achievable improvements to the legal aid regime.

10. The Commissioner and her team have invested time and attention into developing an open and productive relationship with the profession. In the Law Society's view, this is critical. Lawyers are essential to the successful delivery of legal aid and have unparalleled insight into how the system is functioning 'on the ground'.

11. However, the Law Society is concerned about the timeframes required of the Ministry for this Review (reporting to the Minister in 'late 2025'). As outlined below, changes in legal aid expenditure are reflective of wider systems issues. Similarly, changes to the legal aid regime will have wider impacts. The timeframe imposed is inadequate for the scale, complexity, and importance of the legal aid regime and justice system.

12. The constrained timeframe also indicates a limited ability for the Ministry to consult further on the detail of any proposals that are to be progressed. This is concerning, as the proposals are light on detail. There is, overall, limited information and data about both the concerns identified and the proposals that are intended to address them. Many of the proposals raise further issues for consideration and will necessitate additional consultation. These areas are identified throughout this submission, and the Law Society urges the Ministry to undertake further consultation and, as required, recommend to the Minister that additional consultation be prioritised.

The benefits and economic impact of legal aid

13. The Law Society commissioned Deloitte to analyse:

    a. How the affordability of accessing and providing legal aid services has changed.

    b. The costs and benefits of providing legal aid services.

    c. The economy wide impact of particular benefits of legal aid services.

14. The Ministry has provided data and information wherever possible to assist with this analysis, and we extend our thanks for this.

15. The economic analysis is limited by the quality and availability of New Zealand data and literature on legal aid and the justice sector, particularly for the criminal, civil and Waitangi Tribunal jurisdictions. However, and importantly, those gaps are in relation to only the *benefits* of legal aid – all costs are accounted for. This means the cost-benefit analysis and economic impact analysis are conservative and likely materially understate the true net benefits of legal aid. Further data would only increase the benefit cost ratio (**BCR**).

16. Future analysis should be extended to quantify benefits relating to criminal, civil, and Waitangi Tribunal legal aid. We encourage the Government to continue this work and/or ensure the availability and provision of data to enable this work to be undertaken.

17. The full report is included with this submission and will be made available on the Law Society's website. The cost-benefit and economic impact findings are summarised below. Findings on the changing affordability of providing legal aid services is discussed later in the submission, within the feedback on Proposal 2 (increasing provider remuneration).

The benefit cost ratio for legal aid services is at least 2.06

18. The Deloitte report concludes that the estimated BCR is 2.06, which indicates that **for every $1 invested in legal aid, $2.06 in benefits are generated**.

19. As explained above, it is highly likely the results materially understate the true net benefits of legal aid, given the relatively narrow scope of the benefits included in the analysis, compared with the breadth of benefits identified in international literature, and the conservative nature of the assumptions that fed into the calculations. Additional data would only increase the amounts of benefits generated.

20. While not all of these benefits could be quantified in the New Zealand context due to limited data and research, international literature indicates the benefits of legal aid can be broadly grouped into three main categories:

    a. Efficiency of the justice system: the improved operational capacity of the courts that stems from the provision of legal aid services.

    b. Value to individuals: the benefits derived by individuals who achieve improved legal outcomes through access to legal aid services.

    c. Wider government and societal outcomes: the benefits derived by government and society when an individual achieves an improved legal outcome through access to legal aid services.

21. These benefits illustrate very clearly that decisions on legal aid funding have a much broader impact. Failing to properly resource the legal aid system is at the same time a decision to reduce the efficiency of the justice system, to forgo the benefits of reduced crime, to accept the increased costs of social services and demands on the health system, and to leave unaddressed the personal and economic toll of unresolved legal issues.

The broader economic role of legal aid

22. The Deloitte report goes further and provides an economic impact analysis. This is an 'economy-wide' modelling exercise and differs in this regard from the costs and benefits also presented in this report. For example, while the cost-benefit analysis estimates the direct savings to the government through increased efficiencies, an economic impact assessment goes a step further to consider how a more efficient government services industry impacts other industries in the New Zealand economy.

23. The economic impact analysis finds that, relative to a scenario without legal aid, **the expected economic impact of legal aid services between 2025 and 2030 is $2.2**

billion in NPV GDP terms. In annual terms, the New Zealand economy is $664 million (in 2025 NZD) larger in 2030 relative to a scenario without legal aid, which equates to approximately 0.1% of New Zealand's annual GDP. This is additional to the benefits quantified in the cost-benefit analysis.

24. In addition to demand for legal services, the economic impacts modelled in the report relate to increased efficiency savings to government (inside and outside of the justice system), cost savings to households, and labour productivity impacts of avoided violent incidents. These estimated impacts draw from the benefits that were able to be quantified and, like the cost-benefit analysis, the estimated impacts likely materially underestimate the economic impacts of legal aid. Had further data been available, it is likely the estimated wider economic impacts of legal aid would be higher.

This evidence must inform the Review, and future funding decisions

25. Decisions taken following this Review, and at the next Budget, must be evidence-based and take a long-term, systems-wide and economic benefit focus. This report from Deloitte must be at the centre of that evidence; it should be front of mind when analysing legal aid expenditure, and it should encourage decision-makers to act with confidence when making the call to increase investment.

The Legal Aid scheme in 2025

Drivers of the increase in expenditure

26. The Review appears substantially motivated by the trend of increasing expenditure on legal aid. The Discussion Document states that, between 2018/19 and 2023/24, legal aid expenditure increased by more than 59%.

27. Data provided by the Ministry shows that in 2019, $156,774,220.75 was spent on legal aid services (excluding disbursements). In 2024, that figure was $249,935,856.02. Simply applying inflation to the 2019 figure would place expenditure today at $196,469,762.36. This alone reduces the percentage increase of expenditure to around 27%. In addition, during that same period:

    a. The number of legal aid grants increased by 13% (from 76,531 to 86,309).

    b. There were backlogs in the court, and subsequent efforts to reduce these. Backlogs can contribute to cost via the increased number of attendances and 'back and forth' during the prolonged length of a case, while tackling that backlog can also result in an increased number of events. Both increase expenditure.

    c. Legal Aid Services reported an increase in reassignment of files, more than 20,000 in 2023/24. Any duplicate expenditure resulting from reassignment, while requiring attention, needs to be fully investigated and should not be included in the overall analysis of expenditure trends.

28. Where reform is a likely consequence of concerns about increased expenditure, understanding the causes of that increase is important. The question should not simply be one of whether the overall dollar amount of expenditure has increased, but whether

that increase is in fact disproportionate or unjustified. Consideration should also be given to the comparative costs of Crown, Police and Corrections prosecutions.

29. The varied and complex factors impacting the legal aid system, and its cost, must be acknowledged. This includes:

    a. The actions and decisions of others in the justice system. For example:

        i. Police practice for the laying of charges, and policy on when (if at all) charges will be withdrawn, for example, the policy that gang insignia offences will not be withdrawn.

        ii. Disclosure practices and delays, in addition to the increasing volume and complexity of disclosure. For example, criminal cases today can involve extensive volumes of evidence relating to text and online communications, CCTV footage, location data, and forensics. This is a complexity that simply did not feature some years ago.

        iii. Increased and more complex court processes, pressures created by the courts' efforts to increase case throughput, and judicial directions. Feedback suggests that greater understanding by the judiciary about the limits of legal aid would be appreciated. It is the same legal processes and procedures that apply to private paying clients, but under more challenging conditions. Travelling to a judicial conference, requirements for memorandum and affidavit and directing specialist reports need to be considered through a cost lens.

    b. Policy and legislative decisions by Government, made in the absence of proper policy development processes, and without an understanding of likely consequences. For example: the creation of new criminal offences, changes to sentencing requirements, the 'three strikes regime', all impact the overall volume and cost of court proceedings and legal aid, without necessarily considering increases in the cost of legal aid. They are also likely to impact defendant behaviour in terms of guilty pleas and appeals.

    c. The increasing complexity of cases and changes to the nature of legal work, driven by technological changes, complex evidence, and translation requirements.

    d. The increasing complexity of clients, including challenging behaviours and reduced willingness to settle or resolve cases early. Delays in the court system can exacerbate this. For example, where cases in the Family Court are delayed, the conflict does not stop while awaiting a hearing date, but continues in areas such as who may have contact with a child, schooling, and medical decisions. Delay can result in the parties becoming entrenched and unwilling to negotiate or settle matters.

    e. The decisions and behaviours of those involved tangentially in the justice system, and the demands and pressures facing those services. For example (and as discussed under Proposal 4), the inability to obtain psychological reports from the public health system and Department of Corrections has transferred that cost (and administrative burden) into the legal aid system.

f. The reality that legal aid expenditure will always increase as a consequence of population increases, which result in increases in the number of cases before the courts, and growing demand for legal aid.

30. In many cases, these effects are felt by the legal aid system because services elsewhere are seeking to reduce their own costs or amend their own processes, without consideration of 'knock on' effects. To respond to this with corresponding efforts to suppress legal aid expenditure places our justice system at real risk, and ignores the evidence of its social and economic benefits.

Legal aid providers

31. In 2021, the Law Society's Access to Justice survey revealed a legal aid scheme under increasing pressure, for reasons well known and already canvassed in the 2018 Review.

32. Of particular concern, 24% of legal aid lawyers intended to do less or no legal aid work over the next 12 months, for the following reasons:[4]

    a. Inadequate remuneration (58%)

    b. The stress and time commitment associated with legal aid files (41%)

    c. The administrative burden of legal aid (37%)

    d. Complex needs of legal aid clients (31%)

    e. Inability to have junior lawyers supporting legal aid work (24%)

33. We have not identified any available information about whether the number of files held by active providers has reduced. However, a comparison of active and approved providers in the 2020 and 2025 financial years (noting that the data on 'active' providers may not tell the whole story, as this can include providers who have only taken a single legal aid case in a year) shows some significant changes in the proportion of active providers.

34. Data provided by the Ministry appears to show that despite small increases in the number of approved providers, the percentage of active providers in most areas continues to reduce. The increase in the number of active providers is, in most areas, small and likely inconsequential given case volumes.

[4] Above n 2 at 22-23.

