



New Zealand National Report

International Legal Aid Group
Conference
8 – 10 June 2005

Legal Services Agency,
Wellington, New Zealand

The Legal Services Agency

1. This section provides a summary of the key features of the Legal Services Agency including its functions, organisation and accountability structures.
2. The Legal Services Agency (the "Agency") is responsible for the administration of legal aid and related schemes. The Agency is a Crown entity established under section 91 of the Legal Services Act 2000. The Agency took over the granting of aid from the Legal Services Board (for civil and family legal aid) and Registrars of the courts (for criminal legal aid). The Agency is governed by a Board of six members appointed by the Minister of Justice. The Agency has a Chief Executive Officer, over one hundred and fifty staff, eleven regional offices and two Public Defence Service pilot offices.
3. The Agency has responsibility for:
 - administering criminal and civil legal aid schemes
 - administering the Duty Solicitor and Police Detention Legal Assistance Schemes
 - piloting and running schemes for employing or contracting with legal aid providers
 - maintaining a list of approved legal aid providers
 - developing and maintaining standards for listed providers
 - contracting with community law centres for the delivery of community legal services and
 - contracting for and delivering legal information and law related education projects
4. The Agency is required to comply with any written direction from the Minister. The Minister is required to table any direction in the House of Representatives and must publish the direction in the Government Gazette. The Minister is specifically prevented from giving the Agency a direction intended to bring about a result for one or more individuals.
5. The key accountability documents are the Memorandum of Understanding and the Statement of Intent agreed between the Minister and the Agency.
6. The Memorandum of Understanding is an annual purchase agreement that sets out the outputs that the Agency will deliver, defines performance measures, and presents financial information. It also sets out the Minister's expectations in relation to the Agency and the reporting arrangements.
7. The Statement of Intent is a three-year document that reflects the government's ownership interest in the organisation and is tabled in parliament. It sets out the government's outcomes and the Agency's priorities in relation to these outcomes and includes a mission and vision statement and key objectives for the period of the document.
8. The Agency also produces an Annual Report. A copy of the Annual Report can be found at <http://www.lsa.govt.nz>.
9. The Agency receives income from government appropriation, interest, contributions and repayments from legally aided persons, and the Law Society Special Fund. Detailed income figures may be found in Appendix Two. Legal aid is demand driven and the annual appropriation is based on forecast growth.
10. The Agency has a Public Advisory Committee. The Committee is required to have members who represent the interests of women, Māori, Pacific Island people, young people, older people, people with disabilities, the legal profession and community law centres. The Public Advisory Committee provides advice to the Agency on a range of issues including unmet legal needs and the funding of community legal services. The committee may not give advice on individual grants of aid.
11. The Ministry of Justice is responsible for policy development in relation to legal aid. This includes any policy work relating to criteria set in legislation and

subordinate regulation as well and monitoring the performance of the Agency.

Legal Aid - Overview

12. This section provides an overview of the legal aid scheme. Under this scheme the Agency provides a grants of aid to eligible people to fund legal services. The grant money is paid to an approved private practitioner for approved services¹. In New Zealand community legal services are not part of the legal aid scheme. They are delivered by community law centres, which are separately funded by the Agency.

Services Provided

13. Legal aid may be provided when an applicant faces criminal charges or requires legal assistance with a civil dispute where the final resolution of the dispute could be through adjudicated proceedings. Legal aid includes legal advice and representation, and includes assistance:
 - with resolving disputes other than by legal proceedings
 - with taking steps preliminary or incidental to any proceedings and
 - in arriving at or giving effect to any out of court settlement that avoids or brings to an end any proceedings

Listed Legal Aid Providers

14. Listed legal aid providers are currently all in private practice². There are approximately 3000 listed providers. Community law centres employ a small number of listed providers (less than 10).
15. For civil legal aid a person chooses an approved provider who assists them to

¹ Services are also provided by in-house practitioners under a new pilot scheme; this pilot is discussed in a separate paper *Piloting the mixed model in New Zealand*.

² Ditto

seek approval for a grant of legal aid. For criminal legal aid a person may chose a listed provider, or the Legal Services Agency may allocate them a lawyer if they have no preference.

16. The Agency has the power to audit listed providers and carries out random and selected audits.

The Granting Process

17. Applicants for legal aid must pass a means test and the case must pass a merits test (for civil matters) or the "interests of justice" test (for criminal).
18. Grants staff in regional offices process legal aid applications. Staff may also seek the advice of Specialist Advisers, who are experienced lawyers, some employed and some contracted by the Agency.
19. When making a grant of legal aid, the Agency can set a maximum grant. This maximum can be expressed in any way such as a dollar amount, a number of hours, or a period of time. Should the legal aid provider have a need to exceed this maximum grant they must make an application to the Agency for an amendment. When the Agency sets the maximum grant it may also fix an amount of contribution that the aided person will be required to pay as a condition of the grant.
20. The Agency has policy guidelines to support consistent granting, known as "proceedings steps" for family, criminal and civil proceedings. These provide guidance to staff on how much legal aid to grant and are also available to practitioners.

