



**INTERNATIONAL LEGAL AID GROUP CONFERENCE:
1 TO 3 APRIL 2009 – WELLINGTON, NEW ZEALAND**

NATIONAL REPORT: NEW ZEALAND

Legal Services Agency,
Wellington, New Zealand

The Legal Services Agency

1. The Legal Services Agency (the Agency) is responsible for the administration of legal aid and related schemes. The Agency is a Crown entity set up by the Legal Services Act 2000 and is governed by a Board appointed by the Minister of Justice. The Agency has a Chief Executive Officer, 253 staff¹, 12 regional offices and two Public Defence Service offices.
2. The Agency has responsibility for:
 - administering criminal and civil legal aid schemes
 - administering the Duty Solicitor and Police Detention Legal Assistance Schemes
 - contracting with community law centres (CLCs) for the delivery of community legal services and
 - contracting for and delivering legal information and law related education projects
3. The Agency is required to comply with any written direction from the Minister of Justice. 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.
4. The key accountability documents are the Memorandum of Understanding and the Statement of Intent agreed between the Minister and the Agency.
5. 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.
6. The Statement of Intent is a three-year document that reflects the Government's ownership interest 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.
7. The Agency also produces an Annual Report, a copy can be found at <http://www.lsa.govt.nz/publications.php>.

¹ 216 FTE, as at 20.11.2008.

8. The Agency receives income from Government appropriation, interest, contributions and repayments from legally aided persons, and the interest from nominated solicitors' trust accounts (IOLTA, named the "Special Fund" in New Zealand). Detailed income figures are provided in Appendix One. Legal aid is demand driven and the annual appropriation is based on forecast growth. The administration appropriation and legal aid appropriation are separated and cannot be used to offset the other.
9. 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 Committee provides advice to the Agency on a range of issues including unmet legal needs and the funding of community legal services. It may not give advice on individual grants of aid.
10. The Ministry of Justice is responsible for policy development in relation to legal aid, work relating to criteria set in legislation and subordinate regulation and monitoring the performance of the Agency.

Legal Aid - Overview

11. The Agency provides grants of aid to eligible people to fund legal services. The grant is paid to an approved private practitioner for approved services, except in Auckland where some criminal services are also provided by in-house Public Defence Service (PDS) lawyers. PDS lawyers are also required to have appropriate approval to provide approved services.² Community legal services are not part of the legal aid scheme, they are delivered by community law centres and are separately funded by the Agency.

Services Provided

12. Legal aid may be provided when an applicant faces criminal charges or requires legal assistance with a civil matter where final resolution 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

² For more information on PDS see <http://www.lsa.govt.nz/publicdefenceservice.php> or the 2005 ILAG paper: *Piloting the mixed model in New Zealand*.

13. There are just over 3000 approved (listed) providers. With the exception of 20 PDS lawyers and 13 employed by community law centres, all are in private practice. The Agency has the power to audit listed providers and carries out random and selected audits.

14. For civil legal aid a person chooses a listed provider who assists them to apply for legal aid. For criminal legal aid a person may choose a listed provider, or the Agency may allocate them a lawyer if they have no preference.

Grant Information

15. Number of legal aid grants made:

	1998 /99	1999 /00	2000 /01	2001 /02	2002 /03	2003 /04	2004 /05	2005 /06	2006 /07	2007 /08
Criminal	52,972	45,784	44,404	44,702	40,109	40,391	41,834	46,836	51,010	52,610
Family	24,646	22,053	19,977	19,554	18,840	18,098	17,706	17,467	17,985	19,225
Civil Other	3,141	2,863	2,290	2,443	1,829	1,658	1,789	1,446	1,855	1,925
Waitangi			43	62	37	65	63	72	99	145
Total	80,759	70,700	66,714	66,761	60,815	60,277	61,392	65,821	70,949	73,905

Source: Legal Services Board and Legal Services Agency

16. The average cost of a grant varies between proceedings types and over time, reflecting the relatively complexity and amount of time involved. In 2007/08 the average costs of cases were:³

- criminal - \$US 383.40, including high cost cases \$US 562.80
- family - \$US 976.20
- other civil (excluding mental health) - \$US 1,638

Average cost over time (\$NZ):

Average Cost	1998 /99	1999 /00	2000 /01	2001 /02	2002 /03	2003 /04	2004 /05	2005 /06	2006 /07	2007 /08
Criminal	\$798	\$669	\$689	\$747	\$843	\$932	\$995	\$1,029	\$805	\$938
Family	\$1,487	\$1,259	\$1,315	\$1,450	\$1,445	\$1,268	\$1,370	\$1,358	\$1,476	\$1,627
Civil Other	\$2,673	\$2,049	\$2,398	\$2,782	\$2,721	\$3,314	\$3,392	\$2,933	\$2,731	\$2,730

Source: Legal Services Board and Legal Services Agency

Expenditure Information⁴

³ Calculated at 1 NZ\$ = 0.60 US\$.