	Approved 2020	Approved 2025	Active 2020	Active 2025	% increase active	Total % Active 2020	Total % Active 2025
Criminal PAL 1	289	344	230	252	9.5%	79.58%	73.25%
Criminal PAL 2	226	286	204	218	6.9%	90.27%	76.22%
Criminal PAL 3	123	161	117	130	11.1%	95.12%	80.74%
Criminal PAL 4	321	343	300	259	- 13.7%	93.46%	75.73%
Family	910	1008	708	760	7.3%	77.80%	75.39%
Mental Health	183	208	23	7	- 69.6%	12.57%	3.36%
Civil general	453	513	147	175	19%	32.45%	34.11%
Refugee /Immigration	32	33	16	24	50%	50.00%	72.72%

2025 FY data is at 19 June 2025. If previously inactive providers took a file in the last 11 days of June, the figures will differ.

35. Data on the number of legal aid grants for the 2025 financial year was not available at the time of writing; however, for the period 2018 and 2024, the number of legal aid grants approved increased by 13%.

36. Anecdotally, the Law Society continues to hear from legal aid lawyers that they are frequently, in many cases multiple times a day, having to turn away individuals seeking representation on family and civil legal aid matters. Criminal legal aid lawyers have also advised that they are regularly approached multiple times to accept assignments, and are being asked to accept cases that are not at an appropriate level (the primary example being PAL4 lawyers asked to accept PAL1 assignments). Those who continue to provide legal aid are in many cases bearing unsustainable workloads, to ensure that no individual goes without access to justice.

37. It is difficult to get an understanding of provider coverage, and risk to coverage, without the ability to layer data relating to; approved providers, active providers, the number of grants accepted by active providers, pending retirements of senior counsel, and a regional breakdown across all of this. However, the Discussion Document suggests that remuneration increases may need to be prioritised to 'where it will have the greatest positive impact on lawyer availability and legal aid coverage.' It is not clear how these areas could be identified. While we acknowledge the current challenges to analysing provider coverage, it is essential information and one of the areas in which we encourage further attention.

What's working well

38. The Discussion Document asks what is working well in the legal aid system.

    a. The **underlying commitment to access to justice**: the legal aid system applies across a wide range of jurisdictions. Those in financial hardship or on low incomes should not be prevented from participating effectively in a system that is foreign, complex and often stressful. This commitment, on which the regime is premised, is the best aspect of legal aid.

    b. **Lawyer of choice**: the ability for clients to choose their legal aid lawyer in the civil and family jurisdictions, and for serious criminal charges.

    c. **Some approvals**: Amendments to Grant (**ATG**) for out-of-town travel and one-off requests for approval of other proceedings (i.e. civil) are generally straightforward. In addition, the Family Law Section notes it is relatively straightforward to be approved as a family legal aid supervised provider.

    d. **Communication with Legal Aid Services**: this has improved with recent changes resulting from last year's workshops. More providers report receiving phone and/or email responses when queries are made. We note this is not uniformly resolved, with some feedback indicating that case officers continue to send letters for minor matters; do not identify themselves in correspondence; and are unable to be contacted. However, we acknowledge that efforts to improve this remain underway.

    e. **Reassignments**: when a matter is reassigned to another lawyer, the second lawyer gets the full grant not just the remainder of the first grant.

    f. **Applicants for protection orders** do not have to repay their legal aid grant. If this was to change, it would affect people's ability and/or willingness to apply for orders, potentially to the detriment of their safety.

    g. **Mental Health applications**: recent changes to enable applications to be sent via email are welcomed.

    h. **General cost protection in section 45 of the Legal Services Act**: this is particularly important where legal aid is the best means to level a playing field between a poorly resourced party and the party with means and/or an aggressive approach to litigation.

What's not working well

39. As to what is not working well at present:

    a. **Significant shortage of legal aid providers**: demand for legal aid providers outstrips supply. As outlined above, legal aid providers are working long hours for inadequate remuneration. Also of concern is the aging population of providers and the lack of new providers coming through, as well as the future retirement of senior criminal lawyers in regions without replacements.

    b. **Inadequate remuneration**: fixed fee funding allocations are inadequate and do not reflect the reality of the work required. The remuneration, including the 50% claim

for travel across Auckland, Northland and other regions, is not economically viable in terms of running a practice or firm and does not keep up with inflation. The fixed fee schedules are not regularly reviewed and changes since their introduction have been piecemeal. As identified by the Ministry, there are also routine matters requiring an ATG, which could instead be incorporated into the fixed fee, thereby reducing time and administration. However, adjustment of this kind, while helpful, would not be sufficient to displace the need for a broader review of the fixed fees which takes into account changes in court and judicial processes, and the impacts of government policy and legislation over time.

c. **Eligibility threshold**: notwithstanding the recent adjustment to the threshold, many people fall outside eligibility but do not have funds to pay for legal advice. This results in people either leaving legal matters unaddressed or a rise in self-representation.

d. **Complex needs of legal aid clients**: there is a lack of recognition that many clients – across all jurisdictions – require significant time from providers due to their personal histories and/or current situations. For example, trauma victims, those with undiagnosed mental health issues, and clients with intellectual disabilities or development delay. While there is a $190 fee for additional factors in family cases, it is insufficient to accommodate the needs of many parties.

e. **Timeframes for invoicing**: the requirement to file ATGs within 15 working days of final disposition is challenging and should be aligned with the final invoice. For example, it is difficult for providers to anticipate the extent of an amendment prior to a hearing, as issues often change leading up to and even during the hearing. Similarly, many providers have raised that the 6-month timeframe for invoicing is challenging and often onerous within the context of a lengthy proceeding. It can require lawyers to invoice frequently for small amounts, increasing their workload and that of Legal Aid Services.

f. **Relationship between Legal Aid Services staff and lawyers**: providers have for some time raised as an issue the lack of trust that Legal Aid Services generally has in providers. There needs to be a higher trust environment than there is at present.

g. **Delays in provider payments**: it is generally accepted that one of the benefits of providing legal aid has historically been that payment of invoices is timely and reliable. However, this is no longer the case. We acknowledge the significant increase in workload that Legal Aid Services has experienced, and that efforts are underway to more permanently improve this. However, we continue to receive concerns about the time taken for payment of invoices, causing financial pressure for some lawyers. This is particularly where there are ATGs. As was noted by some attendees at the Review meetings, if rates of remuneration were fairer, occasional delays in payment could be better weathered by providers.

h. **Audits**: feedback is that these should be more educational than punitive, and those conducting the audits should have a better understanding of the provision of legal aid services and the types of proceedings being audited. Several examples of inconsistent audit practice and findings, including inaccurate suggestions of required practice, were provided at the Review meetings.

i. **Administration**: the time involved in ATGs and the frequency with which these are required, is burdensome and unremunerated.

j. **Lack of accountability from legally aided parties**: the Family Law Section notes that parties often do not feel the real cost of litigation because they are not seeing this cost until proceedings have concluded, which may increase the amount of cases progressing to hearing rather than settling. During the Review meetings with the Ministry, family and civil legal aid providers also identified that clients are not accountable for unreasonable demands placed on the lawyer's time, and that there is no feasible way to reduce the frequency and intensity of what are unremunerated telephone calls, emails, demands for instant communication etc.

Changes that could make the greatest difference

40. The Discussion Document asks, 'what changes could be made to ensure the legal aid system is more efficient, of better quality, and better promotes access to justice in a cost-effective manner.'

41. The benefits of providing legal aid must be acknowledged. An 'efficient' and 'cost-effective' legal aid regime should not be taken to mean that investment should either reduce or remain stagnant. That has effectively been the status quo for some years now, to detrimental effect.

42. Increased investment in the legal aid system would achieve meaningful change and wider societal and economic benefits. We urge the Ministry, and all readers of this submission, to thoroughly consider the Cost Benefit Analysis undertaken by Deloitte for the Law Society, and to prioritise evidence based decisions.

43. Further, specific changes are discussed throughout the submission, but at a high level, we note:

a. **Better remuneration of lead providers.** Discussed under proposal 2, this could be an increase in the hourly rate of practitioners, or a review of the stage at which providers' hourly rate is increased. This may attract a greater variety of lawyers and/or more experienced practitioners, improving the quality of service. As already noted, fixed fees require review.

b. **Streamlined approval process for lead providers**, in particular where they may not have had sufficient hearing or trial experience in the stipulated areas, but have extensive experience in other types of hearings. Lawyers have noted that their skill in resolving matters prior to trial, which is beneficial to the justice system as a whole, can mean they do not meet technical approval requirements, to the detriment of their ability to obtain lead provider approval or to progress through the criminal provider approval levels.

c. **Paid junior counsel**: this is discussed under proposal three. Junior counsel should be paid to appear and be involved in a file. Senior counsel need to be incentivised to train junior lawyers (or it should, at least, not require financial loss), and this could also make it more attractive for firms to provide legal aid.

d. **Timelier payment of legal aid invoices**: discussed above.

e. **Retention of experienced practitioners:** their involvement ensures smoother progression of proceedings, reducing delays or complications often encountered by registry staff when dealing with self-represented parties. Experienced practitioners are also essential for the training and mentoring of junior counsel (see (c) above), and in this way contribute to the sustainability of the legal aid system.

f. **Making the administrative system easier to navigate/less onerous**: many providers are discouraged by the amount of administrative work required on legally aided matters (such as invoices, applications, ATGs). At times the correspondence received can be confusing, and administrative processes can be time consuming for providers who have not received training or guidance.

g. **For clients to be able submit their own application forms**: the Family Law Section has raised that if clients are able to complete their own application forms (removing the section that must be completed by the lawyer), financial eligibility may already be confirmed when they approach a lawyer, and work can then begin immediately. There are often delays with Court/filing documents while lawyers are waiting for approval to be confirmed.

h. **Pre-hearing matters**: both criminal and family legal aid fixed fees for pre-hearing matters are insufficient in almost all cases. This leads to multiple ATGs being required and a large administrative burden for providers. Having pre-hearing matters on an hourly rate instead of a fixed fee would mean time is properly recovered and administration is reduced.

i. **Amendments to grant**: more generally, these are a costly administrative exercise for providers. The fixed fee schedules need to be amended to include the common ATGs that are always granted. We note from the criminal legal aid ATG data provided by the Ministry (2019 to 2024) that there is a persistent pattern of ATGs being necessary, increasing substantially with the seriousness of proceedings. This is not a new issue, but indicates that review is required.

