

Consultation Document

Legal Aid Provider Contract for Services and
Practice Standards – renewal and refresh

June 2016



New Zealand Government

We are seeking your feedback

We'd like your feedback about proposed changes to the Contract for the Provision of Legal Aid Services and Specified Legal Services (Contract) and the Practice Standards for Legal Aid Providers (Practice Standards).

The current Contract expires on 30 November 2016. We anticipate sending a new Contract to all active legal aid providers in the middle of October 2016. This will give legal aid providers 6-7 weeks to sign and return the Contract to the Ministry of Justice.

Please email your feedback on the proposed changes to legalaidprovider@justice.govt.nz by **5pm 25 July 2016**.

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Background

1. The Contract sets out rights and obligations for each party in the provision of legal aid and the Family Legal Advice Service, the Duty Solicitor service and the Police Detention Legal Advice service. The current Contract (in **Appendix 1**) came into effect on 1 December 2013 and is substantially the same as the 2012 version.
2. The Practice Standards were first published in October 2011. They contain the principles and standards expected of legal aid lawyers to ensure the effective and efficient delivery of legal aid services.
3. Consultation with legal aid providers and the legal professional bodies, the New Zealand Law Society, the Auckland District Law Society, the New Zealand Bar Association and the Criminal Bar Association, will help ensure the final Contract and Practice Standards are fit for purpose and fair for providers.

Proposed changes to the Contract

Summary of changes

4. The proposed Contract is presented in **Appendix 2**.
5. We propose a 3-year Contract that expires on 30 November 2019. This is similar to previous contractual periods.
6. As the Contract is due to expire in November this year, we're taking the opportunity to improve the document. We're proposing a number of minor and technical changes that improve and streamline the Contract. It might look different, but nothing of substance has changed. Importantly, there are no substantive new obligations on providers.
7. We propose changes to the Contract to more accurately distinguish between the functions of the Legal Services Commissioner and the Secretary for Justice.
8. We also want to make the Contract a more useful base document that helps providers understand their rights and obligations. The proposed Contract therefore contains cross-references to relevant provisions of the Legal Services Act 2011, associated regulations, the Practice Standards and operational policies.
9. One important proposed change is that we have aligned the Contract to provider approvals. Essentially, if a provider is approved, they should have a contract. Other changes reflect the new Family Legal Advice Service.
10. We are proposing some minor new obligations for providers that reflect good professional practice, and that we think won't be onerous for providers. These are:
 - 10.1.1. to advise the Secretary for Justice if the provider has been made bankrupt or if the provider's firm has been placed into liquidation
 - 10.1.2. to keep records of proceeds of proceedings
 - 10.1.3. where the provider is an employee of a firm, that the firm undertakes to protect the interests of the Legal Services Commissioner in relation to charges or proceeds of proceedings
 - 10.1.4. to notify the Secretary for Justice about any judicial sanctions imposed on the provider
 - 10.1.5. to inform the Legal Services Commissioner if the court makes, or considering making, a costs order under section 45 of the Act
 - 10.1.6. to inform the Legal Services Commissioner of matters that materially decrease the aided person's prospects of success at first instance (civil only), or the merits of any appeal.

11. A detailed table comparing the existing and proposed contracts is presented in **Appendix 3**. The rationales for the changes are explained below.

Improving and streamlining the document

12. We propose changes to the Contract to make it clearer and more streamlined than the current one, without altering the substantive rights and obligations of legal aid providers. Many of the clauses in the Contract have been rewritten in plain English. Our intention is to create a document that is more accessible.
13. The rewrite brings together parts of the Contract that are conceptually linked, in order to enhance its internal coherence. For example, all sub-clauses relating to payments have been brought together under clause 6, but this hasn't materially altered any rights or obligations.

Distinguishing the Commissioner and the Secretary

14. The proposed revisions to the Contract more clearly distinguish between the functions of the Legal Services Commissioner and the Secretary for Justice. These changes reflect their different functions under the Legal Services Act 2011. In particular, the Commissioner must make decisions about individual grants of legal aid independent of the Secretary for Justice.
15. The current contract often refers to the 'Ministry' instead of the Secretary or the Commissioner, blurring the distinction between them. This is not ideal, especially given that the Contract is with the Secretary for Justice, not the Legal Services Commissioner, and that separate teams within the Ministry of Justice are responsible for their different functions. For example, new clauses 3.8 and 3.9 set out matters that the provider must notify the Secretary and the Commissioner of respectively. This differs from the current contract, which requires the provider to notify the 'Ministry'.

Clarifying and linking to existing rights and obligations

16. Some clauses in the Contract have been amended to clarify providers' existing rights and obligations and cross-reference to relevant provisions of the Legal Services Act 2011, associated regulations, the Practice Standards, and operational policies. These cross-references are intended to help providers to find relevant information and improve their understanding of legal aid processes. It is important to note that the cross-references are to existing, not new, obligations.
17. Examples of proposed cross-references include:
 - 17.1.1. inserting a new clause 3.7 to clarify providers' obligations to protect the interests of the Legal Services Commissioner in relation to charges and proceeds of proceedings under section 107 of the Legal Services Act 2011
 - 17.1.2. more clearly referencing clauses of the Contract to relevant operational policies, for example, clause 4 (delegation of work) clause 7 (Audits and Quality Assurance Checks), clause 9 (Legal Aid Complaints) and clause 10 (Cancellation and variation of approvals)

18. For the avoidance of doubt, the revised Contract clarifies existing rights and obligations. Examples include:

- 18.1.1. inserting a new clause 3.5 to explicitly refer to the requirement for providers to maintain standards for approval, primarily competence, service delivery systems, and being a fit and proper person. Some requirements, such as recent experience, are only relevant at the time that approval or reapproval is sought
- 18.1.2. a new clause 6.17 that clarifies what happens when a provider leaves a firm, and the process for payment for work undertaken prior to their leaving.

Aligning the Contract to approvals

19. The current contract allows the Secretary for Justice and the provider to cancel the contract in situations where the provider would still be approved under the Act. This does not actually happen in practice and the contract and approval are so inextricably linked that it doesn't make sense to allow for it. Consequently, the proposed changes to the contract include only allowing the contract to be cancelled if the provider's approvals are cancelled or expire.

Reflecting the new Family Legal Advice Service

20. The existing contract contains separate provisions for Legal Aid Services and Specified Legal Services that reflect the differences between them. However, the current Contract predates the introduction of a new Specified Legal Service – the Family Legal Advice Service – in March 2014.
21. The Family Legal Advice Service differs from the other Specified Legal Services (the Duty Solicitor service and the Police Detention Legal Advice service). To reflect this difference and incorporate the new service we have amended the definition of 'Assignment' (new paragraph (b) of that definition).

Minor new obligations

22. The revised Contract proposes some minor new obligations that are outlined below. The proposed new obligations reflect good professional practice and we do not think they will be onerous for providers.

Notify the Secretary about bankruptcy or liquidation

23. We propose a new obligation in clauses 3.8.6 and 3.8.7 of the Contract to advise the Secretary for Justice if the provider has been made bankrupt or if the provider's firm has been placed into liquidation.

24. There is nothing in the Legal Services Act 2011, the Legal Services Regulations 2011, the contract (either currently or the proposed revisions), or operational policies that would prevent a provider from continuing to provide legal aid or specified legal services solely because they're made bankrupt or their firm goes into liquidation. However, the new obligation to notify bankruptcy/liquidation will avoid the occasional situation where the Secretary inadvertently pays into an account that is not approved by the Official Assignee.

Notify the Secretary about judicial sanctions

25. We propose a new obligation in clause 3.8.3 to notify the Secretary of any sanction imposed by a judicial officer. This change would help to keep the Secretary informed about potential quality concerns without being onerous for providers.

Keep records of proceeds of proceedings

26. The obligation to protect the interests of the Legal Services Commissioner in respect of proceeds of proceedings under section 107 of the Act isn't new. However some providers have been unclear about their obligations, and from time-to-time, there have been concerns about this issue. New clause 3.7 is intended to ensure providers are aware of their obligations.
27. We are also proposing that providers be required to keep records of proceeds of proceedings (new clause 3.12.8). This is good professional practice and will assist in resolving any concerns about whether the provider has properly protected the interests of the Legal Services Commissioner.

Firm's undertaking to protect interests of the Commissioner

28. We propose new paragraphs (5 and 6) in the Firm's Undertaking in Schedule 3 of the Contract that mirror providers' obligations to protect the interests of the Legal Services Commissioner under section 107 of the Act.
29. We propose that the firm also undertakes to take all reasonable steps to protect the interests of the Commissioner with regard to charges and proceeds of proceedings. This is particularly relevant when the provider has left the firm.
30. This change is intended to help to avoid the occasional situation when firms have inadvertently paid out proceeds of proceedings from their trust account without first checking whether the client has a legal aid debt. This issue has arisen on occasion when finalising Relationship Property matters.