⁴ All figures calculated at 1 NZ\$ = 0.60 US\$.

17. Total expenditure on legal aid and related schemes for the year ended 30 June 2008 was \$US68.4m. This comprised of:

- \$US 34.3m for criminal legal aid,
- \$US 17.9m for family legal aid
- \$US 4.0m for general civil legal aid
- \$US 7.3m in Waitangi Tribunal legal aid
- \$US 5.5m on the PDLA and Duty solicitor schemes.⁵

18. In March 2006, New Zealand's population was 4.03 million.⁶ New Zealand therefore spends approximately \$US16.96 per person on legal aid and related schemes.

Expenditure on legal aid and related schemes over time:

000's GST exc	1998 /99	1999 /00	2000 /01	2001 /02	2002 /03	2003 /04	2004 /05	2005 /06	2006 /07	2007 /08
Criminal	32,384	29,333	30,273	33,845	35,192	39,182	42,501	45,996	51,704	57,105
Family	39,612	34,855	33,655	32,573	27,205	26,476	26,016	25,686	28,251	29,799
Civil	8,108	8,077	6,144	8,720	6,740	5,764	6,489	6,729	6,484	6,630
Duty Solicitor & PDLA	4,826	4,898	4,973	5,360	5,848	6,630	6,830	7,229	8,295	9,201
Waitangi Tribunal	1,513	3,066	4,206	5,581	7,298	6,901	11,059	10,406	12,642	12,095
Total	86,441	80,229	79,251	86,079	82,283	84,035	92,895	96,046	108,282	113,924

Source: Legal Services Board and Legal Services Agency

19. There was 31.8% growth in expenditure on legal aid and related schemes in the ten years from 1998/1999 to 2007/08.

20. The amount of general civil litigation in New Zealand is small due to limited personal injury litigation because of state based accident compensation insurance.

21. The main reason for variations in expenditure were due to changes in the volumes of grants 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.

22. Appendix Two provides a full breakdown of all expenditure on legal aid and other services such as Community Law Centres.

The Granting Process

⁵ See sections below for descriptions of these schemes.

⁶ Census 2006. Statistics New Zealand.

23. 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).
24. Grants staff in regional offices process applications. The Agency has policy guidelines to support consistent granting, including "proceedings steps." These provide guidance to staff on how much legal aid to grant and are also available to practitioners. Staff may seek the advice of Specialist Advisers, who are experienced lawyers, some employed and some contracted by the Agency.
25. When a grant of aid is approved usually a maximum grant is set. The maximum can be expressed in any way e.g. as a dollar amount, a number of hours, or a period of time. Should the legal aid provider have a need to exceed the maximum they must make an application to the Agency for an amendment.
26. On approval of a grant the Agency also assesses whether the applicant will be required to repay part or all of the grant.

Reconsiderations and Appeals

27. An applicant has a right to a reconsideration of any decision made by the Agency. This must be undertaken by someone other than the original decision-maker.

Legal Aid Review Panel

28. An applicant or legally aided person may apply to the Legal Aid Review Panel for a review of a decision by the Agency. The grounds for review are whether the decision is:
 - manifestly unreasonable, or
 - wrong in law
29. 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.
30. In 2007/08 the Legal Aid Review Panel reviewed decisions on 0.24% of legal aid applications, amendments and claims received by the Agency. Of those 39% of the original decisions were upheld, 2% were modified, 33% were reversed, 17% of the decisions were sent to the Agency for reconsideration and 9% of decisions were not categorised.

Appeals

31. 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 2007/8, the Agency was the respondent in five completed appeals to the High Court.

Civil Legal Aid

32. 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. Key features of the scheme follow.
33. Civil legal aid is not available to any body of persons, except:⁷
- (a) a trustee corporation⁸ 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

Eligibility for Civil Legal Aid

Merits test

34. Civil legal aid must be refused where there are no reasonable grounds for taking or defending proceedings or being a party to the proceedings.
35. Civil legal aid may be refused if:
- in some proceedings the applicant's prospects of success are not sufficient to justify a grant of aid
 - in family proceedings aid is not justified after taking into account factors such as previous proceedings, personal protection issues and the interests and welfare of other persons
 - the maximum repayment amount prescribed by regulation is greater than the likely cost of proceedings
 - 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

⁷ 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.