j. **Timeframe for filing ATGs**: as discussed above under 'What's not working', section 28(2)(a) of the Act (15 working day time frame for filing an ATG) should be amended. Section 28(2)(b) should also be amended to allow broader discretion for the Commissioner to accept an ATG outside of the specified time frame.

k. **Timeframe for invoicing:** Regulation 19 (six-month time limit for invoicing) should be amended to extend the period for invoicing, noting the issues identified above under 'What's not working.' Section 98 of the Act could also be amended to provide a more general discretion for the Commissioner to accept late invoices (rather than a power for the Secretary of Justice to specify a different timeframe). Given the current court delays, the requirement to invoice all files every 6 months often leads to many small bills and extra administrative time for both the provider and Legal Aid Services.

l. **Relationship property**: should be taken out of the fixed fee regime and be an hourly rate instead. See comments under Proposal 2.

m. **Invoice amendment:** Legal Aid Services should be able to amend and pay invoices up to a higher maximum amount where the provider makes a mistake, or the invoice

is reduced by Legal Aid Services. We appreciate there may be operational or legislative constraints that currently prevent this, and recommend that those constraints are investigated as a part of this Review, with a view to as practical an approach as possible.

n. **Supervised providers:** feedback indicates it can be onerous for a lead provider to supervise a supervised provider, and the settings do not currently support employing and/or training junior lawyers. Higher standards are applied than would apply to private paying clients. For example, in a matter involving a private paying client, a junior can attend certain court events without a supervisor. However, Legal Aid Services requires a supervisor to accompany a supervised provider and the remuneration for a court appearance is $67 per half hour. That means in practical terms that the cost is shared by the supervised provider and the supervisor. A supervised provider should be able to have control of the file under supervision.

o. **Increase the eligibility threshold for legal aid:** the Discussion Document notes that this will make the shortage of lawyers more acute. There are varying views amongst the profession, however it is noted that many lawyers are having to write off debt from clients who cannot pay, or have clients who pay in small (often irregular) instalments because they are just over the threshold for legal aid. As the eligibility threshold now intersects with measures of poverty, this may mean an increase in self-representation for those who cannot afford a lawyer but no longer fall within the eligibility criteria. This often moves the costs to other areas of the justice system, such as costs of court-appointed counsel and court delays. In family matters, where a legally aided party may be engaged in proceedings with a self-represented party, this also places additional pressure on the legal aid provider, who must carry more of the weight of preparation and time spent on a matter that can often be shared when both parties are represented.

The consequences of limiting access to the legal aid regime

44. The Discussion Document asks, 'What would be the consequences of limiting the availability of legal aid? Who might be most affected?' It should be clear from the above that investment in legal aid not only provides a return on investment but prevents cost elsewhere in the system.

45. First and foremost, restricting the availability of legal aid would be, in the context of current eligibility thresholds, a deliberate decision to reduce access to justice, resulting in more unmet legal need. Those who are on low incomes and yet do not meet the threshold will be most affected and disadvantaged. It will likely have significant personal consequences for some. For example: women who experience family violence and vulnerable children at risk of harm; those whose ACC entitlements have been wrongly decided; those facing employment issues; refugees and migrants; and, if criminal legal aid access were to change, those facing the immediate risk of loss of liberty and the long-term implications of criminal conviction (including reduced employment options).

46. It will also adversely affect the justice system, increasing the inequality of arms between litigants (and between defendants and the State), and undermining trust and confidence in the justice system.

47. It is likely that a proportion of parties who cannot afford a lawyer and do not have access to legal aid will self-represent. There are already concerns about the increasing trend of self-representation, and the strain this can place on the court system.[5] Parties, counsel and the court are all likely to be adversely affected. This will result in the shifting of costs to other areas, such as court-appointed counsel, and increase the time demand on Judges and the courts. It will likely also shift costs more widely, to all other government agencies that interact with the justice system, such as Police, the health system, schools, social workers, etc. The Deloitte report (discussed above) quantifies some of these economic costs (and conversely, the efficiency gain of legal representation), with evidence from New Zealand showing that cases involving self-represented litigants take longer to resolve, and increase the burden on court staff and judges, as well as opposing counsel. It further demonstrates that self-representation has broader economic impacts, including on the wellbeing and employment of the litigant in person,

Feedback on the proposals

Proposal 1: Reducing the administrative burden on legal aid providers

48. Issues pertaining to administrative burden have been canvassed above, including the timing of invoicing and the frequency of certain ATGs. The Law Society agrees there are opportunities to reduce administrative burden in each of the areas identified by the Ministry:

    a. Changes to the level of information required for legal aid applications.

    b. Changing the fixed fees to limit the need for ATGs.

    c. Increased pre-approval of some disbursements.

    d. Improving invoicing processes.

    e. Facilitating easier access to Legal Aid Services staff.

49. Many of these were identified during the workshops held with the Legal Aid Services Commissioner last year, and this broadly captures all issues and options relating to administrative burden.

Changes that could have the biggest impact on reducing the administrative burden of providing of legal aid

50. Reflecting much of the feedback outlined above, the following changes would be particularly impactful:

    a. **Simplifying invoicing processes**: In terms of invoicing, information provided by the Family Law Section indicates it takes providers six times longer to invoice legal aid work than it does for private work. The significant time is attributed to converting a lawyer's time (recorded in 6-minute intervals) into the tasks allocated per legal aid step of a proceeding, including ATGs. Because of this, it is difficult to give the job of

[5] For example, see Emily Ansell 'Continued rise in legal self-representation adding to justice delay concerns' *The New Zealand Herald* (online ed, Auckland, 1 July 2025).

invoicing to an administrator or secretary to complete. In addition, compatibility with add-ons to accounting packages such as Xero, so that providers do not have to produce duplicate invoices (one invoice for legal aid and another for the accountant), would be beneficial.

b. **Simplifying ATG processes**: The administrative time involved in applying for an ATG is considerable. In addition to incorporating the frequently sought and approved ATGs within the fixed fee, one suggestion is to provide an ATG option in the invoice template, that opens and populates as appropriate, so providers do not need a separate document. ATGs can also be challenging where Ministry staff do not understand the case for which the ATG is applied, leading to inconsistencies and onerous information requirements, and ongoing correspondence to resolve the issue.

c. **Fixed fees**: the same fixed fee allocations should apply across all Family Court proceedings. For example, there is currently no allocation for pre-hearing matters for Oranga Tamariki Act proceedings or paternity, no allocation for joint memorandum of counsel for family violence proceedings, and narrow definitions for reports that can be claimed.

d. **Pre-approval of common expenses not currently pre-approved**: this would assist in reducing the need to apply for ATGs for low cost items such as flash drives for the transfer of electronic disclosure by Police/prosecuting agency. Pre-approval of a relatively low amount (for example, up to $300) would make a real difference.

e. **Improving existing pre-approved expenses**: it has been identified that pre-approved expenses for interpreters and translators need to be revised and increased. Where such assistance is required, a more generous pre-approved limit (or no limit), noting that invoices would still be required before the cost can be reimbursed, would reduce the need for multiple ATGs during trial. More generally, the settings for all pre-approved expenses would benefit from review.

f. **Improved communication with grants officers**: acknowledging that efforts are underway to improve direct communication between providers and grants officers, it remains a consistent theme of feedback that lawyers would like the ability to speak directly with a grants officer who is responsible for their case. Even if only more PAL 3 and 4 cases were allocated to specific grants officers, that would make a difference. The benefits of more direct communication are felt particularly when ATGs are required, or there are issues/queries relating to invoices.

g. **Cross referencing with government departments regarding eligibility** for some applicants. For example, to identify the non-disclosure of partners, assets, income, rather than the responsibility being with counsel to chase this information or become detectives.

h. **Clients to update their personal circumstances directly with Legal Aid Services**: this should be a periodic requirement as many in receipt of legal aid experience frequent changes to their personal circumstances and it is hard for the provider to enforce completion of Form 17. For example, re-partnering and starting a new job are common when proceedings continue for years.

51. Webinars and video recordings of some of the administrative processes could be provided, so that providers can, in their own time, upskill on these processes. Training should also be available to lawyers when they are first approved to provide legal aid, even if in the form of online modules. This could include training on what can/cannot be claimed, completing ATGs, invoicing, and management of legal aid cases. At present, new providers are reliant on colleagues for this information.

Proposal 2: Increasing provider remuneration to encourage lawyers to provide legal aid

General comment

52. Fair remuneration for legal aid lawyers is critical to a sustainable, high-quality legal aid system. But it is about more than encouraging lawyers to provide legal aid. The legal aid system has for some time now subsisted on the goodwill of legal aid lawyers, who have a deep commitment to justice and who have taken on unsustainable workloads and regularly gone unremunerated on legal aid files. Addressing remuneration is important for both our future and current legal aid lawyers.

53. Remuneration must be increased, and it must be regularly reviewed. The Law Society and others have made numerous submissions over the years, advocating for increased remuneration, and noting the ongoing risk of neglecting investment in the legal aid system. While a 12% increase of hourly rates was achieved in 2022, they had not increased since 2008, and the fixed fees have received only minor piecemeal adjustment since their introduction in 2012. Such sustained and ongoing advocacy should not be required.

54. Legal aid lawyers have received minimal adjustments to remuneration. Remuneration has not kept pace with inflation, the increased cost of living, or the increased cost of practice. From 2021 to 2023, the cost of practice increased by 15.3% *each year*.[6]

55. Further, lawyers are in many cases not remunerated for the full extent of their work on a legal aid file. From the Law Society's Access to Justice Survey:[7]

> *On average, legal aid lawyers were not renumerated for almost half (48%) of the hours they spent on their last legal aid case. Only 15% of legal aid lawyers were fully remunerated for the amount of time they spent on their last legal aid case, while one in three were not remunerated for over half of the time they spent on their last legal aid case.*

56. This was confirmed in the Law Society's 2024 Costs of Practice report, which showed that administration and client needs – in conjunction with inadequate remuneration and higher overheads – are reducing the productivity of legal aid lawyers and exacerbating operational challenges. While non-legal aid providers recovered 61% of their time (on average 1,031 hours per year), legal aid providers recovered 53.3% (807 hours).[8]

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6 Above n 3 at 4 and 18.
7 Above n 2 at 24.
8 Above n 3 at 5.