Inform the Commissioner about costs orders

31. We propose a new subclause 3.10.3 to require the provider to inform the Commissioner when the court makes, or considering making, a costs order under section 45 of the Act. This new obligation would help to avoid situations where the Commissioner is 'surprised' by previously unanticipated costs commitments.

Inform the Commissioner about decreased prospects of success

32. We propose a new obligation to inform the Legal Services Commissioner of any matter that materially decreases the aided person's prospects of success at first instance (civil only), or the merits of any appeal. This will assist the Legal Services Commissioner in considering whether legal aid should continue.

Proposed changes to the Practice Standards

33. There are 3 minor changes proposed to the Practice Standards. These are:
- 33.1.1. an obligation to maintain records of all proceeds of proceedings and associated transactions (new standard 11.2.6)
 - 33.1.2. an obligation to retain all closed legal aid files for at least 7 years (new standard 11.5). This obligation is already in the existing Contract and the proposed addition will simply align the Contract and Practice Standards
 - 33.1.3. more detail about how a provider can protect the Legal Services Commissioner's interests under section 107 of the Legal Services Act (new standard 24).
34. The proposed changes to the Practice Standards simply reflect current or proposed obligations under the Contract. The 3 changes are presented as highlighted text in the proposed Practice Standards in **Appendix 4**.

Next steps

35. Your feedback is invited on the proposed changes to the Contract and Practice Standards. Please email your feedback to legalaidprovider@justice.govt.nz by 5pm, 25 July 2016.
36. Your feedback will be carefully considered before the Contract and Practice Standards are finalised. We plan to send the Contract and the associated Practice Standards to all legal aid and legal services providers in mid-October 2016 for their signing and return to us by 30 November 2016.

Appendix 1: Current Contract

Contract for Services

PROVIDER CONTRACT FOR THE PROVISION OF LEGAL AID SERVICES AND SPECIFIED LEGAL SERVICES

The Parties to this Contract

The Secretary for Justice

(the Secretary)

And

(the Provider)

The Secretary and the Provider are each a Party to the Contract and are together the Parties.

The Contract

Background

- A. The Secretary is required to establish, maintain and purchase high-quality legal services in accordance with the Legal Services Act 2011.
- B. The Act requires the Secretary to approve providers before they can provide Legal Aid Services or Specified Legal Services.
- C. The Secretary has approved the Provider to provide, from time to time, the types of Legal Aid Services or Specified Legal Services set out in Schedule 1.
- D. The Provider has agreed to undertake and provide those particular types of Legal Aid Services or Specified Legal Services set out in Schedule 1 on the terms set out in this Contract.

Contract documents

This Contract consists of:

- | | |
|---|-------------------|
| 1. These pages | Pages 1-2 |
| 2. Contract Details and Description of Services | Schedule 1 |
| 3. Terms and Conditions | Schedule 2 |
| 4. Firm's Undertaking | Schedule 3 |
| 5. Any other attachments described at Schedule 1. | |

How to read this Contract

This Contract sets out the Parties' rights and obligations. Together the above documents form the Contract. If there are any differences between the documents:

- references to clauses refer to clauses in the Schedule in which the reference occurs;
- references to clauses and Schedules refer to clauses of, and the Schedules to, this Contract;



- references to the singular include the plural and vice versa;
- headings are inserted for convenience only and do not affect the interpretation of this Contract;
- “including” and similar words do not imply any limitation;
- a reference to any law or legislation or legislative provision includes the relevant replacement and/or equivalent provisions of any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- a reference to any policy, procedure or similar document includes instructions, manuals, processes and guides published on the Ministry’s website and refers to those documents as amended, supplemented or replaced from time to time; and
- where under this Contract a word or expression is defined, other parts of speech and grammatical forms of that word or expression have corresponding meanings.

Acceptance

The date of execution of this Contract is the later of the two dates below.

In signing this Contract each Party acknowledges that they have read it and agree to be bound by it.

For and on behalf of the **Secretary:**

For and on behalf of the **Provider:**

Signature

Name: **Jacquelyn Shannon**

Position: **General Manager Legal Aid Services**

(Acting pursuant to a delegation under section 41 of the State Sector Act 1988)

Date:

Signature

Name:

Position:

Date:

Schedule 1

Contract and Approval Details

Start Date		Reference Schedule 2 clause 1
End Date	30 November 2016	Reference Schedule 2 clause 1

Provider to amend if incorrect

Contract Managers Reference Schedule 2 clauses 4 and 15		Secretary's Contract Manager	Provider's Contract Manager
	Name:	Penny Hoy-Mack	
	Title / position:	Team Leader Provider Services, Legal Aid Services	
	Address:	Level 6, Justice Centre 19 Aitken Street SX 10125 Wellington	
	Phone:	04 496 6164	
	Email:	legalaidprovider@justice.govt.nz	

Provider to amend if incorrect

Provider Details Reference Schedule 2 clauses 4 and 14		
	Provider Name	
	Name of firm/Practice he/she is <ul style="list-style-type: none"> Principal/Partner/ Sole practitioner in or employed by 	
	Name of Employer (if different from above)	
	Status within the firm/practice in which the Provider is: <ul style="list-style-type: none"> employed by or a principal, partner or sole practitioner 	
	GST No. (if applicable)	
	Bank A/C No. (into which payments are to be paid)	
	Nominated Alternate/s (where one is nominated under clause 4.7)	



Approval Details

The Provider is approved by the Secretary for Justice to provide the following Legal Services:

Legal Aid Services	Lead Provider			
	Litigation Experience Level			
	Type:	Approval/s:	Approval Period:	
			Start Date	End date
Condition	The above named approvals are subject to the following conditions:			

Legal Aid Services	Supervised Provider			
	Type:	Approval/s:	Approval Period:	
			Start Date	End date
Condition	<p>The above named approvals are subject to the following conditions: The above named approvals are subject to the following conditions: Subject to your current supervision arrangements and service delivery systems. If there are any changes to your supervision arrangements or service delivery systems, you must advise the Secretary for Justice of the change/s at least 10 working days prior to the change. Your advice will be considered as a new application for approval.</p> <p>Supervisor:</p>			

Specified Legal Aid Services	Type	Approvals	Approval Period:	
			Start date	End date
	Condition:			
Condition	The above named approvals are subject to the following conditions:			

Provider Number	<p>Your Provider identification number is . This number is used for correspondence purposes, the assignment of cases and may be required for Provider authentication in future as electronic business transactions are developed.</p>
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Schedule 2

Terms and Conditions – Services

1. Consideration and Operation of Contract

- 1.1. In consideration for the Provider entering this Contract and being bound by its provisions, the Secretary will also be bound by the provisions of the Contract and may offer the Provider Legal Aid Services or Specified Legal Services in accordance with this Contract and the Act.
- 1.2. This Contract will commence on the date of execution by both parties. It will continue until **30 November 2016** (“expiry date”) unless earlier terminated in accordance with this Contract.
- 1.3. The Provider may have had a previous contract with the Legal Services Agency or the Ministry for the provision of:
 - 1.3.1. Legal Aid Services or Specified Legal Services under the Act; and
 - 1.3.2. legal aid services under previous legislation.If such a contract existed immediately before entering into this Contract the parties agree that the previous contract ends from the date this Contract is signed by both parties.
- 1.4. In this Contract, “the Provider” who supplies Legal Aid Services or Specified Legal Services can mean either a Lead Provider or a Supervised Provider, depending on the context.
- 1.5. This Contract does not:
 - 1.5.1. guarantee that the Provider will be Assigned any Legal Aid Matters or be offered a minimum number of Assignments; or
 - 1.5.2. guarantee that the Provider’s name will be placed on a roster.
- 1.6. This Contract does not give the Provider reason to expect that the Secretary will enter into another agreement with the Provider, or that another agreement (if any) will have similar terms to this Contract.

2. Provision of Legal Aid Services

- 2.1. The Provider agrees to provide only Legal Aid Services of the type specified in Schedule 1.
- 2.2. The Provider agrees to undertake any Accepted Assignment in accordance with the terms of the particular Assignment.
- 2.3. If there is any conflict between Schedule 1 and an Assignment, the terms of Schedule 1 will prevail.

3. Provision of Specified Legal Services

- 3.1. The Provider agrees to provide only Specified Legal Services of the type specified in Schedule 1 and that are Rostered to him or her by the Ministry.