Grant Information

21. The following table shows the numbers of legal aid grants made in the period 1995/96 to 2003/04.

	1995/ 96	1996/ 97	1997/ 98	1998/ 99	1999/ 00	2000/ 01	2001/ 02	2002/ 03	2003/ 04
Criminal	33,528	37,898	41,827	52,972	45,784	44,404	44,702	40,109	40,391
Civil	19,619	23,920	22,500						
Family				24,646	22,053	19,977	19,554	18,840	18,098
Civil – Other				3,141	2,863	2,333	2,505	1,866	1,788
Total	53,147	61,818	64,327	80,759	70,700	66,714	66,761	60,815	60,277

Source: Legal Services Board and Legal Services Agency

22. Prior to 1998/99, legal aid grant information was only reported under two categories - criminal and civil. average costs of grants in 2003/2004 were:
- criminal - \$US 667
 - family - \$US 907
 - general civil grant - \$US 2,372
23. The average cost of a grant varies between proceedings types. The

Average cost over time (average costs in (\$NZ))

Average Cost	95/96	96/97	97/98	98/99	99/00	2000/ 01	2001/ 02	2002/ 03	2003/ 04
Criminal	\$702	\$754	N/A	\$798	\$669	\$689	\$747	\$843	\$932
Civil	\$1,590	\$1,732	N/A						
Family			N/A	\$1,487	\$1,259	\$1,315	\$1,450	\$1,445	\$1,268
Civil – Other			N/A	\$2,673	\$2,049	\$2,398	\$2,782	\$2,721	\$3,314

Source: Legal Services Board and Legal Services Agency

24. The variation in average cost of a grant reflects the relative complexity and amount of time involved in the proceedings types. The average costs of criminal cases has been increasing over time and reflects the growing number of serious and costly cases and changes in court practice. to \$US 75.1m. Expenditure on the legal aid portion of this was \$US55.3m³.
26. Legal aid expenditure comprised \$US 27.4 in criminal legal aid, \$US 18.9m in family legal aid \$4.1m general civil legal aid and \$US 4.9m in Waitangi Tribunal legal aid, and \$4.7m for the PDLA and Duty solicitor schemes⁴.

Expenditure Information

25. Total expenditure for the year ended 30 June 2004 on legal aid, community legal services, information and research (including administration costs) comes
27. In 2003/2004, New Zealand's population was estimated at 4.061

³ Calculated at 0.7148 US as of 27 April 2005.

⁴ See sections below for descriptions of these schemes.

million people.⁵ New Zealand therefore spends approximately \$US 18.49 per person on legal aid related services, \$US 13.62 per person of which is spent on legal aid (judicare).

28. There was 41% growth in expenditure on civil, family and criminal legal aid in the ten years from 1994/1995 to 2003/04. Expenditure on legal aid grants reached a peak in 1998/99 financial year.

⁵ Source, Statistics New Zealand.

Legal aid cash expenditure

\$NZ (000) GST exclusive, year ended 30 June

	1995/ 96	1996/ 97	1997/ 98	1998/ 99	1999/ 00	2000/ 01	2001/ 02	2002/ 03	2003/ 04
Criminal	23,736	26,899	28,058	32,384	29,333	30,273	33,845	35,192	38,264
Civil (inc. family)	32,141	38,093	40,372						
Family				39,612	34,855	33,655	32,573	27,205	26,476
Civil				8,108	8,077	6,144	8,720	6,740	5,764
Duty Solicitor & PDLA	3,667	4,389	4,376	4,826	4,898	4,973	5,360	5,848	6,630
Waitangi Tribunal				1,513	3,066	4,206	5,581	7,298	6,901
Total	59,544	69,381	72,806	86,441	80,229	79,251	86,079	82,283	84,035

Source: Legal Services Board and Legal Services Agency

29. The amount of general civil litigation in New Zealand is small as there is limited personal injury litigation because of state based accident compensation insurance.

30. The main reasons for variations in expenditure on legal aid were:

- changes in the volumes of grants of aid made, particularly decreases in the volumes of family and civil grants offset by a more recent increase in the number of grants of criminal legal aid
- increases in the average grant paid particularly for criminal legal aid. The average cost of criminal legal aid has increased as a result of an increase in the number of serious cases, which are costly. In addition the average cost of all grants of criminal legal aid has increased as a result of changes in the operation of the courts

31. The Legal Services Agency manages all legal aid grants. This replaces earlier arrangements under which court registrars granted all criminal legal aid and District Legal Services Subcommittees made up of local

lawyers granted civil legal aid (which included family law aid).

32. A full breakdown of all expenditure on legal aid and other services such as Community Law Centres may be found in Appendix One.