⁸ Defined in section 2 (1) of the Administration Act 1969

- for any other cause it appears unreasonable or undesirable that the applicant should receive aid in the particular circumstances of the case
36. In the case of an appeal, the test is whether in the opinion of the Agency a grant of aid or further aid is justified.
37. The Agency may withdraw civil legal aid after it has been granted if it:
- is satisfied that the legally 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

38. The financial eligibility criteria for legal aid is set out in the Legal Services Regulations 2006 and has two parts:
- the applicant’s gross annual income and
 - the applicant’s disposable capital
39. An applicant’s gross annual income or disposable capital⁹ must not exceed the financial threshold set by regulation unless the Agency is satisfied that there are special circumstances after taking into account the likely cost of proceedings or the applicant’s ability to fund the proceedings if aid is not granted.
40. The financial thresholds vary depending on whether the applicant has a partner and/or financially dependent children:

Immediate Family	Maximum level of gross annual income	
	\$NZ	\$US¹⁰
Is single	19,741	11,845
Has a spouse/partner, or is single with one dependent child	31,225	18,735
Has a spouse/partner and one dependent child, or is single with two dependent children	36,371	21,823

⁹ Social welfare benefits are generally counted as income (some payments related to special financial situations of need are specifically excluded). 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 the capital calculation. The income or capital of the applicant’s partner are treated as the applicants in these calculations unless the partner has a contrary interest.

¹⁰ Calculated at 1 NZ\$ = 0.60 US\$.

Immediate Family	Maximum level of gross annual income	
	\$NZ	\$US ¹⁰
Has a spouse/partner and two dependent children, or is single with three dependent children	41,517	24,910
Has a partner/spouse and three dependent children, or four dependent children	46,665	27,999
Has a spouse/partner and four dependent children, or five dependent children	51,813	31,088
Has a spouse/partner and more than four dependent children, or more than five dependent children	51,813 plus 4,840 for each additional child	31,088 plus 2,904 for each additional child

41. In calculating gross annual income, the Agency considers a person's total income from all sources (before tax) during the 12 months preceding the application, or such other period of 12 months that it deems appropriate.
42. In calculating the disposable capital, the Agency deducts from its calculations:
- interest in a home up to \$80,000 (\$US 48,000)¹¹
 - 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
43. The calculation of applicant's financial resources is also used to assess the requirement to repay some or all of the costs of services paid for under the legal aid grant.

Scope of the Civil Legal Aid Scheme

Civil legal aid is available for all civil and family court proceedings and some tribunals. Full details are contained in Appendix 3.

Repayments

44. All grants of aid are subject to a condition that the Agency makes an assessment as to whether a repayment is required. Some grants e.g. for domestic violence, are exempt.
45. The maximum repayment that a legally aided person may be required to make is limited by the prescribed repayment amount contained in Legal Services Regulations, unless there are proceeds of proceedings. A repayment may not exceed the total cost of services.

¹¹ Calculated at 1 NZ\$ = 0.60 US\$.

46. A repayment may be secured by the Agency through a charge or caveat on their property. All proceeds of proceedings are subject to a charge in the Agency's favour.
47. The prescribed repayment amount is set by the Legal Services Regulations and is based on the total amount payable after combining
- (a) an amount payable based on capital as set out in the regulations, and
 - (b) an amount payable based on income as set out in the regulations

Examples of maximum amounts payable based on capital:

Maximum payable (NZ\$)	amount	Capital threshold for single applicants without children (NZ\$)	Capital threshold for all other applicants (NZ\$)
0		0 - 1,500	0 - 2,000
50		1,501 - 1,900	2,001 - 2,400
145		1,901 - 2,300	2,401 - 2,800
...	
1,090		3,901 - 4,300	4,401 - 4,800
1,270		4,301 - 4,500	4,801 - 5,000

Examples of maximum amounts payable based on income:

Thresholds for a single applicant

(NZ\$)	Income thresholds				
	No children	1 child	2 children	3 children	4 children
0	0 - 23,004	0 - 26,784	0 - 28,944	0 - 31,104	0 - 33,156
1,300	23,005 - 28,728	26,785 - 33,480	28,945 - 36,180	31,105 - 38,880	33,157 - 41,472
2,860	28,729 - 31,104	33,481 - 35,748	36,181 - 38,448	38,881 - 41,148	41,473 - 43,740
...
7,540	35,749 - 38,016	40,393 - 42,660	42,985 - 45,252	45,685 - 47,952	48,277 - 50,544
10,000	38,017 - 39,420	42,661 - 43,416	45,253 - 49,572	47,953 - 55,620	50,545 - 61,776