4. The Provider's General Obligations

Quality of Services and Professional Conduct

- 4.1. The Provider agrees to provide the Legal Aid Services or Specified Legal Services provided under this Contract in an effective and efficient manner.
- 4.2. The Provider agrees that he or she will :
 - 4.2.1. promote and maintain proper standards of professionalism in his or her public dealings with the Secretary, the Commissioner and the Ministry; and
 - 4.2.2. conduct dealings with the Secretary, the Commissioner and the Ministry with integrity, respect and courtesy.
- 4.3. In providing Legal Aid Services or Specified Legal Services under this Contract, the Provider agrees to comply with:
 - 4.3.1. relevant professional obligations, unless any provision of the Act states otherwise;
 - 4.3.2. the Act and any regulations made under the Act and all other applicable statutory obligations;
 - 4.3.3. the Practice Standards;
 - 4.3.4. policies, manuals and procedures relating to Legal Aid Services and Specified Legal Services issued by the Ministry; and
 - 4.3.5. the obligations under this Contract.
- 4.4. The compliance obligations in subclauses 4.3.1 to 4.3.5 are listed in order of precedence. If there is any conflict between these obligations, the obligation which appears first takes precedence.

Delegation of Services and Nomination of Alternate Provider in the event of Unavailability

- 4.5. The Lead Provider will have overall responsibility for an Assignment, whether or not the Lead Provider completed the work associated with the Assignment. This clause:
 - 4.5.1. includes responsibility for supervising other Providers;
 - 4.5.2. does not limit the Provider's obligations under this Contract or the Act; and
 - 4.5.3. does not apply for work undertaken after the Assignment has been Reassigned.
- 4.6. The Provider may delegate part of an Accepted Assignment to another provider to undertake. The Provider must ensure that the delegated provider has the appropriate Approval for such work and complies with any conditions of his or her Approval. This applies whether the delegated provider is to be paid or unpaid.
- 4.7. The Provider may make standing arrangements with another legal aid Provider ("Alternate") to undertake the relevant Legal Aid Services during periods when the Provider is unavailable to do so. The Alternate must be Approved to undertake the type of Legal Aid Services described in Schedule 1 under "Approval Details".

When the Provider Must Notify the Ministry

- 4.8. The Provider agrees to notify the Secretary's Contract Manager in writing within 5 Working Days if:
 - 4.8.1. the Provider's GST status changes;
 - 4.8.2. the Provider's Contact or other details under Schedule 1 change;

- 4.8.3. a Lawyers' Standards Committee has upheld a complaint against the Provider. The notification must include the Committee's rationale and conclusions (subject to any restrictions imposed on publication);
- 4.8.4. a Supervised Provider is no longer being supervised by a Lead Provider while working on a Legal Aid Matter;
- 4.8.5. the Provider is charged or convicted of an offence punishable by a term of imprisonment during the term of this Contract; or
- 4.8.6. the Provider nominates, under clause 4.7, a different Alternate to the Alternate stated in Schedule 1.
- 4.9. The following process will apply if the Provider will be unavailable for 15 Working Days or more for any reason:
 - 4.9.1. If an Approved Alternate is stated in Schedule 1, the Provider must provide advance written notice of the dates the Provider will be unavailable, and confirm that the Provider's Approved Alternate will manage their current Assignments.
 - 4.9.2. If a Lead Provider other than the Approved Alternate in Schedule 1 will be managing their current Assignments, the Provider must provide advance written notice of the dates the Provider will be unavailable and give details of the Lead Provider who will manage the Provider's current Assignments in the Provider's absence.
 - 4.9.3. If Schedule 1 does not state an Approved Alternate, the Provider must provide advance written notice of the dates the Provider will be unavailable and describe the arrangements the Provider proposes to put in place to deal with any Assignments. The Provider acknowledges that if the Commissioner is not satisfied with the proposed arrangements, the Commissioner may Reassign the Provider's Assignments to another Provider.
- 4.10. If the Provider is unable to meet a Rostered commitment, the Provider must advise the Ministry in accordance with the relevant policies.

Record-keeping Obligations

- 4.11. Subject to clause 4.12 and in accordance with clause 11.1 of the Practice Standards, the Provider must endeavour to ensure that all relevant documents are kept on the file electronically or in hard copy. This includes:
 - 4.11.1. all correspondence, including correspondence with the Ministry in relation to legal aid and with the client;
 - 4.11.2. a copy of all court documents filed, served or issued;
 - 4.11.3. file notes of all material telephone conversations and personal attendances;
 - 4.11.4. records of all court attendances;
 - 4.11.5. receipts and records of expenditure, including records of all time spent by the Provider/s and any non-lawyer/s; and
 - 4.11.6. records of any disbursements.
- 4.12. Research, draft documents and disclosure documents do not need to be retained on the file. Where any of these documents are not retained the Provider must keep an index of the documents.
- 4.13. All closed legal aid files or an electronic or hard copy of those files must be retained for a minimum of seven (7) years from the date of closure.

No Lien

- 4.14. The Provider agrees not to, in any way, claim a lien against the Ministry, Secretary or the Commissioner over a file for Legal Aid Services or Specified Legal Services.

When the Provider Must Stop Providing Services

- 4.15. The Provider agrees to immediately stop providing Legal Aid Services or Specified Legal Services if:
- 4.15.1. the Provider is no longer entitled to practise as a lawyer under the Lawyers and Conveyancers Act 2006; or
 - 4.15.2. the Provider is a Supervised Provider but is no longer under the supervision of a Lead Provider as required by the terms of his or her Approval; or
 - 4.15.3. the Secretary has suspended or cancelled the Approval or Approvals listed in Schedule 1.

5. Reassignment of Legal Aid Matters

When this Clause Applies

- 5.1. Clauses under this heading apply to the transfer of the management of an Accepted Assignment to another Lead Provider.

Process for Reassignment

- 5.2. The Provider or legally aided person must get the Commissioner's consent in writing to the proposed transfer of the management of an Accepted Assignment to another Provider.
- 5.3. The Provider acknowledges that if the Commissioner decides to reassign an Accepted Assignment to another Provider, the Commissioner will notify the Provider and legally aided person.

What the Provider Must Do when a Matter is Reassigned

- 5.4. If the Commissioner advises the Provider that an Accepted Assignment is to be Reassigned to another provider, the Provider agrees to co-operate with the Commissioner to transfer the file in a manner that ensures the interests of any affected legally aided persons are not prejudiced.
- 5.5. The Provider agrees to ensure the file to which the Accepted Assignment relates is:
- 5.5.1. neat and orderly and accords with the requirements of clause 11.1 of the Practice Standards; and
 - 5.5.2. transferred promptly to the new Provider specified by the Commissioner.
- 5.6. The Provider agrees to comply with any directions from the Commissioner for the transfer of the relevant file.

6. Ministry's Obligations

- 6.1. The Ministry administers the provision of Legal Aid Services or Specified Legal Services, this includes managing:
- 6.1.1. Approvals and the purchase of services, and
 - 6.1.2. the Rostering and the Assignment of Legal Aid Matters to Providers.
- 6.2. The Ministry will:
- 6.2.1. act promptly on decisions on Approvals and correspondence about this Contract once it has all the relevant information it has asked for;
 - 6.2.2. deal with all Legal Aid Complaints fairly and promptly;



- 6.2.3. promptly answer any question raised by the Provider about an action taken or decision made by the Ministry under this Contract;
- 6.2.4. give reasonable notice to the Provider of intended or impending changes to relevant policies and procedures; and
- 6.2.5. pay all claims in a timely manner, provided:
 - (a) the Commissioner does not defer or decline the payment under section 99(2) of the Act; or
 - (b) the Secretary has not placed a hold on payments under section 101(2) of the Act; or
 - (c) the claim is not disputed in good faith.

7. Legal Aid Complaints

- 7.1. Where the Secretary, Commissioner or the Ministry receives a Legal Aid Complaint, the Ministry will give the Provider a copy of the Legal Aid Complaint, unless the Secretary does not intend to proceed with the Legal Aid Complaint. The Ministry may ask the Provider to respond to any questions about the Legal Aid Complaint.
- 7.2. If the Provider receives a Legal Aid Complaint and is unable to resolve it within 10 Working Days, the Provider agrees to give details of the Legal Aid Complaint (including a copy) to the Ministry within 20 Working Days of having received the Legal Aid Complaint.
- 7.3. If asked by the Ministry to respond to questions about a Legal Aid Complaint, the Provider agrees to respond to the Ministry within the required timeframe. The Ministry will give the Provider at least 10 Working Days to respond.