57. Consistent feedback indicates that legal aid clients often expect lawyers to have a number of attendances and actions on files for which there is not sufficient legal aid funding. This is compounded by complex and changing requirements introduced by legislation (for example, in sentencing and sexual violence cases), the courts' practice requirements, and clients who require extra attention and care.

The data

58. In addition to the evidence base already developed through the Access to Justice Survey and Costs of Practice Report (as above), a component of the work the Law Society commissioned from Deloitte was an analysis of the changing affordability of providing legal aid services. The analysis finds:

    a. **Lawyers are experiencing sector-specific cost pressures**. Input costs for providing legal services have grown significantly faster than both general consumer prices and wages. This sustained growth of input costs for providing legal services above inflation and wages indicates that legal providers have been experiencing growing cost pressures that are not experienced by consumers or other sectors (on average).

    b. **There is a consistent theme of legal aid fees increasing at a rate far below the input costs for providing legal services**. Given this stagnant growth in legal aid fees, real remuneration for legal aid providers has deteriorated considerably over the past 15 years.

59. The Deloitte report looks at trends in wage and legal aid fee growth to gain insight into real remuneration of legal aid providers:

    a. The labour cost index has increased by 43% between 2010 and 2025.

    b. The hourly rate for a Family or Civil legal aid provider with four to nine years of experience – corresponding to Level 2 proceedings category – was $120 per hour for Family and District Court proceedings between 2008 and 2022. The same respective hourly rates apply to Criminal legal aid providers with the same level of experience under PAL2 proceedings.

    c. The hourly rate increased from $120 to $134 per hour on 1 July 2022, and this rate still applies in 2025. This means the hourly rate has increased by only 12% between 2010 and 2025 while the labour cost index has increased by 43%.

60. For remuneration to have increased commensurate to labour costs across the economy during this period, the hourly rate would need to increase to $172 per hour, $38 more than the current actual rate. The differential between this rate and the actual rate suggests a deterioration in effective remuneration for legal aid providers as measured by hourly rates for Level 2 proceedings category. The report concludes:

    > *While these hourly rates are just two examples out of the numerous fees and rates applicable to the provision of legal aid, a similar trend is observable across most of them, pointing to a deterioration in real remuneration for legal aid providers.*

Proposed solutions

61. The Law Society agrees with the solutions identified in the Discussion Document, to the extent that they are detailed, and provides the following additional comment.

62. An uplift of both hourly rate and fixed fees is required, and fixed fees in general require revision. As to how any increases are distributed, it is not possible to comment on this without the detail of what can be afforded or future Budget appropriations. Further consultation will be required. Revision of the fixed fees should be undertaken in close consultation with the profession, including civil legal aid providers (who have noted, for example, that fixed fees for employment cases are never adequate to cover the work required). We do not attempt here to outline all fixed fees that require attention.

63. More generally, it has also been identified by providers that the structure of remuneration tends to favour litigation, to the detriment of providers who resolve matters early for their clients. This seems counterproductive from a systems perspective, and illustrates how working closely with providers could avoid such outcomes.

64. On disbursements, there is strong agreement that travel and office disbursements require an increase. Civil legal aid providers, for example, regularly have to travel because there are so few active providers, and the low rate of payment for travel then further disadvantages them for a matter on which they are likely already poorly remunerated. Similarly, criminal legal aid providers have emphasised the increased costs (printing, storage) they are facing because of the increased volume of disclosure. This is one area in which the decisions of others in the system have increased legal aid expenditure: where the decision is made to only provide disclosure electronically, it must often be printed by the legal aid provider in order to go through it with a client in custody.

65. Lastly, and from a more systemic perspective, neither the Act nor Regulations provide for a regular mechanism by which remuneration is regularly reviewed and/or increased, even in accordance with inflation. This should be considered.

Family legal aid fixed fees

66. The Family Law Section has provided the following feedback in respect of fixed fees for family legal aid:

    a. Hearing and preparation time: both are currently inadequate. The fixed fee should provide for a set amount and then an hourly rate if extra time is required.

    b. Urgency: there should be an increased fixed fee for without notice applications to reflect urgency.

    c. Drug tests and parking: add pre-approved disbursements for local travel (parking), and non-judge directed Hair Strand Drug Testing.

    d. Office costs: should be available for each proceeding, rather than across the whole grant (for example, if a matter is CoCA, family violence and other proceedings). These should be increased and available more than once during a proceeding – such as at each step.

e. Introduce a fixed fee for interlocutory applications for respondents in family violence proceedings and a fixed fee for Family Group Conferences for CoCA matters.

f. Specialist reports: there should be two categories of reports in the fixed fee schedule. Category One, including reports from Oranga Tamariki i.e. section 15 reports, section 19 referral outcomes, supervised access provider reports, lawyer for child reports and section 131(a) reports; and Category Two for the more complex reports such as section 132, 133 and 178 reports. The more complex reports should attract a higher fee as they are often lengthy and complex. For example, it is not unusual for the Family Court to appoint counsel to assist to help a self-represented litigant to read and understand a section 133 report. There should also be additional factors available to claim if a client has reading or comprehension issues as the lawyer has an obligation to go through the report with their client.

67. Remuneration of relationship property files requires attention. The demand for a family legal aid provider in relationship property matters is significant, and the remuneration provided for in the steps for these proceedings is wholly inadequate. For example, the steps provide $350 for the preparation of a section 21 agreement. It would not be worth the risk to a lawyer undertaking this work at this rate in terms of their public indemnity insurance.

68. Legal work relating to relationship property should not be set out in the fixed fee schedules but instead handled like Waitangi Tribunal work, where there is a set rate for a set number of hours and then the ability to apply for an ATG every three months, if more time is required.

69. If fixed fees are to remain for relationship property, we make the following comments:

a. there should be funding for "additional factors" such as where there is a partnership, company, trust, relationship of short duration, dispute about length of relationship, or application to set aside a section 21 agreement. Each of these distinct issues adds time and cost to a proceeding in terms of gathering/disclosing additional documents and evidence.

b. given that repayment of the legal aid debt will be likely when the property is sold, the time spent by providers should be adequately remunerated.

c. include KiwiSaver values in applications and fund Notices of Claim and property searches as separate disbursements for conveyancing lawyers to do.

d. legal aid grants need to allow for proper funding for research and negotiations while the matter is in Court, rather than requiring ATGs.

Remuneration for Coronial files

70. Remuneration in coronial cases has also been raised as an issue and requires review. Currently set at Forum Category One, the maximum hourly rate is $139 (excluding GST).

71. However, the complexity of these proceedings is in many cases significant. For example, the skill of litigation required for full inquests involving fatal shootings by Police can be comparable to that required in PAL3 and PAL4 criminal proceedings, but the remuneration is not reflective of this.

Proposal 9 – Restructuring provider remuneration to incentivise timeliness (criminal legal aid only)

72. The Law Society agrees with the observations in the Discussion Document, that:

    a. The fixed fee schedules do not adequately recognise efficient or early case resolution, and fees claimable in cases that resolve early are comparatively low.

    b. While noting that proposal 9 relates only to criminal legal aid, the observation that early availability of legally aided advice could help prevent, resolve, or contain disputes prior to entering court applies more broadly. However, caution is required. Fixed fees should also not be 'front loaded.' Whether a case resolves early can depend on a variety of factors unrelated to the lawyer, for example late disclosure or the client's unwillingness to take advice.

    c. The criminal fixed fee schedules are complex, resulting in errors in the type of fees claimed.

73. In addition:

    a. There are numerous common ATGs that are regularly applied for (and granted), and we agree it would be beneficial to adjust the fixed fees so that these common ATGs are covered by the fixed fee, and the need for an application, with its associated administration, is removed.

    b. We do not necessarily see this as an issue of 'incentivising' legal aid lawyers to resolve matters earlier. Rather, it is about providing remuneration for earlier stages, so that lawyers can undertake the work and client engagement that is necessary to achieve early resolution. At present, this is often not within the scope of a fixed fee.

    c. It is essential that there remains the ability to apply for amendment of fees in complex cases or where cases do not progress routinely.

    d. Hearing time and waiting time should remain separate. Both are outside of the control of the lawyer and can depend on a multitude of factors. It would not be fair to incorporate this into an overall fee.

74. Although detail is sparse, the proposal seems to be focused on a move away from hourly rates to flat fees. Currently, we have a hybrid system with both fixed fees and hourly rates. If moving to flat fees only, this would require a large amount of work for providers and Legal Aid Services. The impact of this, and the risk of unintended consequences, is difficult to predict. Further consultation will be required if the proposal proceeds.

75. Careful consideration is required as the history of fixed fees suggests ongoing review and adjustment is unlikely. There is little point in restructuring the fixed fees – within any jurisdiction – unless there is also a significant increase in effective hourly rates, whether time-based or fixed fees. Reference to cost-neutrality suggests this is not the intention.

Proposal 3: Improving incentives for junior counsel to provide legal aid

76. In 2021, one in ten (12%) lawyers who did not currently provide legal aid services were (very or extremely) interested in doing so in future. Almost 60% of these lawyers were in their first five years of practice.[9] The main reasons for this were:

    a. My law firm / organisation does not provide legal aid, so I don't have a choice (53%) (note that many firms do not do this due to remuneration).

    b. The administrative burden is too great (20%).

    c. The remuneration for legal aid work is inadequate (15%).

    d. Legal aid funding does not cover the costs of employing or contracting juniors to support the work (11%).

    e. There is a lack of demand / no demand for legal aid work in my practice area (10%).

77. This represents a significant opportunity to incentivise both junior counsel and their firms. Ultimately, we need to increase the number of lead providers who are willing and able to supervise juniors.