Thresholds for an applicant with spouse or partner

(NZ\$)	Income thresholds				
	No children	1 child	2 children	3 children	4 children
0	0 – 14,364	0 – 26,676	0 – 28,944	0 – 31,104	0 – 33,156
1,300	14,365 – 17,928	26,677 – 33,372	28,945 – 36,072	31,105 – 38,772	33,157 – 41,364
2,860	17,929 – 19,980	33,373 – 34,128	36,073 – 36,828	38,773 – 39,420	41,365 – 42,120
...
7,540	23,977 – 26,028	35,533 – 36,288	38,233 – 38,880	40,825 – 41,580	43,525 – 44,172
10,000	26,029 – 27,540	36,289 – 37,260	38,881 – 43,416	41,581 – 49,572	44,173 – 55,620

48. The Agency may vary or waive the repayment where serious financial hardship would arise, or where requiring payment would jeopardise reconciliation in family cases, or it would be just and equitable to write-off the debt.
49. The Agency may require the aided person to make interim repayments while the case is continuing and before the final repayment amount is calculated. These may be in instalments, or a lump sum (or both).
50. The Agency may withdraw aid in civil cases if the aided person defaults on the repayment conditions. The Agency may also charge interest on an unpaid legal aid debt.

Waitangi Tribunal proceedings

51. The Waitangi Tribunal was established in 1975 by the Treaty of Waitangi Act 1975. The Tribunal is a permanent commission of inquiry charged with making recommendations on claims brought by Māori relating to actions or omissions of the Crown that breach the promises made in the Treaty of Waitangi. The availability of legal aid for Waitangi Tribunal proceedings is enshrined in legislation in order to provide Māori with the means of pursuing their claims.
52. In terms of administration, a grant of aid for Waitangi Tribunal proceedings is the same as any grant of civil legal aid, however there is a key difference in respect of repayment. Where a claimant 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.

Criminal Legal Aid

53. Criminal legal aid ensures that those facing serious criminal charges who cannot afford to pay a lawyer from their own resources are provided, in the interests of justice, with a suitably qualified lawyer. Full details of eligibility and scope of criminal legal aid are contained in Appendix 4.

Eligibility for the criminal legal aid scheme

54. In considering the merits of an application for legal aid under section 8 of the Act, the Agency may grant aid if:

- the offence to which the application relates is punishable by a maximum term of imprisonment of 6 months or more or
- it appears to the Agency that the interests of justice require legal aid to be granted

55. When considering the interests of justice the Agency must have regard to:

- whether the applicant has any previous convictions, and
- whether the applicant is charged with or convicted of an offence punishable by imprisonment, and
- whether there is a real likelihood that the applicant, if convicted, will be sentenced to imprisonment, and
- whether the proceedings involve a substantial question of law, and
- whether there are complex factual, legal or evidential matters that required the determination of the court, and
- whether the applicant is able to understand the proceedings or present his or her own case, whether orally or in writing, and
- in any proceeding to which section 6(c) of the Act applies (certain proceedings before the New Zealand Parole Board), the consequences for the applicant if legal aid is not granted, and
- in respect of an appeal, the grounds for the appeal

56. The Agency can also consider any other circumstances that, in its opinion, are relevant.

Financial eligibility

57. 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."¹² When determining whether or not an applicant has sufficient means to gain legal assistance, the Agency must have regard to the applicant's annual gross income and disposable capital.

¹² Section 8 (1)(b) Legal Services Act 2000.

58. The assessment of the applicant’s income and capital are the same for criminal legal aid as for civil legal aid.

Repayments

59. Recipients of criminal legal aid may be required to repay all or part of the cost of legal services under the same conditions as civil legal aid recipients. However, aid may not be withdrawn in criminal legal aid if the aided person defaults on the conditions on the grant.

Duty Solicitor & Police Detention Legal Assistance Schemes

Duty Solicitor

60. The Duty Solicitor scheme provides assistance on the hearing day to people without a lawyer 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 the scheme.

Police Detention Legal Assistance Scheme

61. 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 lawyer. This scheme gives practical effect to the intent of the New Zealand Bill of Rights Act 1990. There are no eligibility requirements for the scheme.

Expenditure on the Duty Solicitor and PDLA schemes

62. The total expenditure on these schemes in 2007/2008 was \$US 5.5m. This represents \$US 1.30 per capita.¹³

Expenditure Item (\$NZ GST Excl.)	1998 /99 (\$000)	1999 /00 (\$000)	2000 /01 (\$000)	2001 /02 (\$000)	2002 /03 (\$000)	2003 /04 (\$000)	2004 /05 (\$000)	2005 /06 (\$000)	2006 /07 (\$000)	2007 /08 (\$000)
Duty Solicitor & Police Detention Scheme	4,847	4,885	5,060	5,360	5,849	6,630	6,830	7,229	8,295	9,201

¹³ Figures calculated at 1 NZ\$ = 0.60 US\$.