8. Payments

Payments for Legal Aid Services

- 8.1. The Provider acknowledges that he or she is only entitled to payments under this Contract if acting as a Lead Provider in a Legal Aid Matter for an Accepted Assignment.
- 8.2. The fees payable by the Ministry for an Accepted Assignment may be:
 - 8.2.1. set on an hourly rate basis for legal aid Providers as published on the Ministry's website;
 - 8.2.2. on a fixed fee arrangement basis; or
 - 8.2.3. as set out in an Accepted Assignment.
- 8.3. In accordance with section 106 of the Act, the Provider is responsible for paying all Disbursements related to a Legal Aid Matter (unless otherwise authorised by the Secretary) but may claim for reimbursement of those costs under section 97 of the Act, and in accordance with clause 8.6 below.

Payments for Specified Legal Services

- 8.4. The Ministry is liable to pay the Provider for Specified Legal Services only where the Provider has been Rostered to provide such services.
- 8.5. The Ministry will pay fees and Disbursements for Specified Legal Services at the rates set by the Secretary. These rates may be varied from time to time.

Claims and Method of Payment

- 8.6. The Provider agrees to make a claim for payment to the Secretary for Legal Aid Services or Specified Legal Services provided under this Contract in accordance with:

- 8.6.1. sections 97 and 98 of the Act;
- 8.6.2. the applicable regulations; and
- 8.6.3. the manner prescribed by the Secretary.
- 8.7. The Provider agrees that the Secretary is not liable to pay for the Office Overheads of the Provider.
- 8.8. All claims for Disbursements submitted by the Provider must be accurate, directly attributable to the conduct of the Legal Aid Matter, actual and reasonable.
- 8.9. The Secretary will pay the Provider by direct credit on receipt of an approved claim for payment for services provided according to the requirements of this Contract, subject to a completed Schedule 3 undertaking (where applicable).

Responsibility for Taxes, Levies and Other Charges

- 8.10. The Provider is solely liable and responsible for all taxes, levies, premiums and any other charges imposed on the Provider in respect of the Cost of Services under this Contract or other fees and Disbursements incurred by the Provider. The Provider agrees to file all necessary returns for such taxes, levies and other charges with the appropriate authority.
- 8.11. The Secretary will pay to the Provider the GST (if any) claimed in respect of the Legal Aid Services or Specified Legal Services supplied by the Provider, subject to a completed Schedule 3 undertaking (where applicable).

If the Provider Moves to a new Firm

- 8.12. If the Provider moves to a new firm, the Provider will ensure that the authorised signatory for that new firm's bank account signs the undertaking contained in Schedule 3 of this Contract. The signed undertaking must be returned to the Ministry before the Provider supplies any Legal Aid Services or Specified Legal Services while employed or engaged by that firm. The Provider acknowledges that the Secretary is not liable to make any payments owing to the Provider until such an undertaking has been duly signed and received by the Secretary.

Overpayments and Underpayments

- 8.13. If the Secretary overpays the Provider for Legal Aid Services or Specified Legal Services, the Ministry must notify the Provider of the overpayment and may:
 - 8.13.1. require repayment of the amount of the overpayment from the Provider; or
 - 8.13.2. deduct the amount of the overpayment from a later payment due to the Provider under this Contract.
- 8.14. If the Secretary notifies the Provider under clause 8.13.1 and requires repayment of the amount of the overpayment, the Provider agrees to pay the Secretary the amount of the overpayment within 20 Working Days after receipt of the notice.
- 8.15. If the Secretary underpays the Provider, the Secretary will pay the Provider the shortfall within 20 Working Days of becoming aware of the mistake.

Reconsiderations and Reviews

- 8.19. The Provider acknowledges that the Commissioner is responsible for approving claims for payment made by the Provider and that the Commissioner may decline some or all of a claim in accordance with the Act. The Provider acknowledges that Reconsiderations or Reviews of decisions made by the Commissioner in respect of payments for legal aid and specified legal services will comply with sections 51 and 52 of the Act.
- 8.20. The Provider further acknowledges that the Secretary may, under section 101(2) of the Act, place a hold on payments and, if that occurs, the Provider has a right to apply for a review of that decision by the Review Authority established under the Act.

The Provider agrees that clause 13 (Disputes) of this Contract does not apply to any such decision made by the Secretary.

9. Audit or Quality Assurance Check

- 9.1. The Provider must, in accordance with section 92 of the Act, provide all documentation and other information requested by the Ministry to enable the Secretary to carry out an Audit or quality assurance check at any time.
- 9.2. In addition to any powers the Secretary may exercise under the Act, the Secretary may take appropriate action in accordance with clause 10 below if an Audit or quality assurance check shows any of the following results:
 - 9.2.1. non-compliance with —
 - (a) the Provider's obligations under the Act or Regulations;
 - (b) the Practice Standards;
 - (c) any conditions imposed on the Provider's Approval;
 - (d) the terms and conditions of this Contract; or
 - (e) guidelines and policies issued or made by the Secretary or Commissioner;
 - 9.2.2. any substantiated or unresolved Legal Aid Complaint;
 - 9.2.3. where the Provider is providing Legal Aid Services as the Lead Provider, a failure to manage or supervise the relevant Supervised Providers or anyone else used by the Provider to work on a Legal Aid Matter;
 - 9.2.4. any other matter which indicates the Legal Aid Services or Specified Legal Services are not being provided in an effective and efficient manner.
- 9.3. The results of a completed Audit or quality assurance check will be reviewed by the Secretary. The Secretary will release the findings to the Provider.

10. Breach of Contract

Notice of Breach

- 10.1. A Provider is in breach of this Contract if, in the Secretary's reasonable opinion, the Provider has not taken all reasonable steps to comply with one or more of the obligations in clause 4.3.
- 10.2. If, in the Secretary's reasonable opinion, the breach is capable of being remedied, and the Secretary requires the breach to be remedied, the Secretary must promptly give the Provider a default notice.
 - 10.2.1. A default notice under clause 10.2 must specify:
 - (a) the nature of the breach;
 - (b) directions to remedy the breach; and
 - (c) the Specified Period within which the breach must be remedied, giving a reasonable period of time taking into account the nature of the breach.

Failure to Remedy Breach within Specified Period

- 10.3. If the Provider fails to remedy the breach within the Specified Period, the Secretary may (acting reasonably) do one or more of the following:
 - 10.3.1. give the Provider directions, with which he or she must promptly comply, for suspending the Provider's provision of the Legal Aid Services or

Specified Legal Services or part of them under this Contract until further notice;

- 10.3.2. give the Provider further directions to remedy the breach, with which he or she must promptly comply;
 - 10.3.3. remedy the breach and recover the reasonable costs of doing so from the Provider;
 - 10.3.4. take action under section 101 of the Act;
 - 10.3.5. notify the Commissioner of the need to Reassign any Accepted Assignment to another Provider, in which case the Secretary may reduce the payments to the Provider by the amount of the cost the Secretary incurs in having all or any of the Legal Aid Services or Specified Legal Services provided by that other Provider;
 - 10.3.6. notify the Commissioner of the need to remove the Provider's name from a Roster; or
 - 10.3.7. terminate this Contract.
- 10.4. The Secretary may take one or more of the actions set out in clause 10.3 without further notice and without prejudice to any other rights the Secretary may have under this Contract or under the Act or otherwise at law.

Material Breach Leading to Suspension or Termination

- 10.5. If the Provider has not remedied a material breach of this Contract within the Specified Period, or the breach is, in the opinion of the Secretary, incapable of remedy, the Secretary may suspend or terminate this Contract, in whole or in part, immediately on giving written notice to the Provider.
- 10.6. The term "material breach" includes, but is not limited to, the following situations:
- 10.6.1. The Provider, without reasonable excuse or reasonable prior notice to the Ministry, ceases, suspends or fails to provide all or any material part of the Legal Aid Services or Specified Legal Services pursuant to an Accepted Assignment or that have been Rostered to him or her. This includes:
 - (a) a transfer of the management of a Legal Aid Matter without the consent of the Commissioner under clause 5.2;
 - (b) a failure to notify the Ministry and to make suitable arrangements for alternative counsel to appear if the Provider is unavailable for Rostered duties.
 - 10.6.2. The Provider consistently fails to comply with the Practice Standards or fails to comply with the Practice Standards in a manner which has a significant or potentially significant impact on a legally aided person.
 - 10.6.3. The Provider misappropriates or mismanages any payments made to him or her.
 - 10.6.4. The Provider engages in action which would have a serious effect on the Provider's ability to perform the Legal Aid Services or Specified Legal Services, or is likely to bring the Secretary, the Commissioner, the Ministry or other providers into disrepute.
 - 10.6.5. The Provider knowingly:
 - (a) conceals information from (subject to the Provider's professional obligations relating to privilege or breach of confidentiality, provided the Provider is not required to provide such information under sections 108, 109 or 110 of the Act);
 - (b) makes false statements to; or

(c) provides a false document to,
the Secretary, the Commissioner or the Ministry.