78. The Law Society therefore supports the proposals under consideration, and notes:

    a. There is a careful balance to be struck, particularly if lead providers are to be paid for supervising or mentoring juniors. Legal Aid Services should be satisfied as to the quality of that supervision, which at present appears to be inconsistent. During the Review meetings, we heard of concerns that some lead providers are supervising more juniors than seems feasible, to the detriment of their performance in court.

    b. Conversely, supervision requirements can also be onerous in some respects, particularly on straightforward matters and as supervised providers progress.

    c. Even if mentoring or supervision are remunerated, there may remain issues around the willingness of lawyers to supervise on an ad hoc, case-specific basis. Legal aid providers expressed some concern around their liability on these cases (both in terms of their professional obligations and indemnity insurance), given the inability to control the supervised provider's work when they are not an employee.

    d. The costs associated with hiring a junior are not just their salary and reduced earning capacity. There is also the cost of their practising certificate and continuing professional development. Any additional remuneration for lead providers who are supervising a lawyer should bear this in mind.

    e. Slightly different to the issue of supervised providers, law clerk time (such as graduates before admission) should not require a special ATG in which their time is a "disbursement". Again, this adds additional administrative time and effort for both legal aid providers and for legal aid staff.

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9 Above n 2 at 51-52. At that time, the number of lawyers interested in providing legal aid represented 58% of the current legal aid workforce – a significant opportunity.

f. Co-counsel should remain available on serious cases. Where the Crown has two lawyers conducting a trial, there should be automatic approval for second legal aid counsel, without the need to provide additional reasons.

79. The Law Society supports automatic approval of junior (including supervised) counsel to assist in more case types/circumstances. As discussed in the workshops last year, there should be automatic approval for juniors on PAL3 and PAL4 jury trials. This will assist the private bar with supporting junior counsel, in the same way that the PDS is presently able to.

80. Further, in all cases where a supervised provider is attending a hearing, both they and their lead provider should be remunerated for attendance. There should be a presumption that supervised providers will be taken to a contested hearing by lead providers and that the supervised provider is paid for preparation and appearance time.

81. The Family Law Section has identified that family law cases are becoming more complex. Clients with emotional dysregulation, mental health issues, addiction and high conflict are common features of many family law cases. Both the emotional dysregulation of clients and the complex legal/interpersonal issues within the cases can be difficult and stressful for inexperienced lawyers to navigate. Having too many cases of this nature risks burn out for even experienced family lawyers. Legal Aid Services could fund up to five sessions of counselling and/or professional supervision per year for junior legal aid providers, who find the work they do both confronting and traumatising.[10] This could also be provided to supervised criminal legal aid providers.

82. Finally, a range of suggestions were made by attendees at the Review meetings, noting the difficulty with training supervised providers who leave shortly thereafter. Further suggestions received include:

a. Some form of bonding for juniors who are financially supported to be legal aid providers, for a period of X years and at a minimum % of their case load, or similar. Some lead providers do this with juniors, but have indicated enforcement can be challenging. This suggestion is for them to be bonded to the Ministry.

b. Student loan remittance of a certain amount per year where a junior lawyer's work comprises, for example, more than 50% legal aid.[11]

Proposal 4: Ensuring value for money and reducing spend on specialist reports

83. Many of the reports identified in the Discussion Document are essential to ensuring a fair outcome (including a fair trial) or responding to the evidence or claims of the other party. Expert evidence by psychiatrists, psychologists, social workers, registered health

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10 This would be in addition to the free counselling service provided by the Law Society, which provides three sessions (with the ability for two further sessions upon request of the counsellor).

11 Similar suggestions have been made in Australia, where such schemes operate for the medical and teaching workforces: https://bulletin.lawsocietysa.asn.au/Bulletin/Bulletin/Content/Articles/2024/August/Calls_to_waive_student_debt_for_lawyers_who_work_in_the_country.aspx

practitioners and occupational therapists can also be required by the Court for it to make a determination.

84. While it is acknowledged that some specialist reports are expensive, the reports can be a way for expert information to be given more efficiently than through contested legal proceedings and the uncertainty and cost that brings.

85. The Law Society agrees there are savings to be made in the funding of specialist reports. However, it is a complex area that requires full consideration of the context in which those reports sit, their use in the court, and the precise causes of increasing expenditure. Further information and analysis are required:

    a. The Discussion Document notes that both the number of reports and the average cost of reports has increased. The respective contributions of each to the increased expenditure is not identified.

    b. It is noted that 'it is not clear what is driving the increasing volumes and cost of specialist reports, and it is not known why the cost of reports has increased (some markedly). It is therefore unknown to what extent this can be legitimately attributed to current challenges in the health system and the availability (or non-availability) of specialists in New Zealand.

    c. The Discussion Document suggests there is a quality problem, apparently indicated by a variety of practice in the way reports are commissioned and presented. Those two statements are not necessarily linked. A variety of practice does not necessarily mean poor quality. If there are quality concerns, they should be identified and addressed but not assumed on this basis. Legal Aid Services could regularly audit professional reports, just as there is an audit process for legal aid providers.

    d. A further identified problem is that there are 'questions' about whether the reports provided to the court are more detailed than necessary. It does not appear there is any evidence-based analysis to indicate whether this a problem, and, if so, in respect of which reports and why. Given the importance of some of these reports in what are very serious cases, anecdotal concerns are not a sufficient basis on which to proceed.

86. The Law Society urges further review and additional consultation on this proposal, if it is to proceed. Caution must be exercised to ensure that any changes do not result in an inequality of arms between the State and defendants (or between parties), or are otherwise detrimental to a legally-aided person by reducing their ability to place highly relevant information before the court.

Why the number of specialist reports may be increasing

87. The increase in the number of specialist reports reflects a range of system impacts, and the changing nature of cases before the criminal and family courts.

88. In the area of criminal legal aid, we know, for example:

    a. Legal Aid is now predominantly paying for reports prepared under section 38 of the Criminal Procedure (Mentally Impaired Persons) Act 2003, as the courts will not, and it is not possible to obtain timely reports through the public health system.

b. Similarly, psychological reports previously prepared by the Department of Corrections are no longer provided, and must be privately commissioned.

c. PAC reports prepared by the Department of Corrections for sentencing can be inadequate. They are often of limited use, and content at times appears judgmental. Clients can struggle to trust Corrections staff, especially where they have been in state care and distrust the 'system.' This necessitates external specialist reports, with the alternative being that necessary information is not put before the court. If the quality of PAC reports improves, the need for specialist reports may reduce. However, funding should not be reduced until that is the case.

d. Costs associated with criminal proceedings are increasing generally, and a modern criminal case often involves extensive evidence, technology, forensics, and associated expert and specialist reports. As the Discussion Document notes, 'more specialist input sought by the Crown in more criminal cases is likely to result in more specialist input being sought by defence counsel to rebut the Crown's evidence.' As the Crown relies more on forensic evidence, it is vital to the interests of justice that funding is available for the defence to review this evidence.

89. Legislative changes and policy decisions made by Government may exacerbate this. Increasing the severity of penalties (as has been foreshadowed) and changes to sentencing (including the three strikes regime and reducing judicial discretion) raises the stakes in respect of both conviction and sentencing. Where this reduces the likelihood of guilty pleas and instead proceeds to trial, reports will likely be required throughout the trial (in respect of evidence, or to respond to Crown evidence) and, if convicted, at sentencing.

90. As previously noted, family lawyers report that matters are becoming more complex, resulting in a growing need to obtain more specialist reports. A 'simple' family dispute often won't make it to hearing as it is likely resolved through negotiation or by parties attending family dispute resolution mediation. Many parties in family law cases have mental health issues, drug and alcohol issues, and are in high conflict. This in turn means there is the need for drug tests (sometimes ongoing), psychologists reports and other expert evidence to be put before the court so a matter can be determined based on the best available information.

Additional issues with specialist reports

91. The availability of specialist report writers for section 133 CoCA reports, and section 178 Oranga Tamariki Act reports and other reports for Family Court clients (critiques, psychological assessment of adults) is restricted by the widespread exclusion of insurance cover for psychologists who provide reports for the Family Court. This reduces availability of these specialist report writers and increases the costs of the reports provided.

92. In addition, the number of complaints made against psychologists is problematic, not only due to the lack of insurance cover but by the cumbersome complaints process required by the New Zealand Psychologists Board.

93. These issues could be addressed by:

a. expanding section 133 reports to include reporting on the psychological issues for the parties in the same way as section 178 Oranga Tamariki Act reports. This would avoid the high cost ($12,500 for a recent report) for reports of an adult's psychological issues in CoCA cases.

b. ensuring complaints about psychologists are made to the Court (in the same way as complaints about court-appointed counsel are treated) for the sitting judge's consideration and to only refer complaints to the professional body if they have been upheld by the judge.

Proposed solutions

94. It is difficult to assess the appropriateness of the options identified, as the Discussion Document does not address:

a. Which reports may no longer be funded and on what basis those reports would be identified as appropriately removed from funding.

b. How likely it is that specialist report providers would be willing to become accredited or otherwise accept a capped fee for provision of a report, particularly where their services are in demand.

c. Whether the Crown will be similarly restricted in respect of specialist reports, to ensure they are not placed at what could be a significant advantage.

95. Feedback from providers was clear that a panel or list of approved report/service providers is not supported. Parallels were drawn with ACC panels, with concerns that such a panel would, over time, become less independent or at least be perceived as less independent. In addition, it can already be challenging to find experts like psychologists, who have capacity to prepare reports within a reasonable timeframe. A list of providers who *must* be used would exacerbate this, with implications for the timeliness of proceedings.

96. There was, however, support for:

a. A list of approved experts, who are effectively vetted and pre-approved by Legal Aid Services, but who legal aid lawyers are not *required* to use.

b. Tentatively, and subject to further analysis and consultation, a cap on the cost of specialist reports. It has been noted that in the United Kingdom there are set specialist rates for different types of experts used in legal aid cases. This is accepted amongst specialists. Legal aid providers report they have at times had to pay specialist report writers more than they receive in remuneration for the entirety of a fixed fee case, and, in most cases, experts are paid a much higher hourly rate than they receive themselves. However, a cap would need to be accompanied by:

i. A requirement that the Crown and the Court comply with the same cap on cost, to maintain equality of arms in proceedings and to ensure that specialists do not favour Crown or Court engagement for its higher rates of payment, to the detriment of legally-aided individuals.

ii. A residual discretion for the Commissioner to approve higher costs for specialist reports, as in some cases the only experts available are overseas or are one of few in the world. Many of these experts are being instructed in response to Crown evidence and experts.

iii. Some form of accreditation or assessment of experts, who would otherwise simply 'self-select' and potentially result in a pool of only sub-standard experts available for legal aid.

iv. Safeguards against the risk of a 'two tier' system, in which privately funded parties have greater access to justice. It may be that limits can only safely be applied to certain reports.

