

Improving the provider experience

Submissions and responses for the Legal Aid Provider Contract and Proposed Contract Variation

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Legal Aid Services

New Zealand Government

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Introduction

Why are we amending the contract?

The 'Improving the Legal Aid Provider experience project' (the project) aims to simplify the current application process and reduce the time spent by both providers and the Ministry on administrative matters.

The project completed consultation on the proposed changes in December 2019. The consultation response has recently been published on the Ministry's Consultation Hub.

Outcomes of the project for contracting include, the:

- combination of the contract with the approval documentation when a lawyer first applies to provide legal aid services; and
- removal of the contract renewal process.

As a result, the current Legal Aid Provider Contract ("the Contract") required amendment, to enable the removal of the contract renewal process.

In addition to these changes, the Ministry also needed to strengthen the current privacy clauses within the Contract. This was to reflect the requirements of the Privacy Bill 2020 which will be enacted on 01 December 2020.

Contract consultation process

Consultation on the proposed contract changes (as noted above) opened on 19 March 2020 and closed on 12 June 2020. Consultation was hosted on the Ministry's web-based platform, Consultation Hub. An invitation was circulated in both March and May 2020 using 'What's New' for Legal Aid Lawyers and 'Law Points' via the New Zealand Law Society.

The consultation consisted of:

- the current Legal Aid Provider Contract with tracked changes;
- the proposed Variation – Contract for Services (Legal Aid) ("Variation"); and
- a questionnaire for feedback on each of the proposed changes.

Submissions could be completed online or made directly to the Provider Services (Legal Aid) team. A total of eight submissions were made in response to the proposed changes to the Contract and Variation.

Consultation feedback summary and our responses

Your comments

Over half of the feedback received in response to the proposed changes was positive. One of the most significant proposed changes was a move to an open-ended contract to alleviate some of the administrative burden, this was widely supported.

The table below outlines the key feedback received through the consultation and outlines the Ministry response and final decisions.

Contract and Variation

Key clauses	Your comments	Our responses
<i>Privacy</i>		
3.20 – 3.22	<p>You felt that there are privacy risks that exist outside of an individuals' control, such as through information theft from the Cloud, or through communication systems between various parties and the Provider.</p> <p>It was expressed that Providers are aware of their responsibilities and duty of care in terms of protecting their clients' privacy.</p>	<p>We recognise that there are various situations in which a privacy breach can occur outside of a Provider's control. The addition of these clauses to the Contract have been prompted by recent privacy breaches and to ensure readiness for the Privacy Act 2020.</p> <p>The Ministry has been working with other government agencies on privacy guidelines for providers which can be used to self-audit your current privacy measures. Further information on this will be emailed to all Legal Aid providers shortly.</p>
3.8A and 3.11A	<p>There should be a clause that outlines the Secretary's obligations if the Ministry has a privacy breach that relates to the personal information about a Provider or anyone else in relation to the provision of Legal Aid Services.</p>	<p>We agree.</p> <p>We have added an additional clause to the Contract outlining the Secretary's obligations should they become aware of a privacy breach as defined in the Contract.</p>

Key clauses	Your comments	Our responses
Complaints		
9.1.1	A Provider should be notified of a complaint even if the complaint has been withdrawn to allow them to review their representation of the client or whether representation should continue.	<p>To release a complaint to a Provider, the Ministry requires written consent from the complainant. In many instances, a complainant will choose to withdraw their complaint as they do not consent to the Provider being notified. Therefore, there are situations where we will not be able to notify the Provider.</p> <p>We have amended the footnote to clarify this information.</p>

Contract Variation		
17.1C and 17.1D	<p>There should be an option for the Provider to alter or vary the Contract.</p> <p>Additionally, the proposed variations infer a unilateral cancellation of the Contract.</p>	<p>The Secretary may enter into a variation. However, due to the volume of Providers, it is likely that the Secretary will only enter into a variation in exceptional circumstances. This is to ensure a consistent approach is applied to over 2000 Providers.</p>

Implementation dates

The new Contract and new approval application form will be available for all new Legal Aid provider applicants to access online from 03 August 2020 and will be used with effect from 17 August 2020.

The current Contract is valid until 30 June 2021 and will be varied during August 2020 to accommodate the following:

- Changes as a result of the project and subsequent feedback
- Strengthening the current clauses to further align with the Privacy Bill which will come into effect from 01 December 2020.

Variations to current Contracts will be sent to existing providers from 03 August 2020.

Questions

If you have any questions about the changes outlined in this document, you can contact the Provider Services (Legal Aid) team by email: legalaidprovider@justice.govt.nz.