

Variation– CONTRACT FOR SERVICES (Legal Aid)

Contract Variation No. 2

Parties to the Contract:

The Secretary for Justice	(the Secretary)
	(the Provider)

Contract: Provider contract for the provision of legal aid services and specified legal services

Date contract signed by Secretary:

Variation

The Secretary and the Provider are Parties to the Contract.

The Parties agree to vary the Contract. The scope of the Variation is set out in the attached Schedule of Changes. The Variation is effective from the Effective Date stated in the Schedule of Changes.

Subject to the changes made by this Variation the terms and conditions of the Contract remain in effect.

Words used but not defined in this Variation have the same meaning as they do in the Contract.

Acceptance

Despite anything in clause 17.1 of the Contract (which requires that variations, other than unilateral variations by the Secretary, be in writing and signed by the Parties), **the Provider is deemed to have agreed to this Variation** by continuing to provide legal aid services and/or specified legal services, unless and until the Provider informs the Secretary’s Contract Manager that the Provider does not agree to the variation (such information to be provided to the Secretary’s Contract Manager by 30 June 2020).

Signed for and on behalf of
the **Secretary:**

Signature

Name: Louise Ainsley

Position: Manager Provider Services (Legal Aid)

Date:

Schedule of Changes

Effective Date: (date)

Changes

Changes to Schedule 1

1 Change to Acceptance clause

The text and signature block under the heading Acceptance on page 2 are deleted and replaced with:

New providers applying on or after (date)

This contract commences on the date the provider is first Approved by the Secretary.¹

Each party acknowledges that they have read this contract and agree to be bound by it.

Existing providers as at (date)

For existing providers as at (date), the date the contract commenced is the later of the date the Secretary or the Provider signed the Contract.

¹ If the Provider ceases to be approved and is subsequently reapproved, the contract commences on the date the Provider is reapproved.

2 Change to term of contract

The 'Contract start date' and 'Contract end date' sections in Schedule 1 are deleted and replaced with:

Term of contract: From [date] until terminated in accordance with this Contract.
Reference Schedule 2 clause 1

Changes to Schedule 2

3 Change to term of contract clause

Clause 1.2 is deleted and replaced with the following clause:

1.2 For new providers applying for Approval on or after (date), this Contract will commence on the date the Provider is first Approved by the Secretary.² It will continue until terminated in accordance with this Contract.

² For existing providers as at (date), the date the contract commenced is the later of the date the Secretary or the Provider signed this Contract.

4 Clarification of general obligation

In subclause 3.3.1 the words "statutory obligations" are replaced with "obligations under any other enactment".

5 New obligations to notify Secretary and Commissioner of privacy breach

Under the subheading *When the Provider must notify the Secretary* insert the following clause after clause 3.8:

- 3.8A The Provider must immediately notify the Secretary's Contract Manager as soon as they become aware of a privacy breach (as defined in clause 3.22 of this Contract) and all relevant details of the breach.

Under the subheading *When the Provider must notify the Commissioner* insert the following clause after clause 3.11:

- 3.11A The Provider must immediately notify the Commissioner as soon as they become aware of a privacy breach (as defined in clause 3.22 of this Contract) and all relevant details of the breach.

6 New provisions regarding privacy

After clause 3.19 insert the following heading and clauses:

Privacy

- 3.20 In providing Legal Aid Services or Specified Legal Services, the Provider must:
 - 3.20.1 comply with all relevant enactments and codes relating to personal information, including the Privacy Act 1993 (and its successor) and the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, as well as any applicable Practice Standards
 - 3.20.2 take all reasonable steps to prevent unauthorised access to, or disclosure or loss of, personal information, including by having adequate security for physical storage of personal information and adequate systems for data security (which, at a minimum, must comply with clause 3.5 of this Contract, regulation 9 of the Legal Services (Quality Assurance) Regulations 2011, Information Privacy Principle 5 in section 6 of the Privacy Act 1993, and the Practice Standards), and
 - 3.20.3 take reasonable steps to ensure the reliability and integrity of any personnel who have access to personal information and that such personnel know of and comply with the obligations in clause 3.20.1 (in accordance with Information Privacy Principle 5 in section 6 of the Privacy Act 1993).
- 3.21 If the Provider becomes aware of a privacy breach (as defined in clause 3.22), the Provider must:
 - 3.21.1 notify the Secretary and the Commissioner in accordance with clauses 3.8A and 3.11A
 - 3.21.2 notify affected individuals and others (such as the Privacy Commissioner) if required to do so by any enactment
 - 3.21.3 recover the personal information, if possible, or otherwise take reasonable steps to prevent or mitigate the potential consequences of the breach