97. A threshold before reports/services can be commissioned, for example based on the seriousness of the offence, is not supported.

98. In the Family Court, consideration could be given to ensuring that the brief to an expert when requesting a report is as specific as possible, so the report is better targeted to what is required. The brief should be approved by counsel and the court.

99. To ensure value for money in respect of specialist reports and other assistance, consideration could be given to bulk funding organisations for the following used in the Family Court:

a. Paternity testing

b. Hair drug testing

c. Alcohol monitoring

d. Interpreters

e. Communication Assistants

Changes to the content and processes for specialist reports to ensure value for money while preserving access to justice

100. Directly bulk funding the purchase of paternity and hair drug testing and alcohol monitoring, with results to be sent directly to the Court and parties, might result in a discounted rate for such reports, more certainty in terms of expenditure for the Ministry and reduced administration for providers. In addition, as the results would be sent directly to the Court and parties, this would provide greater security of results (for example, there have been cases of fraudulent tampering with results, especially drug tests).

Proposal 5: Reviewing quality assurance processes

101. The Law Society agrees with the problems as broadly identified in the Discussion Document and supports the suggestions under consideration. The Legal Services (Quality Assurance) Regulations 2011 require review.

102. The Law Society is aware there are a range of views on the quality assurance processes, most notably in respect of auditing. We agree the audit process should be streamlined, to ensure it is both effective and time efficient.

103. We also agree it is timely for criminal provider approval levels to be reviewed. At present, these are tied to the charge and potential penalty, rather than the complexity of the file. The Law Society has previously suggested that PAL3 sexual violence cases, for example, require revision. These cases pose a higher risk for lawyers, are more challenging (for example, pre-recording of evidence and historic allegations), will inevitably be appealed if convicted, and have a significant emotional toll. They require co-counsel (not just junior counsel), and warrant their own category.

104. In addition, there should be a discretion for the Commissioner to assign a case at a higher PAL, and 'strike' offences under the Three Strikes Regime should be set at a higher PAL.

105. The processes for approval as a legal aid provider are addressed below.

Provider approval

106. As the Ministry will be aware from both the workshops last year and the recent Review meetings, feedback on the process for approval as a legal aid provider is mixed. While civil and family legal aid providers more readily supported proposals to reduce the administration associated with the approval process, many criminal legal aid lawyers emphasised the importance of the approval process ensuring the quality of legal aid providers, including some form of qualitative assessment of performance – perhaps by observation in court – in advance of lead provider approval or as a requirement for progression through the provider approval levels. This may simply be reflective of the specific nature and requirements of criminal proceedings (and their potential consequences).

107. Notwithstanding this slight variation in perspectives, there are broad areas of agreement:

    a. There is support for the Commissioner's suggestion that where a lawyer is approved to practise on their own account and has been practising in the area in which they seek legal aid provider approval, the approval process should be markedly simplified. Though practicalities would need to be worked through, this could be streamlined by asking lawyers whether they intend to provide legal aid services, at the time they make their application to the Law Society for approval to practise on their own account. Once that application is approved, the information currently provided by the Law Society when a lawyer applies for legal aid provider approval (Regulation 5) would be supplied to Legal Aid Services.[12] This would stipulate the area in which the lawyer is approved to practise on their own account and would be the full extent of the additional information required on an application for provider approval. Similarly, for lawyers already approved to practise on their own account,

[12] This would be subject to the lawyer providing consent to this disclosure, at the time they state they intend to provide legal aid. In the absence of consent, the information required under Regulation 5 would not be proactively supplied to Legal Aid Services upon approval to practice on own account.

this would be the only additional information required to accompany a later application for provider approval.

b. There is inconsistent practice across selection committees, from which many of the examples of burdensome documentation, inconsistencies in approach, and perceptions of unreasonable decisions appear to stem. The term 'substantive and active involvement' is the source of some inconsistency, and would benefit from guidance.

c. Within criminal legal aid, it is progression through the provider approval levels that is often an issue, rather than initial approval as a supervised or PAL1 lawyer. The requirements of the Legal Services (Quality Assurance) Regulations 2011, specifically 'substantial and active involvement' in specified proceedings can be challenging to meet, particularly for PAL1 and PAL2, where those seeking approval are successfully resolving cases prior to trial, guilty pleas are entered, or trials are otherwise not progressing. Similarly, for family legal aid, more factors should be able to be considered than the amount of hearing time. Across all jurisdictions, the Regulations should enable greater flexibility and discretion. For example, two or three approved lead providers who are familiar with a lawyer's work could provide a reference if the requisite hearing time cannot be met.

d. There is also support for the Commissioner's suggestion of enabling employers practising on their own account and approved to provide legal aid (including firms) to effectively manage the provider approval of their employees. The employer would provide an undertaking to Legal Aid Services in respect of supervision requirements, and the employee applying for approval as a supervised provider would then make a simplified application, without a requirement for additional supporting information.

108. Civil legal aid is an area with few active providers, but this does not reflect a lack of need. Rather, it reflects inadequate remuneration, and the unremunerated work associated with establishing the merits of a case before legal aid is granted. It may also reflect challenges with gaining approval. By way of recent example, a lawyer with Australian legal experience now practising in New Zealand has been advised that Australian experience does not contribute towards meeting the minimum requirements to become a lead provider. Instead, initial approval as a supervised provider is required. There being only three active lead providers in the relevant area of practice, this is proving difficult. There should be greater flexibility to waive some requirements and consider the totality of an applicant's experience, particularly in areas where there are provider shortages.[13]

109. Provider approval for civil legal aid can also be more challenging due to the requirement for 'substantial and active involvement' in cases or proceedings, which the Ministry's 'Step by Step Guide' indicates is heavily reliant on participation in court proceedings. A substantial proportion of civil disputes are resolved prior to trial, and this itself can point towards the competence of a civil litigation lawyer. However, these skills appear not to be as valued, and instead a prospective civil legal aid provider will face the onerous task of piecing together well more than five work examples to sufficiently demonstrate

13 We also note here the Trans-Tasman Mutual Recognition Admission Regulations 2008.

'substantive participation.' This may well be a matter of inconsistency across selection committees. Irrespective, the very limited number of civil legal aid providers indicates that review of these settings may be warranted.

110. Consideration could be given to a requirement for newly approved supervised providers to complete mandatory education within their first year. For example, supervised family providers could be required to attend introductory education on family law advocacy and practice.

111. Finally, where there are conditions on a lawyer being able to practise on their own account, the Secretary for Justice should note the same conditions on that lawyer's provider approval (and if those conditions are later lifted, they should be removed from the provider approval at the same time). Similarly, if a lawyer who is a lead provider has had conditions imposed following disciplinary proceedings, Legal Aid Services should mirror those conditions.

Additional improvements to ensure quality of representation while minimising administrative burden

112. Additional suggestions include:

a. **High trust relationships with legal aid providers**: Legal aid providers are working in a stressful environment, and they may make honest mistakes. A high trust relationship should seek to ensure that providers are not assumed to be fraudulent from the outset. While recognising that any fraud is costly for the system, the nature of some of the correspondence provided to legal aid providers, including during audit, would benefit from review. For example, we are aware of lawyers being accused of fraudulently invoicing for work, when in fact what has occurred is that documentation has been accidentally left out of the supporting information in a large file. In other cases, it is simply a matter of providing additional education or clarity.

b. **Improved audit processes**: the provision of clear criteria to providers selected for audit, alongside checklists of the information they are required to supply (depending on whether a limited or full audit is to be undertaken). At times, there appears to be inconsistency in the approach to auditing, with some providers subjected to more onerous (unremunerated) requirements, and inconsistency across results. Providers have reported having to engage in protracted discussions during limited audits, with Ministry staff who do not appear to understand legal practise, much less the relevant practising areas.

c. **Forms and education**: forms should be simplified. Alternatively, guidance on how to complete each section of the form could be provided, including education on what is included in each line of the grant's schedules. This should be provided in multiple ways, including guides and videos.

d. **Consideration of a user portal** where legal aid providers can submit all documents including applications and ATGs, as well as documentation required for audit. This could be of significant benefit to both Legal Aid Services and legal aid providers, and create efficiencies. A portal would enable legal aid providers to follow the progress of their case. Any issues could be automatically notified via the portal, which would

minimise the time spent on sending emails and letters and answering queries. Other matters, for example, complex matters or misunderstandings, should be dealt with via a phone call.

e. **Law clerks and paralegals**: should also fall under any employer or firm undertaking, with their own identification value on the grant schedule, so they are not a disbursement on the invoice.

Proposal 6: Bulk funding and procurement of legal aid

113. Bulk funding has previously been raised as prospect and has proved to be controversial. We anticipate it will remain of concern to lawyers, particularly as the Discussion Document does not address:

a. How feasible bulk funding is likely to be. The changes to the legal aid regime post-Bazley Report, and the ongoings pressures associated with being a provider, have resulted in the provision of legal aid moving from firms to primarily sole practitioners and barristers.

b. Cashflow and the frequency of payments will be critical considerations for those who contemplate bulk funding. In addition, whether there will be scope to receive additional payment where cases become far more complex or drawn out than was originally intended (or otherwise move them out of the bulk funding arrangement).

c. The number of cases that a firm (or other arrangement) would be required to take on, and how the widely variable nature of proceedings within each jurisdiction would be considered. Not all cases take the same time to resolve.

d. How cases would be triaged as appropriate (or not) for bulk funding, and how they will then be allocated.

e. It is unclear how disbursements would be covered in a bulk funding model as it is hard to predict at the outset of a case what disbursements will be required.

f. Whether, and to what extent, there would be a 'claw back' of funding if the specified number of cases is not completed, and how this would operate for cases that span multiple funding years.

g. Calculation of repayments and fairness between the repayments required by those who receive bulk funded legal aid services and those who do not.