Ministry's Failure to Pay

- 10.7. If the Ministry fails to pay any claim made by the Provider and:
- 10.7.1. the claim is due and properly payable; and
 - 10.7.2. the Commissioner has not deferred or declined the payment under section 99(2) of the Act; and
 - 10.7.3. the Secretary has not placed a hold on payments under section 101(2)(a) of the Act; and
 - 10.7.4. the payment is overdue by two (2) months following the month in which the Ministry received a correctly rendered invoice from the Provider; and
 - 10.7.5. the claim is not the subject of a good faith dispute between the parties;
- then the Provider will notify the Ministry of the default and the Ministry will remedy the default within 10 days of such notice.
- 10.8. If the Ministry fails to remedy the default within 10 days, the Provider may terminate this Contract immediately on giving notice to the Ministry.

11. Cancellation or Amendment of Provider's Approval and Termination or Suspension of Contract

Cancellation or Amendment of Approval

- 11.1. If the Secretary cancels the Provider's Approval under section 103 of the Act, the Approval expires, or the Provider advises the Secretary that the Provider will no longer be providing Legal Aid Services, this Contract terminates on the date which the Secretary specifies that the termination takes effect in the written notice given to the Provider.
- 11.2. If the Secretary has modified the Provider's Approval under section 102 of the Act (including requiring the Provider to be supervised by another Provider), the Legal Aid Services or Specified Legal Services provided by the Provider must comply with the modified Approval, whether or not a variation has been made to this Contract.

Termination or Suspension of Contract

- 11.3. The Secretary may terminate this Contract in whole or in part for any reason by giving the Provider three (3) months' notice in writing.
- 11.4. The Secretary may terminate this Contract immediately if the termination is due to a change in government policy or a change in appropriation. If this occurs, the Secretary will give as much notice as is reasonably practicable in the circumstances.
- 11.5. The Secretary may suspend or terminate this Contract under clause 10.
- 11.6. The Provider may terminate this Contract in whole or, in relation to the type of Legal Aid Services or Specified Legal Services provided, in part. This can happen at any time by giving one month's notice in writing to the Secretary.
- 11.7. If a party partially terminates this Contract under this clause, clause 12 will apply to the terminated Legal Aid Services or Specified Legal Services.

12. Consequences of Termination or Suspension

- 12.1. If this Contract is terminated or suspended, either in whole or in part, the Provider will immediately stop providing the terminated or suspended Legal Aid Services or Specified Legal Services under this Contract.

- 12.2. If this Contract expires, or is terminated or suspended, the Secretary is liable to pay the Provider only the fees and/or Disbursements for Legal Aid Services or Specified Legal Services supplied by the Provider before the date of expiry, termination or suspension of this Contract. The Provider must have had the Secretary's approval to provide such Legal Aid Services or Specified Legal Services or the Secretary's authorisation to incur such Disbursements before the Secretary will make any such payment.
- 12.3. The Provider acknowledges that upon expiry or termination of this Contract, the Commissioner will Reassign the Provider's uncompleted Legal Aid Matters to other Providers. Clause 5 will apply to each Reassignment.

13. Disputes

Application of this Clause

- 13.1. The Provider acknowledges and agrees that clause 13 does not apply:
 - 13.1.1. where a right to apply for a review or appeal of a decision made by the Secretary or the Commissioner under the Act exists (including a legally aided person's right to apply for a review or appeal under Part 2, Subpart 7 of the Act); or
 - 13.1.2. to the resolution of a Legal Aid Complaint
 - 13.1.3. to any Audit or quality assurance check
 unless otherwise agreed by the Parties.
- 13.2. Subject to clause 13.1, the Parties will take all reasonable steps to resolve promptly and in good faith any dispute that may arise in connection with this Contract.

Process for Dealing with Disputes

- 13.3. The following process applies to disputes:
 - 13.3.1. The Party claiming a dispute will give written notice detailing the nature of the dispute. Both Parties will then try their best to settle the dispute by negotiation.
 - 13.3.2. If the dispute is about a granting or invoicing matter, negotiation must follow the Legal Aid's Granting and Invoicing Disputes Resolution Process.
 - 13.3.3. For disputes other than disputes about Legal Aid's granting and invoicing, if the Parties have not resolved the dispute within 10 Working Days of the notice, the parties may participate in mediation with a mutually accepted mediator. If they cannot agree on a mediator within 28 days of the notice, the Chairperson of LEADR New Zealand Incorporated will appoint the mediator.
- 13.4. Each Party agrees to pay its own costs of mediation under clause 13.3.3.
- 13.5. Before any dispute is resolved, the Parties agree to continue to perform their respective obligations under this Contract. This does not apply if the dispute relates to purported termination by the Ministry.

14. Provider's Details

- 14.1. The Provider's Details are recorded in Schedule 1 as they are at the date of signing this Contract.
- 14.2. The Provider must notify the Secretary's Contract Manager of any change to the Provider's Details in accordance with clause 4.8.



15. The Ministry's Contact Details

- 15.1. All notices to be given by the Provider to the Commissioner under this Contract relating to the Assignment and Reassignment of a Legal Aid Matter must be given to the legal aid case manager named in the Accepted Assignment, or as advised by the Ministry in subsequent correspondence about that Legal Aid Matter.
- 15.2. All notices to be given by the Provider in respect of a Rostering matter must be given to the:
 - 15.2.1. Legal Aid Office;
 - 15.2.2. Initial Criminal Legal Services Unit; or
 - 15.2.3. other office or person indicated in the applicable manual or instruction published by the Ministry,
 as the context requires.
- 15.3. Notices under clause 4.9 must be sent to the Provider's local Legal Aid Office.
- 15.4. The Provider must give all other notices required to be given under this Contract to the Secretary's Contract Manager recorded in Schedule 1. This includes notices under clauses 4.8, and 11 and 14.2.
- 15.5. The Secretary's Contract Manager's details may be updated from time to time by publication on the Ministry's website. The format and delivery requirements of clause 16 do not apply to this clause 15.4.

16. Format and Delivery of Notices and Communications

- 16.1. The Parties agree to communicate with each other and provide any notices in relation to this Contract or the Act electronically, in accordance with the Electronic Transactions Act 2002. Specifically (but without limitation), the Ministry and the Provider:
 - 16.1.1. agree to send and consent to receive all notices and communications with the other that are required by this Contract and the Act by email;
 - 16.1.2. agree that any document required by this Contract or the Act to be signed by one or both parties, will be signed using an "electronic signature" as defined by the Electronic Transactions Act 2002;
 - 16.1.3. may choose the particular form of electronic signature for their own use, which may, without limitation, be a typed name or scanned manuscript signature.
- 16.2. The Provider agrees to use the Provider's email address nominated in Schedule 1 to send and receive email.

17. The Relationship between the Parties

- 17.1. Nothing in this Contract constitutes a legal relationship between the parties of partnership, joint venture, agency, or employment. The Provider is responsible for his or her own salary, wages, holiday or redundancy payments, and for such payments to his or her personnel. This includes any GST, corporate, personal and withholding taxes, ACC premiums or other levies attributable to the provision of the Legal Aid Services under an Accepted Assignment or Specified Legal Services Rostered to the Provider.
- 17.2. The Provider is responsible for payment of any fees, expenses and Disbursements claimed by any Supervised Providers who have provided Legal Aid Services or Specified Legal Services on behalf of the Provider under an Accepted Assignment or from any other subcontractors engaged by the Provider.

- 17.3. Both Parties agree to act in good faith in the exercise of their rights and the performance of their obligations under this Contract.
- 17.4. Neither Party has authority to bind or represent the other party in any way or for any purpose.
- 17.5. The Secretary, the Ministry and the Provider agree that they will at all times conduct dealings with integrity, respect and courtesy.

18. Entire Agreement

- 18.1. This Contract (which includes all Assignments accepted by the Provider) and any variations to it (and to any Accepted Assignments) constitute the full agreement between the parties about the Legal Aid Services or Specified Legal Services to be provided by the Provider under this Contract.

19. Variations to Contract

- 19.1. The Secretary has the right to unilaterally vary this contract under clauses 19.2 and 19.3. Otherwise, the provisions of this Contract may be varied by mutual agreement, in writing, and signed by the authorised representatives of the Parties.