Community Law Centres

63. 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.
64. 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 (IOLTA). 40% of the interest is returned to the banks and 60% goes to the Special Fund.
65. 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 there is more demand for funds than money available:
- (a) the relative level of unmet legal need in the community served by the centre
 - (b) the relative capacity of the community to pay for legal services
 - (c) the effectiveness, or likely effectiveness, of the 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

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

Expenditure on community law centres

66. This represents expenditure of \$US 5.7m expenditure in 2007/2008 on community law centres or \$US1.34 per person.¹⁴

Expenditure Item (GST Excl. (\$NZ))	1998 /99 (\$000)	1999 /00 (\$000)	2000 /01 (\$000)	2001 /02 (\$000)	2002 /03 (\$000)	2003 /04 (\$000)	2004 /05 (\$000)	2005 /06 (\$000)	2006 /07 (\$000)	2007 /08 (\$000)
Community law centres	3,981	4,389	4,976	5,379	6,222	6,339	6,871	8,187	8,399	9,528

¹⁴ Figures calculated at 1 NZ\$ = 0.60 US\$.

Legal Information and Law Related Education

67. The Agency funds legal information and law related education from a Research and Education Fund.
68. The Agency's long-term strategy for legal information and law related education, established in 2001, has the Agency as a central repository and gateway to other organisations for education and information resources for all, but targeting those who are most at risk of experiencing significant unmet legal needs. This need is established by the Agency's legal needs research. Development directions are also informed by a Consultation Group drawn from community law centres and other community agencies involved in the delivery of legal information and education.

Legal Information

69. The Agency produces information and education resources and facilitates access to resources produced by others. It works with other government and non-government agencies to coordinate legal information development and availability.
70. The Agency produces and publishes a comprehensive electronic index of legal information available in New Zealand, known as LawAccess (<http://www.lawaccess.govt.nz>). LawAccess is an electronic gateway to legal information from government agencies, community and educational organisations, and other agencies. It also contains factsheets produced by the Agency on everyday legal issues.

Law Related Education

71. 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 initial delivery of these kits is frequently done by the Agency in "train the trainer" style. The kits can be modified for different audiences and situations, and are regularly evaluated and maintained.
72. The distribution and maintenance of the kits is handled by relevant community organisations. These relationships strengthen the Agency's links with the community and provide direct feedback on the use and relevance of the resources.
73. Kits have been produced on enduring power of attorney, domestic violence and harassment, accident compensation law, immigration law, legal aid and other legal assistance, and the law and mental health.

74. The Agency also has an audio visual resource and teaching guide about Waitangi Tribunal proceedings (grievances brought against the Government by Maori under the Treaty of Waitangi) which is primarily aimed at school students aged 13 to 18.

Research into Unmet Legal Needs

75. The Agency can undertake or fund research into the unmet legal needs of communities and how they may be met.

76. In 2006 the Agency undertook its first national legal needs assessment, 7,200 New Zealanders were interviewed by telephone about the legal needs over the previous 12 months. It found that 29% of people in New Zealand aged 15 and over had experienced at least one non-trivial legal problem in the previous 12 months.

77. Working in partnership with CLCs, the Agency has also undertaken three local needs assessment exercises and a piece of work to attempt to develop legal needs scores across the country. Although these have now been largely superseded by the national survey.

78. The Agency's research reports can be found at <http://www.lsa.govt.nz/research.php>

New Developments

Legal Services Amendment Act

79. On 1 March 2007 the provisions of the Legal Services Amendment Act 2006 came into force. Stemming from the first review of the eligibility criteria for legal aid for almost 25 years, the Amendment Act made major changes to eligibility and debt establishment and repayment.¹⁵

80. Implementing the Act was a huge piece of work for the Agency, it required the creation of a new debt function and increased the proportion of the population eligible for legal aid by around 40%.

81. The Amendment Act also placed a new obligation on the Agency to review legal aid provider remuneration rates "from time to time." With legal aid rates having remained largely unadjusted since 1996 immediately on implementation of the Act the Agency formed an independent Advisory Panel to review the rates. The Panel developed a model on which to base prospective fees. On the basis of that they

¹⁵ Fuller details of the Amendment Act changes can be found in the Agency's 2007 ILAG country report.

recommended an increase of 15.9%. Government, in Budget 2008, increased for 2008/09 the funding by 10%.

82. The Agency will update the model annually and inform Government of the results. In the years prior to the rate increase, the Agency experienced a slow decline in the availability of legal aid lawyers, with particular locations that needed Agency intervention for both criminal and family legal aid. Since the rate increase the situation has stabilised although some locations (mainly rural) still need interventions, while others (rural and provincial) need monitoring.