Reconsiderations and Appeals

33. An applicant for legal aid has a right to a reconsideration of any decision made by the Agency. A granting officer other than the original decision-maker must do the reconsideration.

Legal Aid Review Panel

34. An applicant or legally aided person may apply to the Legal Aid Review Panel for a review of a decision by the Agency in relation to legal aid. The grounds for review are whether the decision is:

- manifestly unreasonable or
- wrong in law

35. The review can be in relation to a broad range of decisions made by the Agency. This can include reviews of the decision to grant or not grant, any conditions

imposed on the grant of aid, any contribution required, a maximum grant, decisions about charges on property etc.

36. A listed legal aid provider can also seek a review of a decision by the Agency in relation to the amount payable by the Agency to that provider.
37. The Legal Aid Review Panel is an independent panel appointed by the Attorney General and consists of a mix of lawyer and non-lawyer members. Decisions are made on the papers by teams of up to three people. Each team must have a lawyer member. The panel can confirm, modify or reverse a decision, or direct the Agency to reconsider.
38. In 2003/4 the Legal Aid Review Panel reviewed decisions on 0.12% of legal aid applications, amendments and claims received by the Agency. Of the applications reviewed, 41% of the original decisions were upheld, 2% of the decisions were modified, 21% of the decisions reversed, 32% of the decisions were sent to the Agency for reconsideration and 4% were not categorised.⁶

Appeals

39. The Agency or the applicant can appeal a decision of the Legal Aid Review Panel to the High Court or the Court of Appeal on a question of law. During 2003/4, the Agency was the respondent in 5 completed appeals to the High Court.

Civil Legal Aid

40. The civil legal aid scheme funds legal advice and representation for individuals (whether lawfully or unlawfully in New Zealand) for disputes that could be resolved in adjudicated proceedings in New Zealand. This

section provides a summary of the key features of the civil legal aid scheme.

41. Legal aid for civil proceedings is not available to any body of persons, whether corporate or not, except where the applicant is one or the other of the following:
 - (a) a trustee corporation (as defined in section 2 (1) of the Administration Act 1969) that applies for legal aid in connection with proceedings in which it is concerned in a representative, fiduciary, or official capacity or
 - (b) a Māori involved in proceedings before the Waitangi Tribunal, for the benefit of a group of Māori of which the applicant is a member
42. The government has also established a separate scheme to fund any non-profit group that has a recognised legal status seeking representation in the resource management process. The Ministry for the Environment administers the scheme and it operates on a capped fee basis.

Eligibility for Civil Legal Aid

Merits test

43. Civil legal aid must be refused where:
 - there are no reasonable grounds for taking or defending proceedings or being a party to the proceedings and/or
 - the required contribution from the litigant is greater than the likely cost of proceedings
44. Civil legal aid may also be refused if:
 - the applicant's prospects of success are not sufficient to justify a grant of aid
 - having regard to the nature of the proceedings and the applicant's interest in them (financial or otherwise) in relation to the likely cost of proceedings, the grant of aid is not justified or
 - for any other cause it appears unreasonable or undesirable that

⁶ Source: Legal Services Agency Annual Report, 2003/4.

the applicant should receive aid in the particular circumstances of the case

45. In the case of an appeal, the test is whether in the opinion of the Legal Services Agency a grant of aid or further aid is justified.
46. The Legal Services Agency may withdraw civil legal after it has been granted if it:
 - is satisfied that the aided person has conducted proceedings so as to incur an unjustifiable expense or has required unreasonably that proceedings be continued and/or
 - becomes aware that there are no longer reasonable grounds for being involved in the proceedings or that it is unreasonable or undesirable in the particular circumstances for the person to continue to receive legal aid

Financial eligibility

47. The financial eligibility criteria for legal aid have two parts:
 - the applicant's disposable income⁷ and
 - the applicant's disposable capital
48. Generally, an applicant's disposable income must not exceed \$NZ 2,000 per year. In calculating disposable income, the Agency considers that person's total income (after tax) during the 12 months immediately preceding the application for legal aid, or during such other period of 12 months as the Agency considers appropriate, then deducts a living allowance as set out below:

⁷ For the purposes of most other benefits the term "discretionary income" is used, and is probably more appropriate. Disposable income is in economic terms income less tax payments. However, legal aid applicants are able to deduct certain allowances.