Variations to the Contract by the Secretary

- 19.2. The Secretary may unilaterally amend or delete any provisions of this Contract in accordance with clause 19.5 to achieve consistency with a relevant change in the Act, Regulations, government policy or a change in appropriation. Any such amendment or deletion must be consistent with the Act.
- 19.3. The Secretary may unilaterally vary Schedule 1 from time to time to by:
 - 19.3.1. amending the Legal Aid Services or Specified Legal Services the Provider may provide if the Provider's Approval changes; or
 - 19.3.2. amending any conditions attaching to the Provider's Approval.
- 19.4. Where the Secretary varies the Contract under clauses 19.3.1 and 19.3.2, the Ministry will issue the Provider with a revised Schedule 1. The revised Schedule will replace the existing Schedule 1 of this Contract from the date of issue by the Secretary and will form part of this Contract from that date.
- 19.5. Where the Secretary intends to vary the Contract under clause 19.2, the Ministry will notify the Provider in writing of the intended variation. The Provider must either sign and return the variation to the Ministry or terminate the Contract upon written notice to the Secretary within one month of the date of the notice. If the Provider fails to respond, the Ministry will deem the Contract to have been varied from the date that is one month after the date the notice of intended variation is given to the Provider.

20. Transfer of rights under this Contract

- 20.1. Neither Party has the right to assign or transfer, in whole or in part, its rights, obligations or benefits under this Contract to any other Party.

21. Liability

- 21.1. The Ministry will not be liable to any third party as direct or indirect result of anything done or omitted to be done by the Provider in connection with providing Legal Aid Services or Specified Legal Services under this Contract.

22. Authorisation for Collection and Disclosure of Personal Information

- 22.1. The Provider authorises the Secretary to collect personal information about the Provider from the New Zealand Law Society or any other organisation responsible for regulating the Provider if this is necessary for the Secretary to meet their obligations under the Act or any other legislation. The Provider also authorises the Secretary to disclose such personal information to these organisations, if necessary.
- 22.2. In collecting and disclosing the Provider's personal information under clause 22.1, the Secretary will comply with the Privacy Act 1993.
- 22.3. The Provider acknowledges that the Secretary is subject to the Official Information Act 1982.

23. Force Majeure

- 23.1. Neither Party will be liable for any act omission, or failure to fulfil their obligations under this Contract if such act, omission or failure arises from any cause reasonably beyond their control. The Party unable to fulfill their obligations will immediately notify the other in writing of the reasons for its failure to fulfill their obligations; any damage or loss caused (or likely to be caused); and any proposed remedial action.
- 23.2. The Parties will seek to reach agreement on the extent of any such damage or loss and any remedial action to be taken.

24. Privity of Contract

- 24.1. No third party may enforce any of the provisions of this Contract. The provisions of section 4 of the Contracts (Privity) Act 1982 do not apply to this Contract.

25. Governing Law

- 25.1. This Contract is governed by New Zealand law.

26. Severance

- 26.1. If any part or provision of this Contract is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of the Contract will be binding on the parties.

27. Continuing Provisions

- 27.1. The clauses in this Contract which are capable of surviving the expiry or termination of this Contract will continue beyond the termination or expiry of this Contract.

28. Definitions

- 28.1. When used in this Contract, the following words in bold have the meaning beside them, unless the text clearly states that a different meaning is intended:

Accepted Assignment	means a matter Assigned to the Provider as a Lead Provider in respect of which the Provider has not notified the Commissioner that he or she declines the Assignment.
Act	means the Legal Services Act 2011.
Approval	means the instrument signed by the Secretary which specifies the particular Legal Aid Services or Specified Legal Services the Secretary has approved the Provider to provide, as may be amended by the Secretary from time to

	time.
Assignment	<p>means a letter outlining a decision made by the Commissioner to allocate a Legal Aid Matter to a Provider as a Lead Provider and which specifies:</p> <ul style="list-style-type: none"> • the name and contact details of the legally aided person; • the details of the grant of legal aid to that person (including the maximum amount of the grant); • the basis for payment of the Provider's fees; and • the conditions attaching to the grant of legal aid to the legally aided person <p>which, unless the Provider notifies the Commissioner that he or she declines the Assignment, is deemed to have been accepted by the Provider upon receipt of the Assignment by the Provider.</p>
Audit	means an audit of the Provider undertaken on behalf of the Secretary under section 91 of the Act.
Commissioner	means the Legal Services Commissioner appointed under section 70 of the Act and includes any person duly delegated by the Commissioner to undertake his or her functions.
Conditions of Approval	means the conditions (if any) imposed by the Secretary under section 77(2) of the Act on the Approval given to the Provider.
Contract	means this Contract including all the attached Schedules, all Accepted Assignments, and any documents referred to in this Contract (whether attached or published on a website), and includes all variations to it and any such documents.
Cost of Services	has the same meaning as in section 4 of the Act.
Disbursements	are defined in the Grants Manual issued by the Ministry and updated from time to time (which can be found on its website).
Examination	means an examination carried out by or on behalf of the Commissioner under section 90 of the Act.
Legal Aid Complaint	means a complaint made to the Provider or the Secretary, Commissioner or the Ministry about the Provider (whether made by staff of the Ministry or a person outside of the Ministry). The complaint must relate to the Legal Aid Services or Specified Legal Services provided or which should have been provided to an aided person, but excludes a Request for Examination.
Legal Aid Matter	means a matter requiring legal representation in respect of which a grant of legal aid has been made under the Act or any previous legislation.
Legal Aid Services	has the same meaning as in section 4 of the Act.
Lead Provider	has the same meaning as in section 4 of the Act.
Ministry	means the Ministry of Justice and its successors.
Office Overheads	are as defined in the Disbursements section of the Grants Manual issued by the Ministry and updated from time to time (which can be found on its website). They are expenses which cannot be claimed by the Provider.
Parties	means the Secretary and the Provider.
Practice Standards	has the same meaning as in section 4 of the Act and are as documented and published on the Ministry's website (as amended from time to time).
Provider's Details	means the Provider's details set out in Schedule 1 or as otherwise notified

	by the Provider under clause 14.2.
Reassignment	means the process by which the Commissioner transfers the management of a Legal Aid Matter Assigned to one Lead Provider to another Lead Provider.
Request for Examination	means a request by an aided person for the Commissioner to examine the Cost of Services under a grant of legal aid to the person if he or she considers that a Lead Provider — <ul style="list-style-type: none"> (a) has claimed for more time than was actually spent providing services under the grant; or (b) has claimed for Disbursements that were not in fact used in providing these services.
Review Authority	means the Review Authority appointed under section 84 of the Act.
Roster	means a list maintained by the Ministry of Providers who have been approved by the Secretary to provide Specified Legal Services and whose applications to have their names placed on such a list have been approved by the Ministry for the purpose of scheduling and allocating the Specified Legal Services.
Secretary	means the Secretary for Justice and includes any person duly delegated by the Secretary to undertake his or her functions.
Secretary's Contract Manager	means the persons named in Schedule 1, as applicable, and as updated in accordance with clause 15.4 from time to time.
Specified Legal Services	has the same meaning as in section 4 of the Act.
Specified Period	means the period of time specified by the Ministry for the Provider to remedy any breach of this Contract. This is normally 10 Working Days unless the severity of the consequences of the breach continuing warrants, in the Ministry's reasonable opinion, a lesser period.
Supervised Provider	means a Provider who is required to be supervised by a Lead Provider in accordance with the Act, the Legal Services (Quality Assurance) Regulations 2011, the Approval, the Practice Standards and the Ministry's applicable policies and procedures.
Working Day	means any day other than a Saturday, Sunday or statutory public holiday.

Schedule 3 - Firm's Undertaking

Provider to Complete – required where providers are employees, partners or directors of law firms or incorporated law firms

Provider		Reference Schedule 1 c
Firm name (nominated)		Reference Schedule 1
Firm's No.		Reference Schedule 1
Authorised signatory of Firm's account		Reference Schedule 1

The Provider has nominated the **Firm's account** to be the account into which payments for Legal Aid Services or Specified Legal Services supplied by the Provider are to be paid by the Secretary for Justice ("the Secretary").