Permanent establishment of in-house services in New Zealand

83. Until the introduction on 3 May 2004 of the Public Defence Service (PDS) pilot New Zealand had always operated a private model of service delivery. Under the pilot in-house criminal legal aid and duty solicitor services were provided alongside private legal aid lawyers at two of country's largest District Courts in Auckland.
84. The key drivers of the establishment of the PDS pilot were to improve the quality, consistency and cost effectiveness of representation for clients and improve the existing contracting system and its ability to deliver value for money for the taxpayer.
85. The pilot was set up under statutory provisions in the Legal Services Act 2000, which include consultation requirements, limits on the length of time a pilot can operate and the number of field trials that can be operated and a requirement for pilots to be evaluated and criteria to be used.¹⁶
86. The evaluation¹⁷ undertaken by Victoria University's Crime and Justice Research Centre tested the pilot against the three statutorily required criteria:
- that the pilot maintained or improved the quality of the delivery of the service;
 - the pilot does not prevent people from accessing a private lawyer or deny any lawyer the opportunity to offer services to potential clients; and
 - the effect of the pilot on other parts of the justice system, such as court processes, other schemes and the legal profession.
87. Both qualitative and quantitative evidence supported a finding that the PDS had at least maintained the quality of service. Interviews with key officials and judges noted the quality and preparation that PDS lawyers

¹⁶ Contained in sections 80-84 and 100.

¹⁷ *Evaluation of the Public Defence Pilot*, Martin Jenkins, May 2008

demonstrated in their cases. Data showed that when defendants were found guilty there was no difference in likelihood of imprisonment or sentence length. While PDS cases had more early guilty pleas than private legal aid lawyers they had fewer changes of plea during the case.

88. The evaluation found no unusual change in the number of lawyers leaving or beginning practice in the pilot areas, with the pilot operating within a competitive market, nor had private lawyers been denied the opportunity to practice. It also found that the pilot likely provides a substantial cost saving to courts, whilst there was no evidence that the PDS pilot adversely affected the legal profession or had any effect on other legal aid schemes.
89. Based on the findings of the evaluation, in July 2008 the Minister of Justice authorised the Agency to permanently employ salaried staff “for the same or related purposes as were trialled in the pilot.”¹⁸ Cabinet agreed that the Legal Services Agency should again consult stakeholders in the two courts that PDS operates and after doing so the authorisation was made effective from 1 December 2008.
90. The operation of the PDS is governed by a Statement of Service. The Statement sets out the Agency’s expectations of and undertakings in respect of the PDS and covers parameters of the services to be provided, the relationship between the Agency and the PDS, and the professional obligations of PDS lawyers including a specific Code of Conduct. The Statement serves as the core agreement between the Public Defender and the Chief Executive on behalf of the Agency and enshrines the principle of independence of PDS’ advice and representation, although the service is an integrated part of the Agency.
91. The PDS currently employs 28 staff, of whom 20 are lawyers. In 2007/08 PDS lawyers represented clients in 2,675 legal aid cases – 23% of total Auckland and Manukau grants. PDS staff are also rostered as duty solicitors at the two courts.

Simplified Family Legal Aid Granting

92. In October 2008, the Agency implemented a new and streamlined approach to the administration of legal aid for family cases. It involves approving maximum grants up-front at a level which is sufficient to cover 80% of family legal aid cases through to conclusion.
93. The initiative specifically addresses the compliance cost of the legal aid scheme for lawyers and the Agency by reducing the number of amendments, and therefore the number of interactions with the

¹⁸ As required by section 84 Legal Services Act 2000.

Agency, as well as the documentation requirements for 'standard' grants. In addition, the initiative has introduced a more streamlined approach to claims for payment of fees, disbursements and travel costs by lawyers.

94. Essentially the new process involves:

- The Agency retaining the initial decision on whether to grant legal aid after consideration of the statutory means and merits tests
- The implementation of revised granting steps, consisting of legal activities and guideline hours, that now reflect how different Family cases should proceed in a standard way (the Agency previously granted through a series of steps whereby a legal aid lawyer, having completed one step in a case, had to seek an amendment to the grant before proceeding to the next step)
- Increased guideline hours for each step that more accurately reflect how long each activity is likely to take
- Allowing a legal aid lawyer to exceed the hours on one activity within a step, provided they go under on another activity within that step (so that an increase does not have to be sought for small amounts of aid)
- Allowing legal aid lawyers to move through the steps to the conclusion of the case without further approval from the Agency, provided that in a subsequent random compliance check they can:
 - confirm that the activities/event occurred
 - demonstrate that the activities completed were required for the successful progression of that case
 - demonstrate that the case had ongoing merits

95. The new simplified process should apply in at least 80% of family legal aid cases that can be considered to be 'standard' grants. For more complex matters, lawyers may still request a grant increase to complete the work required. In that situation all documentation will be required for the Agency to assess whether the higher hours required to complete activities is justified.