Table 1 Deductible allowances (\$NZ)	
Status of applicant	Deductible allowances from net annual income
Single person	\$ 9,841
Applicant with a partner	\$ 14,668
Sole parent or sole applicant with other dependants	\$10,361 plus \$1872 for the first dependant and \$832 for each additional dependant
Applicant with a partner and children or other dependants	\$15,188 plus \$1872 for the first dependant and \$832 for each additional dependant

49. The Agency considers whether the applicant has any assets that can contribute to the payment for legal services. The Agency may exempt from its calculations of disposable capital:

- interest in a home up to \$NZ 41,000 for a single person, or \$NZ 82,000 if a partner also has an interest in that house⁸
- the value of any vehicle used for domestic purposes
- household furniture, appliances, personal clothing and tools of trade
- any contingent liabilities that may mature in six months or less
- unsecured debts
- a further allowance of \$NZ 500, where the person has a dependant or spouse, or where resources of others are being calculated as the applicant's resources

50. If the applicant has capital available after these deductions, the applicant must contribute the value of two thirds

⁸ These amounts (\$41,000 or \$82,000) are determined by reference to "the specified sum" set down in section 16(5) of the Joint Family Homes Act 1964, as amended in 1996. Changes in the Legal Services Regulations 2000 have meant that the Agency would now be relying on staff discretion in applying this formula.

of the first \$NZ 2,000 worth of assets to the costs of their case, and all disposable capital in excess of this. Where property is at issue between the parties, as it often is in Family Court cases, then that disputed property is ignored for the purposes of this calculation.

Scope of the Civil Legal Aid Scheme

51. Civil legal aid is available for all civil and family court proceedings and some tribunals. This includes:

- civil proceedings in a District Court or a Family Court
- civil proceedings in the High Court or the Court of Appeal
- appeals to the Judicial Committee of the Privy Council in civil proceedings in any case where -
 - (i) the applicant has succeeded in the Court of Appeal and is the respondent in the appeal to the Privy Council, if the grant of aid is approved by the Minister of Justice or
 - (ii) the Attorney-General certifies that a question of law of exceptional public importance is involved and that the grant of aid is desirable in the public interest

- proceedings commenced by way of application in a Youth Court under Part VII of the Children, Young Persons, and Their Families Act 1989 or in respect of any review of any determination of, or any order made in, a Youth Court in any such proceedings⁹
- in any case where the Agency considers that the case is one that requires legal representation (having regard to the nature of the proceedings and to the applicant's personal interest) and that the applicant would suffer substantial hardship if aid were not granted, for proceedings in -
 - (i) the Māori Land Court¹⁰ or
 - (ii) the Māori Appellate Court or
 - (iii) the Employment Court or
 - (iv) the Employment Relations Authority or
 - (v) any administrative tribunal or judicial authority – not being a tribunal or an authority in respect of any decision from which an appeal lies to any of the following five bodies
- proceedings before the Waitangi Tribunal
- proceedings before the Social Security Appeal Authority
- proceedings before the Tenancy Tribunal
- proceedings before a body established under section 63(1)(a)(i) of the Housing Restructuring Act 1992 to hear appeals under section 62 of that Act and
- proceedings before the Refugee Status Appeals Authority (whether

as established by the government of New Zealand or as continued under section 129N of the Immigration Act 1987) in respect of any claim for refugee status made before 1 April 1999, or any other matter relating to refugee status that arose before that date

52. Legal aid may also be granted for:

- the processing, under Part VIA of the Immigration Act 1987, of any claim for refugee status first made on or after 1 April 1999 (including proceedings on any appeal in relation to such a claim), and the processing of any other matter arising under section 129L or section 129R of the Immigration Act 1987 that first arose on or after that date (including proceedings on any appeal in relation to such a matter)
- any judicial review proceedings (as defined in section 2 of the Immigration Act 1987) in respect of certain refugee claims
- any application under section 114I of the Immigration Act 1987 for a review by the Inspector-General of Intelligence and Security of a decision of the Director of Security to make a security risk certificate
- all applications, submissions, and appeals under the Resource Management Act 1991 or to the Environment Court under any other Act
- all applications, submissions, and appeals to any Council or body in any case where an appeal in relation to its decision lies to the Environment Court

53. There are a small number of proceedings for which legal aid is expressly not available, or may only be available in certain circumstances. This includes proceedings relating to the status of marriage, unless the Legal Services Agency is of the opinion:

- that the unusual complexity of the case requires that the applicant be legally represented or

⁹ This may include, for example, legal representation of a parent or guardian in relation to an application by the state to continue to place a child in secure care.

¹⁰ The primary role of the Māori Land Court is to facilitate and promote the retention, occupation, utilisation, development, and control of Māori Land by Māori owners, their whānau (family), their hapū (tribal group) and their descendants.

- that the applicant would suffer substantial hardship if aid were not granted

54. Legal aid is not available in any circumstances for:

- relator actions¹¹
- election petitions under the Electoral Act 1993
- petitions for inquiry under the Local Elections and Polls Act 1976
- proceedings incidental to any proceedings mentioned in any of the three preceding bullet points

55. Legal aid is generally not available for dissolution of marriage proceedings. Legal aid is, however, available for ancillary proceedings associated with dissolution of a marriage such as custody and access proceedings.