114. Many firms who currently provide legal aid already subsidise their legal aid work with private paying client. A bulk funding model would need to account for that.

115. The options discussed in the paper propose contracting firms, or groups of lawyers, to provide a specified volume of cases for a fixed price. An alternative option suggested by the Family Law Section would be to consider the organisation of bulk funding on a salaried basis, like how the PDS operates. This would enable employment of both supervisors and supervised providers and could address the current difficulties facing the latter. Disadvantages might include staff not getting sufficient complex cases to progress their career, potentially resulting in high staff turnover.

The benefits and disadvantages of bulk funding

116. Criminal legal aid providers we heard from were almost unanimous in their agreement that bulk funding would not work for the criminal jurisdiction, including because it is now rare for firms to provide any significant volume of criminal legal aid. For that reason, the benefits and disadvantages outlined below are from the perspective of family legal aid.

Benefits

117. A bulk-funded firm would, to an extent, have cost certainty. However, any trial of bulk funding would need to consider how to deal with the lead provider/supervised provider division. This may be problematic for a firm trying to do a high volume of straightforward legal aid cases. Removing this division for bulk funding purposes would result in firms being able to employ juniors to do the work, which may assist in increasing the number of family legal aid providers, and family lawyers overall.

118. If bulk-funding results in reduced administration, that may be a benefit. However, if bulk funding arrangements result in lawyers and firms being paid less overall, this would be of limited advantage. Further, some lawyers have raised concerns that it would in fact transfer some of the administrative burden from Legal Aid Services to the bulk-funded firm.

Disadvantages

119. There are several disadvantages to a bulk funding model, including:

    a. There is rarely a simple case in family law and cases are often unpredictable. This means that the time and cost incurred is equally unpredictable. The high volume of ATGs illustrates this point. The current waiting times for hearings in the Family Court mean an extended period from filing until the final hearing. In that timeframe the case does not stop, and the conflict continues. Additional issues commonly arise around contact with a child and guardianship issues, for example, schooling.

    b. If a client is bulk funded there is no incentive for them to consider costs and repayment when making decisions.

    c. There will be a need for more than one bulk provider as both parties will need to be represented if they both qualify for legal aid. Conflicts of interest may present an issue.

    d. Bulk funding may incentivise a system with low supervision, high volumes of cases, and juniors with minimal experience. It may create high staff turnover if it results in a lack of complexity of cases and lengthy hearings. It may also mean that cases will be more likely to settle as the legal aid provider will not want the matter to proceed to a hearing.

    e. It may be difficult to get the client to repay a grant in a bulk funding model if it is not a set amount for a case at the outset.

    f. It may remove the ability for a client to choose their own lawyer.

Types of proceedings which may be appropriate to manage via a bulk funding model

120. The types of cases that might be appropriate for a bulk funding model could include:

    a. Simple proceedings that might be resolved at FDR and which, as a general rule, do not proceed to court.

    b. Straightforward paternity cases.

    c. Child support cases.

    d. Oranga Tamariki and mental health reviews.

    e. Family violence cases that do not involve children.

121. CoCA cases are unpredictable and rarely straightforward, and not suited to bulk funding.

Proposal 7: Increasing repayments from legal aid recipients

122. As recognised in the Discussion Document, the legal aid scheme is a 'cornerstone' of New Zealand's justice system. Without it, those most in need lose the ability to resolve legal disputes or vindicate their legal rights and entitlements. Such an outcome risks injustice, and undermines the rule of law.

123. A modest, means-tested adjustment in the repayment obligations *may* be justified in some circumstances to ensure long-term sustainability of the legal aid system, where there is clear evidence that a recipient has the capacity to meet such payments. Any amendment to repayment obligations must ensure that the repayment system is just, fair, proportionate, and does not itself become a barrier to justice for those the system is designed to support.

124. It is imperative that before any such adjustment is proposed, this is considered carefully against the following factors:

    a. **Sliding scale of affordability**: Repayments should reflect the recipient's financial capacity and be structured, both in total sum and repayment terms, to avoid further hardship to that recipient or their family.

    b. **Ongoing oversight and administrative support**: Legal Aid Services must have sufficient resources to minimise administrative delays for processing repayment obligations, as well as requests where recipients are experiencing hardship.

    c. **Clear communication and hardship protections**: Repayment expectations and rights must be transparent and easily understood at the time a grant of aid is made, to lessen the likelihood of adverse outcomes. There must be robust, clearly understood avenues for parties' seeking reassessment or write-offs.

    d. **More consideration as to who and in what cases legal aid is repaid**. It may be unclear to some parties what policy considerations underpin the general rule that applicants in family violences cases do not need to repay legal aid, but applicants in CoCA proceedings involving serious and significant safety issues do. Parties filing without notice applications under CoCA and the Family Violence Act 2018 must establish the same ex-parte threshold and therefore it may appear arbitrary to

ringfence applicants in family cases, particularly when the allegations of family violence at that stage are untested. Does this conversely, mean that if findings are made at a later time that another party was in fact the victim of family violence (such as a respondent) that their repayment scheme is altered? Parties may be encouraged to seek Protection Orders in the first instance if they are aware that this will impact their repayment scheme.

125. Notwithstanding the comments above, the belief that legal aid is "free" can be abused by clients and result in unreasonable demands on counsel, as well as a reduced willingness to resolve matters. Having clients pay as they go, regardless of how low the repayment is, may give them some "skin in the game," assist their attitude towards counsel, and improve understanding of the implications of their conduct and their responsibility to progress matters. The use of civil orders for examination and/or attachment orders to wages or benefits would also increase repayment rates for recover of legal aid fees in appropriate cases.

126. The Family Law Section has suggested consideration of a 2-tier structure for legal aid, which might enable a greater level of repayment. For example, Tier 1 for those on benefits or similar, with repayment at low weekly rate, and Tier 2 for others to repay at a higher rate, which could include an interest component (akin to the repayment of a student loan as a percentage of a person's income). Note, however, that views on this differ widely, and introduction of an interest component is strongly opposed by some.

127. Whatever options are considered will require a balance to be struck between the cost of collection and the amount collected.

The impact of increasing repayment amounts on legal aid users

128. This will depend on how the proposed reforms are designed and implemented.

129. The obvious immediate or short-term impact on legal aid users is increasing repayment amounts. This will mean more money being repaid, which for low-income earners or recipients under financial strain, may have an adverse impact on their disposable income. This requirement may deter recipients from applying for a grant of aid, even if eligible to do so, thereby contributing to the growing rate of unmet legal need.

130. A broader effect is that there is likely to be a greater need for robust administrative and operational measures to cope with the increase in hardship applications, applications for reassessment, and debt recovery difficulties. As noted above, there must be sufficient resourcing to cope with the likely increase in demand.

Expanding options for enforcing and collecting legal aid debt

131. Strengthening enforcement and collection of legal aid debt may be appropriate in some circumstances, where recipients have the capacity to repay and the recovery of those costs will not cause undue hardship on the recipient.

132. One example of additional powers for this purpose could be expanding data-sharing among agencies to allow for exchange of up-to-date information. However, any proposal to strengthen or expand the enforcement of legal aid debt collection should be carefully weighed against the broader impacts on the access to justice and administrative efficiency. Aggressive or blanket recovery and/or enforcement provisions are likely to

undermine the legal aid system and should be treated with caution. The Law Society is unable to provide further comment in the absence of detail as to what those additional powers might be.

Proposal 8: Increasing the role of the Public Defence Service

133. While the Law Society does not oppose the PDS taking PAL 3 and PAL 4 cases (or taking steps to meet the 50% target), we do not support changes to the lawyer of choice policy.

134. There are PAL3 and PAL4 lawyers at the private bar who are willing to take additional legal aid files, should conditions improve. They need to be incentivised to train juniors, both for the future viability of the legal aid regime, and for the longevity of the independent bar.

135. Although we acknowledge it could be beneficial for the development and job-satisfaction of PDS staff, this does not justify changes to the lawyer of choice and rotational allocation policy.

Proposal 10: Minimising reassignments of lawyers

136. The Discussion Document identifies that in 2023/24, more than 20,000 reassignments were processed by Legal Aid Services. It is stated that 'most' of these reassignments were due to the initial lawyer not being available to take the case, however a 'significant volume' were reassigned at a later stage.

137. The Law Society acknowledges the increased workload this has created for Legal Aid Services. Where a case is reassigned at a later stage, it can also result in duplication of work, as the newly assigned lawyer must review the file and get to know both the case and client. It is correct that the newly assigned lawyer would be remunerated for this work, though it does result in some additional expenditure.

138. It is not surprising that most criminal legal aid reassignments relate to provider unavailability. This is most frequently a result of scheduling clashes, but may also relate to reassignment where a lawyer becomes unwell, is suffering burnout, or is unavailable for reasons other than time limitations. All of these can be a legitimate reason for reassignment. Feedback provided to the Law Society has referenced the past practice of Legal Aid Services in calling or texting lawyers prior to making an assignment, limiting the assignment of files for which a lawyer does not have capacity.

139. Feedback also suggests that lawyers are continuing to receive assignments where they have advised they are unavailable, which necessitates reassignment (often not long before first appearance and without disclosure).

140. The remaining common grounds of reassignment, listed in the Discussion Document, are:

    a. a conflict of interest or a breakdown in the relationship between the lawyer and the client

    b. the case is outside the lawyer's scope of practice or expertise

    c. the case is transferred to a different court

d. Legal Aid Services made an error in the original assignment.

141. In the absence of further information about the prevalence and nature of reassignments, it is difficult to identify potential solutions or assess the potential efficacy of the solutions suggested by the Ministry. We note that reasons (b) to (d), above, and conflict of interest under (a) are appropriate reasons for reassignment, and in fact would in many cases *require* reassignment.

142. This effectively leaves only relationship breakdown (fewer than 4,000 reassignments) as a factor that could be the focus of efforts to reduce reassignments. However, it is not clear whether it is the lawyer or client who is making the request, nor what falls within this category. It could, for example, include lawyers who have been threatened by clients, and lawyers who will face challenges complying with professional obligations or their duty to the court if they continue to represent the client.