- 3.21.4 provide reasonable assistance to the Ministry in any investigation of the breach directed by the Secretary
 - 3.21.5 provide reasonable assistance to the Ministry in implementing any steps the Secretary considers desirable to prevent or lessen any potential harm as a result of the breach, and
 - 3.21.6 take all reasonable steps to prevent any recurrence of the breach or similar breaches.
- 3.22 In clause 3.21, **privacy breach** means an event or incident that gives rise to a real risk of unauthorised access to, or disclosure or loss of, personal information held by the Provider in relation to the provision of Legal Aid Services or Specified Legal Services that has caused, or may cause, harm of a more than trivial nature to the client or the person the information is about (if they are not the client).

6 Clarification of notification of complaints

Subclause 9.1.1 is amended by inserting the following footnote at the end of the first sentence:

³The Secretary will not advise the Provider of a complaint if it is withdrawn or discontinued by the complainant before the Secretary advises the Provider about the complaint.

7 Consequential amendments as a result of indefinite approvals and new Cancellation due to inactivity policy

(a) Subclause 10.4.2 is deleted and replaced with the following clause:

10.4.2. the Secretary cancels all of the Provider's Approvals for inactivity after giving notice and no response being received (see the *Cancellation due to inactivity* policy in the Provider Manual), or

(b) Subclause 10.4.3 is amended by inserting the italicised text:

10.4.3. the Provider advises the Secretary that the Provider will no longer be providing any Legal Aid Services or Specified Legal Services and requests the Secretary to cancel, *or agrees to the Secretary cancelling*, their Approvals,

8 Consequential amendment due to change of method of commencement

Clause 12.1 is amended by deleting the word "signing" and replacing it with "commencement of".

9 Changes to process for variation of contract (other than unilateral variations by Secretary)

Clause 17.1 is deleted and replaced with the following clauses:

17.1 The Secretary has the right to unilaterally vary this Contract in accordance with clauses 17.2 – 17. 5 by giving written notice to the Provider. Otherwise, the provisions of this Contract may only be varied by mutual agreement in accordance with clauses 17.1B and 17.1E.

17.1A The Secretary must consult the Provider on any proposed variation to this Contract (other than a unilateral variation) before finalising the proposed variation, and must specify the period in which the Provider may provide comments (being a period that is reasonable in the circumstances).

17.1B If, after consultation in accordance with clause 17.1A, the Secretary proceeds with the proposed variation with or without amendment, the Secretary may give notice (which must specify a date by which the Provider is to respond (**specified date**)) requiring the Provider to:

- (a) confirm their agreement to the variation in writing (signed by them or their authorized representative). If the Provider does not confirm their agreement by the specified date, they will be deemed to have not accepted the variation, or
- (b) give notice if they do not agree to the variation (signed by them or their authorized representative). If the Provider does not give notice that they do not agree by the specified date, they will be deemed to have accepted the variation.

17.1C If, pursuant to clause 17.1B(a) or (b), the Provider does not agree, or is deemed not to have agreed, to the variation, the contract is terminated from the day after the specified date, unless the Parties agree otherwise.

17.1D If the contract is terminated in accordance with clause 17.1C, the Provider may no longer provide Legal Aid Services or Specified Legal Services.

17.1E If the Provider wishes to propose a variation of their contract with the Secretary:

- (a) the proposed variation must be communicated to the Secretary's Contract Manager in writing and signed by the Provider or their authorized representative, and
- (b) acceptance by the Secretary (if the Secretary agrees to the variation) must be communicated to the Provider in writing and signed by the Secretary's authorized representative.

The heading above clause 17.2 is amended by replacing the word "Variations" with "Unilateral variations".

10 New definition

Clause 26.1 is amended by inserting the following new definition:

Enactment	means an Act or regulations
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