56. Legal aid is not available for any appeal, made under the Immigration Act 1987, to the Residence Appeal Authority or the Removal Review Authority. The purpose of these exclusions is to prevent a person who does not comply with New Zealand's immigration laws and policies using legal aid to delay their removal.

57. Where there is a possibility that removal from New Zealand would mean a return to a place of persecution or physical danger, that person may receive legal aid to make a claim for refugee status, including an appeal to the Refugee Status Appeals Authority. Since 1 April 1999, legal aid for refugee matters has been available at all stages, including the first instance determination by the Immigration Service.

¹¹ The relator in an action is a person who is aggrieved in a matter of public interest and who satisfies the Attorney-General that the subject matter of the actions is such as to justify the use of the Attorney-General's name.

Contributions and Repayments from Proceeds of Proceedings in Civil Legal Aid

Contributions

58. Every applicant for civil legal aid (with the exception of domestic violence cases) must make a minimum contribution of \$50 towards the cost of his or her legal services. The Legal Services Agency can waive the requirement in cases of proven hardship and/or on grounds of justice and fairness.

59. Further contributions are required if the Agency determines that the person has sufficient disposable income or capital to make a further contribution. The financial eligibility calculations form the basis of the Agency's assessment of the contribution that the person is required to make to the cost of their proceedings. Consequently an applicant for legal aid (whether civil or criminal) may have to pay as part of his or her contribution, the total of the following:

- \$1 for each complete \$2 of the first \$1,000 of the applicant's disposable income
- \$2 for each complete \$3 of the applicant's disposable income that is more than \$1,000 but less than \$2,000
- all of the applicant's disposable income that is more than \$2,000
- \$2 for each complete \$3 of the applicant's disposable capital that is less than \$2,000
- all of the applicant's disposable capital that is more than \$2,000

60. Contributions may be made as one sum or in instalments (or both). The Agency may vary or waive the sum of the further contribution where substantial hardship would arise or where requiring payment would jeopardise reconciliation in family cases, or for reasons of justice and fairness.

61. Legal aid must be withdrawn when a person is more than 21 days in arrears in paying a contribution, except where the applicant can show grounds for

extending the payment time. In practice criminal legal aid cannot be withheld pending payment of a contribution.

62. In determining an applicant's personal disposable capital, a higher level of exemption is allowed for an applicant seeking aid for criminal proceedings.

Repayments

63. Every grant of civil legal aid is subject to the condition that the aided person will repay the Agency the cost of legal services out of the proceeds of proceedings (if any). This repayment is less any deductions, allowances or write-offs the Agency may have made.

Charges

64. Civil legal aid may be granted subject to a condition that the aided person permits a charge to be registered over any form of property owned by them as security for payment of the assessed contribution and/or repayment for the cost of providing legal services. The cost of services is defined in section 18 of the Act and includes all legal aid lawyers' fees and charges plus any disbursements paid.

65. Any proceeds of proceedings may also be subject to a charge in favour of the Agency for the amount of:

- any unpaid contributions and
- the repayment payable under the grant

66. *Bates v Legal Services Board* [1999] NZLR, 91 endorsed the view that the Board was entitled to the benefit of a charge that almost consumed the entire proceeds of the proceedings. In this case the proceeds of the proceedings included exemplary damages but the aided person was still deemed to have an obligation to reimburse most of the cost of legal services received under the grant of aid.

67. Where a person receives a grant made for proceedings in the Waitangi Tribunal, a charge may not be imposed on any settlement property, or any

property acquired out of, or with, the settlement property, or on the proceeds of any disposition of the settlement property. This reflects the fact that the proceedings are primarily against the Crown in relation to past wrongs towards Māori, and it would therefore be inappropriate for the Crown to, for example, take a charge over land it had just returned to Māori.

68. Recovery from contributions and charges in civil and family legal aid was 24% of expenditure in 2003/04.

Criminal Legal Aid

69. Criminal legal aid ensures that those facing serious criminal charges that cannot afford to pay a lawyer from their own limited resources are provided, in the interests of justice, with a suitably qualified lawyer.

Eligibility for Criminal Legal Aid

Merits test

70. In considering the merits of an application for legal aid under section 8 of the Act, the Agency:

- may grant aid if, in its opinion, this is desirable and in the interests of justice
- must consider the gravity of the offence
- must consider the consequences to the applicant of any application for aid to assist with representation before the Parole Board or a District Prisons Board
- may consider the grounds for appeal in any application for appellate aid
- may have regard to any other circumstances that, in its opinion, are relevant
- may later modify or cancel a grant of legal aid because the interests of justice are no longer met

71. In interpreting "in the interests of justice", the Agency must have regard to the seriousness of the offence and the consequences for the applicant if

aid is not granted. Whether the actual charge is subject to a penalty, which includes the real likelihood of a term of imprisonment, is therefore an important part of this test.

