

Consultation Paper: Mental Health Rosters

Purpose

Legal Aid Services (LAS) has recently undergone changes to our operating model. One of the primary reasons for this change is to ensure we are providing nationally consistent services to our customers and providers. To that end, the Ministry of Justice is now reviewing the operation of mental health rosters nationwide.

The purpose of this consultation paper is to invite comment on the proposed operation of the mental health rosters.

Context

The law

Mental health proceedings include all proceedings under the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Act). The object of the Act is to provide for the compulsory assessment and treatment of mentally disordered people, in a way which protects their rights as far as reasonably possible. Section 70 of the Act guarantees patients the right to legal advice.

Legal aid policy

LAS policy provides that the legal aid applicant may nominate a preferred lawyer in family law cases. As mental health cases are in the family jurisdiction, the preferred lawyer policy applies and the administration of the roster should facilitate this.

Objective

The objective of the rosters is to ensure that providers are referred to mental health customers in a way that meets the customer's needs and is sufficiently timely to fit in with hearing schedules.

To be effective, the rosters must:

- ensure there are sufficient providers available on relatively short notice to accept instructions from mental health customers at a variety of locations
- allow an applicant to select their preferred provider where they can exercise a choice
- allow for consistency of representation where there are repeat customers
- be supported by an effective complaints system and audit policy.

Identified issues

Authority

Currently, those who administer the rosters do not have authority to undertake the management of, or make decisions on, how the rosters operate. They have taken on the responsibility to ensure patients can obtain legal advice and representation.

Regional variations

There are significant regional variations in how the rosters are administered and how providers are referred to customers.

Lack of transparency

There is little transparency in the way providers are referred to customers and the distribution of cases between the available lawyers. It is also unclear how frequently they are given the opportunity to exercise choice in representation.

No complaints process

There is no authority for answering complaints made about management of the rosters.

Administration

The groups currently managing the rosters are not funded for it. Logically it should sit with LAS along with other tasks that go toward administering legal aid.

Proposal

Referral process

The mental health administration will notify LAS of hearings and LAS will refer providers to mental health customers. They will be given the opportunity to select their preferred provider if they can exercise a choice on their own or with assistance from a support person. The provider must be approved to provide mental health legal aid services.

If the customer is unable to exercise a choice, and they have previously been represented, that provider will be referred to them if the provider is available. If the customer is unable to exercise a choice, and they have not been represented before, a provider will be referred to them from the roster.

The rosters

LAS will take on the responsibility of administering the rosters. They will be open rosters, that is, any approved mental health provider may join the rosters, which will be updated periodically. Before the finalised roster is distributed, providers will be asked to confirm their availability and whether they wish to remain on the roster.

The roster will then notify providers of the weeks when they can expect to be referred to customers. Providers will be expected to make themselves available during those weeks. How the rosters operate may be tailored to recognise differences between regions in volumes of cases and the numbers of available providers.

Re-application process

Approved providers and current roster members will be invited to indicate if they wish to be part of the new roster for providing legal aid services for mental health customers.

Training/induction

Providers who are approved to provide mental health legal aid services may be added to the roster. We recognise that mental health is a specialised area of law. Our future intention is to review the approval standards to ensure they adequately address the experience requirements for mental health. Providers will be responsible for familiarising themselves with relevant locations and processes, and maintaining their approval.

LAS Practice Standards

LAS will review and update the practice standards. These practice standards will apply to all mental health providers.

Implementation

Implementation will be staged, starting in Auckland and transitioning to the rest of the country throughout the course of next year. Specific timeframes are yet to be determined.

Invitations to comment

We invite comments from mental health providers, the New Zealand Law Society, mental health administrators at District Health Boards, District Inspectors for Mental Health and any interested parties by Sunday, 28 January 2018. Comments should be provided in the form below or by email to NSDOpsSupport@justice.govt.nz.