Quality Audit project

96. The Agency is developing a new approach to evaluating the quality and value of services provided by legal aid lawyers. It is based on the peer review systems used in other jurisdictions such as in England and Wales, and Scotland. Assessment criteria focusing on the client, conduct of the case and the court process (if appropriate) has been developed and consulted on with senior lawyers. The criteria is currently in the second round of small scale testing after which the Agency will consider the extent of the programme going forward.

Proposed future service developments

Legal Services Review

97. In July 2008 the previous government directed the Agency and the Ministry of Justice to undertake a review of services provided using legal aid funding. Underpinning the review is whether there are opportunities in legal aid cost savings and reprioritisation; and innovative service options. While the detail is to be finalised, ensuring quality and cost effective service delivery is a key theme.
98. As part of the review, the Ministry of Justice, in consultation with the Agency, and other appropriate agencies, are undertaking further analysis on the value-for-money of the PDS with a view to assessing the impact of any proposed expansion of the service.
99. The review will likely form the basis of future legal aid service delivery developments and is examining initiatives for enhancing the delivery of existing legal services and improving access to justice through innovative new services. Areas for consideration include:
- Enhancing the delivery of existing legal services
 - Expansion of the Public Defence Service
 - The promotion of private mediation services for family and civil courts
 - Managing very high cost cases
 - The application of technology, including 0800 numbers, online advices and processes (e-filing) and audio video-conferencing
 - Improving Access to Justice through innovative new services
 - Trialling an initial advice clinic in the family court
 - Trial of salaried lawyers for the family court
 - Establishment of Legal Aid Centres i.e. one stop shops

Changes in the operating environment

100. The current economic downturn has changed the environment in which the Agency operates and has had an immediate impact on the development of community legal services (provided by community law centres under contracts with the Agency).
101. The reliance on Special Fund (IOLTA) monies for funding has left community law centres vulnerable in economic downturns. Significant reductions in the number of housing transactions and in the interest rate as the Reserve Bank of New Zealand seeks to stimulate the economy in the current recession has meant that the Agency now

expects an overall reduction of more than 50% in the monies available from the Special Fund this year.

102. In order to maintain core community law centres funding for the current year the Agency has been forced to quickly respond by ceasing community law centres service development activity. Options to maintain core funding from 2009/2010, after the funds reserves are expected to have expired, are being currently explored, but are unlikely to be successful and sustaining community legal services funding levels is and will continue to be a major challenge for the Agency in the near future.

Modernisation of the Agency's core business system, LA Office

103. In Budget 2007, the Agency was appropriated monies over three years to replace its aging and inflexible IT system with the IT capability and capacity needed to meet its growing and more complex business needs, including e-business. Objectives for this initiative, known as the Legal Services Management System (LSMS), include:

- making the administration of legal aid simpler and more efficient for staff and legal aid lawyers
- enabling lower cost development and maintenance of the system on widely-used Microsoft.NET technology

104. A primary focus of this development is to build in system controls and decision-support features that will improve quality and efficiency for staff and lawyers. Efficiency will be increased through streamlining processes and using system capability more effectively. LSMS complements and reinforces other streamlining initiatives that have been implemented to improve efficiency.

Appendix 1 – Legal Services Agency Income

\$NZ GST Exclusive	1998/99 (\$000)	1999/00 (\$000)	2000/1 (\$000)	2001/2 (\$000)	2002/03 (\$000)	2003/04 (\$000)	2004/05 (\$000)	2005/06 (\$000)	2006/07 (\$000) IFRS	2007/08 (\$000) IFRS
Administration	3,620	4,524	8,820	10,480	10,195	11,007	11,228	15,141	18,632	18,765
Legal Aid	80,381	72,458	78,162	78,151	77,128	73,106	82,156	89,552	99,262	110,364
Community Law Centres					267	267	267	267	267	267
Interest Received	1,081	1,071	1,422	1,235	2,736	2,761	2,713	3,644	2,449	2,649
Contributions - Civil Legal Aid	1,736	1,525	604	2,635	5,157	4,287	3,954	3,411		
Contributions - Criminal Legal Aid	61	99	138	100	315	127	453	919		
Charge Income - Civil Legal Aid	6,032	9,457	9,532	5,569	7,165	6,347	6,353	6,391		
Discounting of secured receivables			(9,222)	1,876	(2,248)	(1,853)	(1,151)	(1,102)		
NZ Law Society Special Fund	4,950	4,485	5,050	5,669	6,500	6,700	7,000	8,000	8,815	9,513
Other		26	123		19	28	18	14	12	7
Total Income	97,861	93,645	94,629	105,715	107,234	102,777	112,991	126,237	129,437	141,565