72. The Agency can also consider any other circumstances that, in its opinion, are relevant and can consider whether there are substantial questions of law, whether the proceedings may require cross-examination of expert witnesses and whether the individual may not be able to understand the proceedings fully.

Financial eligibility

73. The financial eligibility criteria for criminal legal aid have two parts:

- the applicant's disposable income¹² and
- the applicant's disposable capital

74. The financial test for criminal legal aid is based on whether "it appears to the Agency that the applicant does not have sufficient means to enable him or her to obtain legal assistance."¹³ When determining whether or not an applicant has sufficient means to enable him or her to gain legal assistance, the Agency must have regard to the applicant's disposable income and disposable capital.

Scope of Criminal Legal Aid

75. Criminal legal aid may be granted for:
- criminal proceedings in a District Court, a Youth Court (other than for a "child" or "young person" - who is usually represented by a youth advocate), the High Court, or the Court of Appeal

¹² For the purposes of most other benefits the term "discretionary income" is used, and is probably more appropriate. Disposable income is in economic terms income less tax payments. However, legal aid applicants are able to deduct certain allowances.

¹³ Section 8 (1) of the Legal Services Act 2000.

- appeals to the Judicial Committee of the Privy Council, where the Attorney- General certifies that a question of law of exceptional public importance is involved and that the grant of criminal legal aid is desirable in the public interest
- proceedings –
 - (i) before the New Zealand Parole Board under section 27, section 65, or section 107 of the Parole Act 2002 (which related to the postponement of parole consideration orders, recall orders, and orders that offenders not be released)
 - (ii) in the High Court on an application under section 68 of the Parole Act 2002 (which relates to appeals against postponement of parole consideration orders and orders that offenders not be released)

Contributions

76. Recipients of criminal legal aid may be required to make a contribution to the cost of legal services as a condition of the grant. Income from contributions for criminal legal aid was 0.3% of criminal legal aid expenditure in 2003/04.

Duty Solicitor Scheme

77. The Duty Solicitor scheme provides assistance on the hearing day to people without legal representation who face criminal charges at a District Court. The duty solicitor ensures the person charged is aware of basic court procedures and that the case is dealt with satisfactorily. This may include advice about legal aid and adjournments, and entering a plea in mitigation, when the defendant is pleading guilty. There are no eligibility requirements for this scheme.

Police Detention Legal Assistance Scheme

78. The Police Detention Legal Assistance Scheme ensures that a person being questioned or detained by the Police

may obtain advice or assistance by telephone or in person from a rostered lawyer. This scheme gives practical effect to the intent of the New Zealand Bill of Rights Act 1990. There are no eligibility requirements for this scheme.

Expenditure on the Duty Solicitor and PDLA schemes

Expenditure Item (\$NZ GST Excl.)	95/96 (\$000)	96/97 (\$000)	97/98 (\$000)	98/99 (\$000)	99/00 (\$000)	2000/1 (\$000)	2001/2 (\$000)	2002/03 (\$000)	2003/04 (\$000)
Duty Solicitor & Police Detention Scheme	3,667	4,389	4,376	4,847	4,885	5,060	5,360	5,849	6,630

79. At current exchange rates, the total expenditure on these schemes is \$US 4.74m. This represents US\$1.18 per capita on these schemes.

there is more demand for funds than money currently available:

- (a) the level of unmet legal need in the community served by the community law centre, relative to that of other communities
- (b) the capacity of the community to pay for legal services, relative to the capacity of other communities to pay for them
- (c) the effectiveness, or likely effectiveness, of the community law centre in providing those services to the community
- (d) the benefit of ensuring continuity in the delivery of services
- (e) the need to provide reasonable access by communities to community law centres throughout the country and
- (f) alternative providers of legal services that are (or will be) available in practice to the community

Community Law Centres

80. Community law centres provide legal advice and representation, information and assistance with submissions. Most centres employ lawyers, but some work with volunteer lawyers and law students.

81. The Agency contracts with community law centres for services with money from the New Zealand Law Society Special Fund and a small amount of government appropriation. Income for the Special Fund is generated when banks collect the interest payable on lawyers' nominated trust accounts where it is impractical to pay that interest to the owners of those monies, either because it is held for a short period of time or consists of a small amount. 50% of this interest is returned to the banks and 50% goes to the Special Fund.

82. When deciding the funding each year for Community Law Centres, the Agency is required to consult with its Public Advisory Committee and must have regard to the following criteria if

As a matter of good practice, however, these criteria are generally considered for all funding decisions.

83. In order to support this process, the Legal Services Agency works with local community law centres in formal reviews of needs and in consultation processes to assist them with identifying priorities of unmet legal need at a local level.

Expenditure has grown on community law centres (\$NZ)

Expenditure Item (GST Excl.)	95/96 (\$000)	96/97 (\$000)	97/98 (\$000)	98/99 (\$000)	99/00 (\$000)	2000/1 (\$000)	2001/2 (\$000)	2002/03 (000)	2003/04 (000)
Community Law Centres	2,918	3,611	3,895	3,981	4,389	4,976	5,379	6,222	6,339

This represents current expenditure of \$US 4.531 expenditure in 2001/02 on community law centres or \$US1.13 per person.