The authorised signatory of the **Firm's account** undertakes, on behalf of the **Firm**, the following:

1. The Firm will receive all payments from the Secretary for Legal Aid Services or Specified Legal Services supplied by the Provider by direct credit only. On receipt, the Firm will promptly pay all approved providers and disbursements incurred in the course of supplying Legal Services. The Firm will not make any other claim for payments to be made in any other manner (for example, by cheque).
2. The Firm will maintain and retain all information supporting the applications for legal aid submitted by the Provider for a minimum of seven years, except where files are transferred and Reassigned under clause 5 of this Contract, or the Provider has taken the relevant file to another firm.
3. If a Legal Aid Matter is Reassigned to another legal aid provider outside the Firm, the Firm will make such file available for immediate transfer to the provider to whom the Legal Aid Matter has been Reassigned.
4. At the written request of the Secretary, the Firm will make available for assessment, Examination or Audit the records of the Legal Aid Services or Specified Legal Services supplied by the Provider, except where files are transferred and Reassigned under clause 5 of this Contract, or the Provider has taken the relevant file to another firm. The Firm will ensure it can meet such requests for a minimum of seven years.
5. At the written request of the Secretary, the Firm will provide any other information the Secretary is entitled to assess, Examine or Audit under the Legal Services Act 2011.

Acceptance

In signing this Schedule, the authorised signatory acknowledges that they have read it and agree to be bound by it.

For and on behalf of the Firm :	Name:
_____	Position:
Signature	Date:
With full authority to bind the Firm with this Undertaking	

Appendix 2: Proposed Contract



Contract for Services

PROVIDER CONTRACT FOR THE PROVISION OF LEGAL AID SERVICES AND SPECIFIED LEGAL SERVICES

The Parties to this Contract

The Secretary for Justice

(the Secretary)

And

(the Provider)

The Secretary and the Provider are each a Party to the Contract and are together the Parties.

The Contract

Background

- A. The Secretary is required to establish, maintain and purchase high-quality legal services in accordance with the Legal Services Act 2011 (section 68(1)(a) of the Act).
- B. The Act requires the Secretary to approve providers before they can provide Legal Aid Services or Specified Legal Services (section 75(a) of the Act).
- C. The Secretary has approved the Provider to provide, from time to time, the Legal Aid Services or Specified Legal Services set out in Schedule 1.
- D. The Provider has agreed to provide the Legal Aid Services or Specified Legal Services set out in Schedule 1 on the terms set out in this Contract.

Contract documents

This Contract consists of:

- | | |
|--|-------------------|
| 1. These pages | Pages 1-2 |
| 2. Contract Details and Description of Services | Schedule 1 |
| 3. Terms and Conditions | Schedule 2 |
| 4. Firm's Undertaking | Schedule 3 |
| 5. Any other attachments described at Schedule 1 | |
| 6. The terms of any Accepted Assignments or Rostered Duties. | |

This Contract sets out the Parties' rights and obligations. Together the above documents form the Contract.



Acceptance

The date of execution of this Contract is the later of the two dates below.

In signing this Contract each Party acknowledges that they have read it and agree to be bound by it.

For and on behalf of the **Secretary:**

For and on behalf of the **Provider:**

Signature

Name: **Jacquelyn Shannon**

Position: **General Manager Legal Aid Services**

(Acting pursuant to a delegation from the Secretary under section 41 of the State Sector Act 1988)

Date:

Signature

Name:

Position:

Date:

Schedule 1

Contract and Approval Details

Start Date		Reference Schedule 2 clause 1
End Date	30 November 2019	Reference Schedule 2 clause 1

Provider to amend if incorrect

Contract Managers Reference Schedule 2 clause 13		Secretary's Contract Manager	Provider's Contract Manager
	Name:	Penny Hoy-Mack	
	Title / position:	Team Leader Provider Services, Legal Aid Services	
	Address:	Level 6, Justice Centre 19 Aitken Street SX 10125 Wellington	
	Phone:	04 496 6164	
	Email:	legalaidprovider@justice.govt.nz	

Provider to amend if incorrect

Provider Details Reference Schedule 2 clause 12		
	Provider Name	
	Name of firm/practice the Provider is <ul style="list-style-type: none"> principal/partner/sole practitioner of or employed by 	
	Provider's status within the firm/practice	
	Name of Employer (if different from above)	
	GST No. (if applicable)	
	Bank A/C No. (into which payments are to be paid)	
	Nominated Alternate/s (see clause 4.4)	



Approval Details

The Provider is approved by the Secretary to provide the following Services:

Legal Aid Services	Lead Provider			
	Litigation Experience Level			
	Type:	Approval/s:	Approval Period:	
			Start Date	End date
Condition/s	This approval is subject to the following condition/s:			

Legal Aid Services	Supervised Provider			
	Type:	Approval/s:	Approval Period:	
			Start Date	End date
Condition/s	<p>This approval is subject to the following condition/s:</p> <p>The Provider must comply with the supervision arrangements and service delivery systems in place at the time of approval. If there is any material change to the supervision arrangements or service delivery systems, the Provider must advise the Secretary of the change at least 10 Working Days prior to the change taking effect or, if the Provider does not have sufficient advance notice of the change, within 5 Working Days of becoming aware of it. Advice of the change will be considered as a new application for approval.</p> <p>Supervisor:</p>			

Specified Legal Services	Type	Approval/s	Approval Period:	
			Start date	End date
	Condition:			
Condition/s	This approval is subject to the following condition/s:			

Provider Number	Your provider identification number is . This number is used for correspondence purposes and assignment of cases. This number may also be required for provider authentication in the future as electronic business transactions are developed.
------------------------	---

Schedule 2

Terms and Conditions – Services

1. Consideration and operation of contract

- 1.1. In consideration for the Provider entering into this Contract and being bound by its provisions, the Secretary will also be bound by the provisions of the Contract.
- 1.2. This Contract will commence on the date of execution by both Parties. It will continue until **30 November 2019** (“expiry date”) unless earlier terminated in accordance with this Contract.
- 1.3. This Contract does not guarantee that the Provider will:
 - 1.3.1. receive any Assignments or be offered a minimum number of Assignments;
 - 1.3.2. be placed or remain on a Roster for Specified Legal Services.
(section 77(3)(e) of the Act)
- 1.4. This Contract does not give the Provider reason to expect that the Secretary will enter into another agreement with the Provider, or that another agreement (if any) will have similar terms to this Contract.
- 1.5. In reading this Contract:
 - 1.5.1. unless the context requires otherwise, references to:
 - 1.5.1.1. schedules are to the schedules of this contract;
 - 1.5.1.2. clauses are to the clauses of the schedule in which the reference occurs;
 - 1.5.2. references to the singular include the plural and vice versa;
 - 1.5.3. headings are inserted for convenience only and do not affect the interpretation of this Contract;
 - 1.5.4. references to provisions of the Act in brackets are inserted for convenience and do not affect the interpretation of this Contract, although the provisions of the Act will prevail in the event of any inconsistency with the Contract;
 - 1.5.5. “including” and similar words do not imply any limitation;
 - 1.5.6. a reference to any Act or Regulation, or any provision of an Act or Regulation, includes any replacement or equivalent Act, Regulation, or provision;
 - 1.5.7. a reference to policies generally, or to any particular policy, includes any related guidance, instructions, or procedures, however named, published on the Ministry’s website, and refers to those documents as amended, supplemented or replaced from time to time;
 - 1.5.8. where a word or expression is defined, other parts of speech and grammatical forms of that word or expression have corresponding meanings.



2. Provision of Legal Aid Services and Specified Legal Services

2.1. The Provider will:

- 2.1.1. only provide Legal Aid Services or Specified Legal Services that he or she is Approved to provide, as specified in Schedule 1;
- 2.1.2. comply with any Condition/s specified in Schedule 1 in providing those Services; and
- 2.1.3. undertake any Accepted Assignment in accordance with the terms of that Assignment and any Rostered Duty in accordance with the terms of that Duty.

2.2. If there is any conflict between Schedule 1 and the terms of an Accepted Assignment or Rostered Duty, the terms of Schedule 1 will prevail.

3. The Provider's general obligations

Quality of services and professional conduct

3.1. The Provider will provide any Legal Aid Services or Specified Legal Services in an effective and efficient manner.

3.2. The Provider will:

- 3.2.1. promote and maintain proper standards of professionalism in his or her public dealings with the Secretary, the Commissioner, and the Ministry; and
- 3.2.2. conduct dealings with the Secretary, the Commissioner, and the Ministry with integrity, respect, and courtesy.

3.3. In providing any Legal Aid Services or Specified Legal Services, the Provider will comply with:

- 3.3.1. the Act and any regulations made under the Act, and all other applicable statutory obligations;
- 3.3.2. relevant professional obligations, unless any provision of the Act states otherwise (section 81 of the Act);
- 3.3.3. the Practice Standards (the General Practice Standards, General Responsibilities to Clients, and the applicable practice standards for the relevant area of law);
- 3.3.4. policies relating to Legal Aid Services or Specified Legal Services issued by the Secretary and the Commissioner; and
- 3.3.5. the obligations under this Contract.