143. The overarching concern here is that there is insufficient information on which to make changes that could have negative consequences for both lawyer and client. Further, Legal Aid Services already imposes restraints on further reassignments in some cases, and it is unclear what effect 'limiting the number of times that legal aid cases can be reassigned' would have in practice.

144. If there is to be a limitation on reassignment, it should only be in the area of reassignment for the reason of relationship breakdown, with the following caveats:

a. There must remain a discretion to permit reassignment beyond the limit, where appropriate.

b. Lawyers who receive a 'last chance' reassignment should be advised that the client is at their limit for reassignment of the file.

145. On the topic of reassigned files, though unrelated to reducing the frequency of reassignment, consideration should be given to establishing a fixed fee or fee for the review of an uplifted/transferred file, with flat fees depending on the complexity of the file. This work is additional to what would be required if assigned a file that had not previously had work undertaken on it, and lawyers should be remunerated for this necessary work.

Provision of legal aid file by the previous lawyer

146. The Discussion Document proposes unspecified changes to complaints and audit processes to enable the Ministry to act when newly assigned lawyers are not provided with an up-to-date client file from the previous provider, without delay. We suggest such changes are unnecessary.

147. A lawyer's professional obligations under the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 require that a client's file is transferred to the client's new lawyer (Rule 4.4.1). In most cases, this should require the efficient transfer of the files. The Discussion Document does not outline the prevalence of this issue, but feedback at the Review meetings indicated it was geographically restricted. The Law Society regularly provides guidance to the profession on professional obligations and

commonly arising issues, and this has been recorded as an area on which to provide future guidance. We will be in touch with Legal Aid Services to discuss this.

Proposal 11: Clarifying the role of Duty Lawyers in cases that can be resolved without a grant of aid

148. The Law Society considers it reasonable to expect duty lawyers to provide more services in cases where the offence is punishable with a term of imprisonment of less than six months. This has historically been the role of the duty lawyer, and the mandatory training covers this.

149. We also note that, as one of the outcomes of the Duty Lawyer Review, the Duty Lawyer Training Programme is currently under review.

Additional comments

Complaints about Legal Aid Providers

150. A topic of discussion at some of the Review meetings was the hesitance of approved providers to undertake legal aid work or undertake legal aid work relating to challenging clients or opposing parties, due to the duplicate complaints processes that can apply. Some providers had experiences of being the subject of complaint to Legal Aid Services at the same time as complaint to the Law Society's Lawyers Complaints Service.

151. The Law Society agrees it is not desirable for a provider to be subject to two complaints processes for the same conduct. At the same time, concerns relating to the professional obligations of lawyers should be forwarded to the Law Society. We will engage further with Legal Aid Services to ensure these arrangements are working as intended.

Family Legal Advice Service

152. The Family Legal Advice Service (FLAS) was introduced as part of the 2014 changes to the family justice system. Those changes saw the removal of legal representation for parties with parenting and guardianship disputes, and parties had to represent themselves unless the matter was filed without notice.

153. FLAS was introduced to allow parties to receive limited and initial legal advice and information on the family justice system (Stage 1: $245) and help with completing the Family Court application forms (Stage 2: $245). FLAS has a separate administration system to navigate: the Resolution Management System, which is not particularly user-friendly.

154. The Family Law Section suggests the Ministry consider disestablishing FLAS and redirecting its associated budget to provide more funding for legal aid providers to facilitate negotiation and settlement at a prehearing stage and at specific stages throughout the legal aid steps.

Parole cases

155. Parole is a difficult area of work, in which few lawyers are inclined to provide legal aid services. It is frequently conducted by AVL, before constantly changing panels, and often

with little success. Clients typically have high needs, and lawyers field queries about prison issues (lost property, misconducts) and other non-legal social issues.

156. It is worth considering a specific PAL. Parole legal aid files involve considerable unremunerated work, and regular ATGs. Very rarely could a parole matter be properly completed on the basic fixed fee, and there are a range of routinely applied for and approved ATGs that should be incorporated into the fixed fee. For example, ATGs are always required for in-person and AVL client meetings, including for the taking instructions. A fixed fee for AVL meetings, if repeatable, would be helpful.

157. There are also matters that regularly arise when working with a client under a grant of legal aid for parole purposes, and which go hand in hand with parole cases but are not directly related to proceedings. Assisting clients with applications for compassionate leave is one such example, and of great importance to clients. Consideration should be given as to how this can be accommodated within the grant.

158. Finally, other than for clients serving life sentences or on preventive detention, an application for the grant of legal aid cannot be made until 6 months prior to the hearing. This is despite having visited and progressed the case before this. This also means that at times, when a prisoner is transferred to another prison and engages a different lawyer for their parole proceedings, the original lawyer is not remunerated for the work done.

Repayment obligations for parole legal aid

159. The settings for repayment of legal aid relating to parole proceedings need to be reviewed, to include the duration of time that a person has spent in prison as a consideration, in addition to their wage.

160. Where an individual has spent a great deal of time in prison, even if they do secure employment upon release, they are at significant financial disadvantage to other who have been working for years. While they may now be earning a wage at or slightly above minimum wage, within the context they are typically not in a financial position to make repayments, without hardship and risk to their reintegration into the community. At present, lawyers are frequently providing pro bono services for section 29B and section 56 hearings,[14] because they recognise the unfairness of placing repayment obligations on recent parolees.

Education of clients

161. The challenges posed in managing some clients are an ongoing concern for legal aid lawyers. More could be done by Legal Aid Services to manage clients and their expectations, and to educate them as to their own obligations while in receipt of legal aid. This could include:

    a. Their obligation to provide necessary information, and respond to contact from lawyers.

    b. What is and is not covered by the grant of legal aid, including expectations of reasonable communication with the legal aid lawyer.

14 Parole Act 2002.

c. The role of a legal aid lawyer in providing advice on the likely outcome of a case, early settlement or resolution, etc.

d. Liability for costs if they do not act reasonably.

Māori Land Court Legal Aid

162. Legal aid is not currently available in any meaningful way for proceedings in Te Kooti Whenua Māori (the Māori Land Court) or Te Kooti Pīra Māori (Māori Appellate Court).

163. Between 2014 and 2023, there was only one grant of legal aid in respect of such proceedings. In most of those years, there were few, if any, applications for legal aid. This is not necessarily because there is no need, but rather reflects a widely held perception that legal aid will not be granted even where it is applied for.

164. That perception is driven by several factors. These include the very low threshold for aid, and difficulties arising from section 11 of the Legal Services Act 2011. Section 11(1) provides that legal aid for civil proceedings is not available to any body of persons, whether corporate or unincorporate, except as provided in sections 10(1) and 47. Any Māori person acting in a representative capacity for whānau, hapū, or iwi is therefore excluded from being able to access aid. While there is an exception for Waitangi Tribunal civil aid, there is no such exemption for Māori Land Court. This should be addressed.

165. In the absence of a functioning legal aid regime, the costs appear to be met almost entirely through the Special Aid Fund administered by the Court. It is unclear whether this is sustainable. The Law Society is concerned that this reliance on the Special Aid Fund is placing an increasing administrative burden on the Court and urges engagement with the Court, bodies such as Te Hunga Rōia Māori o Aotearoa, and with practitioners working in this jurisdiction to address these issues.

Refugee and Protected Persons

166. To obtain legal aid provider status in refugee and protected person matters, lawyers must have at least 18 months of relevant practice experience in New Zealand. This is a strict requirement with no flexibility for senior practitioners who may have significant experience overseas or in another jurisdiction such as analogous civil, criminal or family matters. For example, a lawyer with over 10 years of post-qualification experience in refugee or human rights law in another jurisdiction, or someone who has been practicing in civil or criminal law, is unable to bypass this requirement, even where their skills and expertise are highly transferable. This poses a barrier for practitioners to become a legal aid provider in refugee matters, and limits the ability to meet overwhelming demand for competent representation in this area.

167. The current legal aid funding allocates 25 hours for representation at the Refugee Status Unit (RSU) and 18 hours (or 14 hours if the provider acted at RSU) for appeals to the Immigration and Protection Tribunal. These fixed hours do not adequately account for the complexity of refugee matters. Clients often face mental health challenges, including post-traumatic stress disorder. Cultural and language barriers are likely to be present. Preparing a credible claim requires extensive engagement with the client, gathering of evidence, identification of witnesses, and drafting of submissions. The work required to meet procedural and evidential obligations cannot be reasonably completed within the

hours allocated. Lawyers routinely write off hours of work to complete what is required to maintain acceptable professional standards.

168. Within those capped hours, senior legal aid providers (those that are level 3 must have 9 years of litigation experience) are limited to charging $139.00 per hour. This rate grossly undervalues the legal and factual complexity of the work, as well as the significance of the outcome where a negative decision may result in deportation to a place of danger. The legal, evidential, and procedural demands of refugee claims are often on par with, or exceed, those in FC2 and above. The current rate fails to reflect the expertise required and contributes to the growing shortage of experienced lawyers willing to undertake this work.

169. There is currently no additional funding provided for supervised providers in refugee and protected person matters. The hours allocated under the legal aid framework are limited and typically fully absorbed by the lead provider. As a result, lead providers have limited capacity to support or train less experienced/new practitioners within existing funding arrangements. This has a flow on effect in that there are reduced opportunities for new lawyers to enter the jurisdiction and contribute to the longer-term shortage of legal aid providers in this area.

170. Finally, the current delays within the process deny applicants prompt access to justice, and result in higher costs. Refugee claimants are now waiting over 12 months from lodging their claim to the initial RSU interview. During this prolonged and uncertain period, legal representatives are required by their professional obligations to maintain regular contact, update supporting evidence, address emergent issues (such as changes in the claimant's health or country conditions), and help clients remain engaged with the process. However, legal aid funding does not account for this prolonged involvement. While lawyers are able to apply for an ATG in some circumstances, doing so imposes an additional administrative burden on already stretched providers with no guarantee the application will be approved. This creates real disincentives to do the necessary work and places clients at risk.

Next steps

171. The Law Society is available to discuss any aspect of this submission, if that would assist, and we look forward to further engagement with the Ministry on the next steps of the Review.

Frazer Barton
President

Encl: *An economic evaluation and impact of the legal aid scheme: Report for the New Zealand Law Society* (August 2025), Deloitte Access Economics