Legal Information and Law Related Information and Education

84. The Agency funds legal information and law related education from interest earned from a Research and Education Fund.

85. The Agency's long-term strategy for legal information and law related education, established in

2001, has the Agency as a central repository for education and information resources for all, but targeting those who are most at risk of experiencing significant unmet legal needs. The Agency has established a consultative committee, drawn from community law centres and other community agencies involved in the delivery of legal information and education to inform its development directions.

Legal Information

86. The Agency produces information and education resources and facilitates access to resources produced by others. The Agency produces and publishes a comprehensive electronic index of legal information available in New Zealand, known as Law Access (available from the Agency's website www.lsa.govt.nz). Law Access is an electronic gateway to legal information from government agencies, community and educational organisations, and other agencies.

87. The Agency is also addressing issues of coordination and rationalisation of legal information development and availability, both within and outside the justice sector. The Agency has begun work to address issues of quality standards for the development of legal information resources.

Law Related Education

88. The Agency develops law related education kits that are stand-alone education resources containing all key legal information and teaching resources on a particular topic. The kits can be modified for different audiences and situations, and are regularly evaluated and maintained.

89. Topics of kits completed or under development include enduring power of attorney, domestic violence and harassment, accident compensation law, immigration law, legal aid and Waitangi Tribunal proceedings (grievances brought against the Government by Maori under the Treaty of Waitangi).

Research into Unmet Legal Needs

90. Community law centres deliver a range of community legal services including law reform, legal information, law-related education, advice, assistance and representation. The Agency has undertaken research into unmet legal needs to assist with both service funding, and with local service design and delivery.

- 91. The Agency has developed legal needs scores for areas across the country to assist it with decisions regarding new service developments and funding of services.
 - 92. Working with CLCs, the Agency has recently undertaken local needs assessment exercises in Auckland, Christchurch and Wellington to help gain a better understanding of unmet legal needs in these regions. The Wellington assessment included a general population survey to determine the level of legal problems, the nature of these issues, where people turn for assistance and the success of this help.
 - 93. The Agency's research reports can be requested by sending an email to info@lsa.govt.nz.
- clarifying the merits tests to support improvements in the administration of legal aid
96. At the time of writing, final decisions by the Government have yet to be announced. Any changes in eligibility would require statutory change.

Improving the Granting of Legal Aid

97. Over the past two years, the Agency has undertaken work on a Legal Aid Improvement Programme to examine different approaches to granting legal aid, to streamline legal aid granting processes, and to consider the feasibility of e-business. Implementing change resulting from this work programme in the short to medium term would ideally be sequenced with any changes arising out of the review of eligibility.
98. Looking ahead, the focus of improvement will be on four particular areas

New Developments

Review of Eligibility for Legal Aid

94. The Ministry of Justice began a review of eligibility criteria for legal aid in 2002. The general objectives are that the eligibility regime should be one that:
- supports access to legal representation for people with genuine need
 - is understandable to users and the general public
 - discourages unnecessary litigation
 - enables fiscal responsibility and
 - enables efficient and timely administration of the legal aid scheme
95. Throughout the review, the focus of reform was on:
- expanding the pool of financially eligible people
 - structuring the repayment of aid to encourage more repayment arrangements to be established
 - improving the management of debt repayment
- the final shape of the system – balancing the rights of clients and, responsibilities to taxpayers with a system that is efficient, consistent, and user friendly
 - working with providers – building a business partnership model that reflects mutual responsibilities
 - targeting and sequencing change – apart from any reforms arising from the review of eligibility, developmental reforms need to be sequenced over at least a three-year period
 - preparing for e-govt/e-business – positioning the Agency to implement new technological capabilities

Ensuring Access to Legal Aid Services

99. The Agency will consider the options for the future of the Public Defence Service pilot once the service is fully established and in light of the evaluation of the service. For the foreseeable future, however, private listed providers will continue to carry out the majority of legal aid work. As a result, the viability

and success of legal aid in New Zealand relies on private lawyers, in terms of both access to and quality of services.

100. The Agency has undertaken an analysis of the availability of providers across the country in 51 standard locations. This “model” will be updated annually so as to build up availability trends. This will be particularly useful if there is an increase in volumes due to the review of eligibility.
101. Further work will address two fundamental questions – what should be considered an adequate level of availability of provider choice for those accessing legal aid; and, what is the level of competent service that the Agency should expect to pay for on behalf of the aided persons. The answers could have a bearing on more tangible issues to be faced such as remuneration, level of payments for discrete services, standards and the impact of any change in the numbers of eligible people.