Source: Legal Services Board and Legal Services Agency

Appendix 2 – Expenditure on Legal Aid and Other Services

Expenditure Item (\$NZ, GST Excl.)	1998/99 (\$000)	1999/00 (\$000)	2000/1 (\$000)	2001/2 (\$000)	2002/03 (\$000)	2003/04 (\$000)	2004/05 (\$000)	2005/06 (\$000)	2006/07 (\$000) IFRS	2007/08 (\$000) IFRS
Administration	4,323	4,733	7,372	10,004	10,111	10,709	11,080	13,412	18,682	19,231
Legal Aid - Criminal	32,666	30,518	34,636	33,304	37,430	39,880	39,128	51,892	51,574	54,654
Legal Aid - Family	41,799	36,332	25,245	31,365	27,471	25,789	22,656	24,127	27,480	29,625
Legal Aid - Civil	9,377	8,613	6,248	6,923	6,721	5,807	5,429	7,148	6,623	6,775
Duty Solicitor & Police Detention Scheme	4,847	4,885	5,060	5,360	5,849	6,630	6,830	7,229	8,296	9,200
Legal Aid – Waitangi	1,512	4,347	4,335	7,383	7,298	6,901	11,059	10,406	13,803	10,957
Less contributions									(3,320)	(8,174)
Impairment and reclassification									(11,020)	5,405
Legal Aid – Public Defence Service									2,759	2,725
Provision for Debt/Debt write-off	1,782	889	80	723	2,947	2,700	8,219	2,957	4,207	795
Discounting of payables*				(4,014)	418	(779)	830	(548)		
Community Law Centres	3,981	4,389	4,976	5,379	6,222	6,339	6,871	8,187	8,399	9,528
Research & Education	2,761	2,352	785	307	62	188	270	470	899	879
Other					0	918	1,849	2,461		
Total	103,048	97,058	88,737	96,734	104,529	105,082	114,221	127,741	128,382	141,600

Source: Legal Services Board and Legal Services Agency

* To recognise the period of time legal aid contracts are outstanding

The Agency moved to reporting under International Financial Reporting Standards (IFRS) for the 2007/08 year. Accordingly the 2006/07 comparative figures have been restated to also reflect IFRS. The change in accounting rules has led to a reduction in revenue recognition for Legal Aid and Interest. Contributions and Repayments from Legally Aided Persons are no longer recognised as income under IFRS, but as a reduction in Legal Aid expenditure.

Legal Aid expenditure has been adjusted for Contributions, Interest and movements in Legal Aid Accruals and Receivables.

Appendix 3 - Scope of the Civil Legal Aid Scheme

Civil legal aid is available for all civil and family court proceedings and some tribunals, including:

- civil proceedings in a District Court, Family Court, High Court, the Court of Appeal and the Supreme Court
- appeals to the Judicial Committee of the Privy Council in civil proceedings in cases 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
- 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 proceedings¹⁹
- in any case the Agency considers 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 Court²⁰ 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 and Tenancy Matters Act 1992 and
- proceedings before the Refugee Status Appeals Authority 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

¹⁹ 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.

²⁰ 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.

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 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
- any judicial review proceedings 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
- proceedings before an adjudicator under the Weathertight Homes Resolution Services Act 2002
- proceedings before a Tribunal under the Prisoners' and Victims' Claims Act 2005

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 Agency is of the opinion:

- that the unusual complexity of the case requires that the applicant be legally represented or
- that the applicant would suffer substantial hardship if aid were not granted

Legal aid is not available in any circumstances for:

- relator actions
- election petitions under the Electoral Act 1993
- petitions for inquiry under the Local Electoral Act 2001
- proceedings incidental to any proceedings mentioned in any of the three preceding bullet points

Legal aid is generally not available for dissolution of marriage proceedings. It is, however, available for ancillary proceedings associated with dissolution of a marriage such as day-to-day care of and contact with children.

Legal aid is not available for any appeal, made under the Immigration Act 1987, to the Residence Appeal Board or the Removal Review Authority, in

order to prevent a person who does not comply with New Zealand's immigration laws and policies using legal aid to delay their removal.

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.

Legal aid is also not available for proceeding before a Commission of Inquiry under the Commission Inquiry Act 1908.

Appendix 4 – Scope of the Criminal Legal Aid Scheme

Criminal legal aid may be granted for:

- criminal proceedings in a District Court, a Youth Court, the High Court, the Court of Appeal or the Supreme Court
- 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
- proceedings –
 - (i) before the New Zealand Parole Board under section 27, section 65, or section 107 of the Parole Act 2002 (which relate to postponement orders, recall orders, and orders under section 107 of that Act respectively)
 - (ii) in the High Court on an application under section 68 of the Parole Act 2002 (which relates to appeals against postponement orders, section 107 orders and final recall orders)