Legal Aid Defence Service Pilot

102. A discussion of this initiative is contained in a separate paper, *Piloting the Mixed Model in New Zealand*.

Listed Provider Approval Criteria and Service Standards

103. The Agency contracts with individual practitioners to provide legal aid, and services under the Duty Solicitor and Police Detention Legal Assistance schemes. Practitioners must demonstrate minimum experience and training before receiving specific approval to act on a category of legal aid matters. Experience is assessed based on time and numbers of cases or Court appearances.
104. Where practitioners have not yet attained the required level, the Agency may list them as secondary providers, which permits them to work on a legal aid matter under the direction of an approved lead provider. This system allows junior practitioners to gain the

required minimum experience on both legal aid and private cases.

105. It is recognised that some practitioners may have met quantitative criteria, but still perform below an acceptable level, while others who gain solid experience rapidly may be worthy of earlier listing. To accommodate this, the Agency takes advice from local consultative groups it has established in each Law Society district, and an element of local knowledge of competency can be brought into each assessment.
106. The development of service standards is currently under consideration.

Proposed Future Service Developments

107. The Agency’s draft strategic business plan for 2005-8 includes a number of proposed key service reviews. These include reviews of:
 - initial criminal legal services. This review is underway. It aims to identify options to improve the availability and accessibility of free criminal legal services from the stage people are detailed by the Police through to an initial or subsequent court appearance
 - the availability of legal information and advice services, and an assessment of the options for increased service delivery with improved access for people who find services hard to access
 - the options for integration of legal services across the sector and between the justice and welfare services sectors to ensure that clients receive the right service from the right provider at the right time
 - contracting arrangements with providers, such as alternative forms of contracting, including bulk contracting and individual contracts for specific cases
 - IT systems to replace the Agency’s core business application and to support service improvements and developments

Appendix One – Total Expenditure on Legal Aid and other Services

Expenditure Item (\$NZ, GST Excl.)	95/96 (\$000)	96/97 (\$000)	97/98 (\$000)	98/99 (\$000)	99/00 (\$000)	2000/ 1 (\$000)	2001/2 (\$000)	2002/03 (000)	2003/04 (000)
Administration	4,247	3,855	3,875	4,323	4,733	7,372	10,004	10,111	10,709
Legal Aid – Criminal	23,73 6	33,94 4	31,44 5	32,66 6	30,51 8	34,63 6	33,304	37,430	39,880
Legal Aid – Family	25,82 4	48,48 3	38,92 9	41,79 9	36,33 2	25,24 5	31,365	27,471	25,789
Legal Aid – Civil	5,838	11,14 0	11,19 4	9,377	8,613	6,248	6,923	6,721	5,807
Duty Solicitor & Police Detention Scheme	3,667	4,389	4,376	4,847	4,885	5,060	5,360	5,849	6,630
Legal Aid – Waitangi	480	984	2,070	1,512	4,347	4,335	7,383	7,298	6,901
Provision for Debt/Debt write- off	113	82	(85)	1,782	889	80	723	2,947	2,700
Discounting of payables to recognise the period of time legal aid contracts are outstanding							(4,014)	418	(779)
Community Law Centres	2,918	3,611	3,895	3,981	4,389	4,976	5,379	6,222	6,339
Research & Development	1,266	2,144	3,254	2,761	2,352	785	307	62	188
Total	68,08 9	108,6 32	98,95 3	103,0 48	97,05 8	88,73 7	81,044	104,529	105,082

Source: Legal Services Board and Legal Services Agency

Appendix Two: Legal Services Agency Income

<i>\$NZ GST Exclusive</i>	1995/96 (\$000)	1996/97 (\$000)	1997/98 (\$000)	1998/99 (\$000)	1999/00 (\$000)	2000/01 (\$000)	2001/02 (\$000)	2002/03(\$ 000)	2003/04 (\$000)
Annual Government Appropriation									
Administration	3,620	3,619	3,620	3,620	4,524	8,820	10,480	10,195	11,007
Legal Aid	57,147	62,001	66,065	80,381	72,458	78,162	78,151	77,128	73,106
Community Law Centres								267	267
Other Income									
• Interest Received	1,513	2,230	1,609	1,081	1,071	1,422	1,235	2,736	2,761
• Contributions Civil Legal Aid	931	917	1,167	1,736	1,525	604	2,635	5,157	4,287
• Contributions Criminal Legal Aid	184	68	94	61	99	138	100	315	127
• Charge Income Civil Legal Aid	3,216	4,127	4,679	6,032	9,457	9,532	5,569	7,165	6,347
• Discounting of secured receivables						(9,222)	1,876	(2,248)	(1,853)
• NZ Law Society Special Fund	5,552	6,194	5,164	4,950	4,485	5,050	5,669	6,500	6,700
• Others					26	123		19	28
Total Income	72,163*	79,156*	82,398*	97,861*	93,645*	94,629	105,715	107,234	102,777