3.4. The obligations in subclauses 3.3.1 to 3.3.5 are listed in order of precedence. If there is any conflict between those obligations, the obligation which appears first takes precedence.

3.5. The Provider will, during the term of this contract, maintain the standards required for Approval in the Legal Services (Quality Assurance) Regulations 2011 for each Approval listed in Schedule 1, including the requirements relating to competence (regulation 6), service delivery systems (regulation 9), and being a fit and proper person (regulation 9C).

3.6. In accordance with section 105 of the Act, the Provider must not take any payments relating to Legal Aid Services or Specified Legal Services unless those payments are authorized by or under the Act, or are authorised by the Commissioner acting under the Act or any regulations made under the Act.



Provider to protect Commissioner's interests in relation to charges and Proceeds of Proceedings

3.7. The Provider must comply with his or her obligations under section 107 of the Act to:

- 3.7.1. take all reasonable steps to protect the interests of the Commissioner under a charge, including not doing or permitting anything that would or might effect the transfer of the property without the charge being satisfied; and
- 3.7.2. advise the Commissioner if he or she is aware that an aided person has, is, or is attempting, to avoid making payments to the Commissioner from Proceeds of Proceedings.

When the Provider must notify the Secretary

3.8. The Provider must notify the Secretary's Contract Manager in writing within 5 Working Days if:

- 3.8.1. the Provider's GST status changes;
- 3.8.2. the Provider's contact or other details, including any Alternate/s, in Schedule 1 change;
- 3.8.3. a Lawyers Standards Committee, the Legal Complaints Review Officer, or the Disciplinary Tribunal has made, upheld, or quashed a decision against the Provider. The notification must include the reasons and any sanctions imposed, varied or upheld (subject to any restrictions imposed on publication);
- 3.8.4. a judicial officer has imposed a sanction on the Provider. The notification must include the reason and the sanction imposed.
- 3.8.5. the Provider is charged with, or convicted of, an offence punishable by a term of imprisonment during the term of this Contract;
- 3.8.6. the Provider has been declared bankrupt;
- 3.8.7. the Provider's firm has been placed into liquidation.

3.9. If the Provider is a Supervised Provider, s/he must notify the Secretary's Contract Manager of any material change to the supervision arrangements or service delivery systems in accordance with the supervision condition.

When the Provider must notify the Commissioner

3.10. The Provider must notify the Commissioner in writing within 5 Working Days if the Provider becomes aware:

- 3.10.1. of any increase in the income or disposable capital of (or being treated as being of) an aided person they represent by an amount that could affect the aided person's eligibility for legal aid (section 25(1)(a) of the Act);
- 3.10.2. that the aided person's address or other contact details have changed (section 25(1)(b) of the Act);
- 3.10.3. that a court is considering making, or has made, an order relating to costs under section 45 of the Act;
- 3.10.4. of any matter that materially decreases the prospects of success of the aided person's matter at first instance, or the merits of any appeal.

3.11. Sub-clause 3.10.4 does not apply to defence of criminal charges at first instance.

Record-keeping obligations

- 3.12. Subject to clause 3.13 and in accordance with clauses 11.1 to 11.4 of the Practice Standards, the Provider must endeavour to maintain a coherent file of each Accepted Assignment and ensure that all relevant documents are kept on the file, either electronically or in hard copy, including:
- 3.12.1. all information supporting the Application for Assistance;
 - 3.12.2. all correspondence, including correspondence with the Secretary, the Commissioner, and the client;
 - 3.12.3. a copy of all court documents filed, served, or issued;
 - 3.12.4. file notes of all material telephone conversations and personal attendances;
 - 3.12.5. records of all court attendances;
 - 3.12.6. receipts and records of disbursements;
 - 3.12.7. records of all time spent on the Assignment by the Provider and any other providers or non-lawyers; and
 - 3.12.8. records of any Proceeds of Proceedings.
- 3.13. Research, draft documents and disclosure documents do not need to be retained on the file. Where any of these documents are not retained the Provider must keep an index of the documents.
- 3.14. The Provider must retain an electronic or hard copy of all files for Accepted Assignments for a minimum of seven (7) years from the date of closure or the last activity on the matter.

No lien

- 3.15. The Provider will not, in any way, claim a lien against the Secretary or the Commissioner over a file for Legal Aid Services or Specified Legal Services.

When the Provider must stop providing services

- 3.16. The Provider must immediately stop providing all Legal Aid Services or Specified Legal Services if the Provider is no longer entitled to practise as a lawyer under the Lawyers and Conveyancers Act 2006.
- 3.17. The Provider must stop providing Legal Aid Services or Specified Legal Services in respect of a particular Approval listed in Schedule 1:
- 3.17.1. immediately if the Provider is unable to comply with a Condition of the Approval, including if the Provider is a Supervised Provider but is no longer under the supervision of a Lead Provider (section 75(b) of the Act);
 - 3.17.2. on the date specified in any notice of suspension or cancellation of the Approval issued by the Secretary (section 75(a) of the Act).
- 3.18. Subclause 3.17.1 does not apply if the Secretary agrees to suspend or cancel the Condition.

Transfer of files

- 3.19. If the Commissioner reassigns one or more of the Provider's Assignments for any reason, the Provider will comply with any directions from the Commissioner for the transfer of the file/s, and will:
- 3.19.1. ensure that each file is up to date and complies with clause 3.12; and
 - 3.19.2. promptly transfer the file/s in a manner that ensures the interests of any legally aided persons are not prejudiced.

4. Delegation of work and arrangements when unable to provide services

Delegation of work

- 4.1. The Provider may only delegate work on an Accepted Assignment as authorised by, and in accordance with, the Delegation of Work policy in the Grants Manual.
- 4.2. Subject to any contrary or additional provisions in the Delegation of Work policy, if the Provider delegates work, the Provider:
 - 4.2.1. retains overall responsibility for the Assignment (unless and until it is reassigned) and any services supplied in respect of it;
 - 4.2.2. is responsible for appropriate supervision of any Supervised Provider that the Provider delegates work to;
 - 4.2.3. must seek prior approval from the Commissioner before delegating work to another Lead Provider, unless prior approval is not required under the policy;
 - 4.2.4. must ensure that any provider he or she delegates work to has the appropriate Approval/s to undertake such work and complies with any Condition/s of his or her Approval/s. This applies whether the delegated provider is to be paid or unpaid;
 - 4.2.5. must ensure that any work delegated to a non-lawyer is of a kind permitted by the policy, and must provide appropriate supervision.
- 4.3. Clauses 4.1 and 4.2 apply to an Accepted Assignment for Specified Legal Services as outlined in the policy for the relevant Service published on the Ministry's website.

Nomination of Alternate in event of unavailability

- 4.4. The Provider may, in accordance with the Alternate policy in the Grants Manual and with the agreement of the Commissioner, make standing arrangements with another Lead Provider ("Alternate") to undertake the work on their Accepted Assignments during periods when the Provider is unavailable to do so.
- 4.5. Subject to any contrary or additional provisions in the Alternate policy, if the Provider arranges for an Alternate to work on their Accepted Assignments:
 - 4.5.1. the Provider must ensure that the Alternate, at a minimum, holds the same Approval/s as the Provider in regard to any work the Alternate will undertake;
 - 4.5.2. the Provider retains overall responsibility for the Assignments and any services provided by the Alternate in respect of them;
 - 4.5.3. the Alternate may not accept any new Assignments on behalf of the Provider;
 - 4.5.4. the Alternate may, subject to any restrictions imposed by the Commissioner or the Provider, do anything relating to an Accepted Assignment that the Provider could do, except submit claims for payment to the Secretary under section 97 of the Act.

Transfer and termination of Accepted Assignments

- 4.6. The Provider may only transfer or terminate an Accepted Assignment to provide Legal Aid Services in accordance with the Reassignment and Termination policy in the Grants Manual and with the Commissioner's consent.
- 4.7. The Provider may only transfer or terminate an Accepted Assignment to provide Specified Legal Services in accordance with the relevant policy.



- 4.8. In clauses 4.6 and 4.7, the term transfer includes any transfer of the substantive management of an accepted assignment to another provider, but does not include delegation of work in accordance with clauses 4.1 – 4.3 or work undertaken by the Provider's Alternate in accordance with clauses 4.4 and 4.5.

Replacements for Rostered Duties or unavailability to provide Specified Legal Services

- 4.9. If a Provider is unable to undertake a Rostered Duty, or is otherwise unavailable to provide a Specified Legal Service, he or she must comply with the procedure in the relevant policy, including any requirements to inform the Secretary and find a replacement.

5. Secretary's obligations

- 5.1. The Secretary will, once the Secretary has all relevant information that has been requested from the Provider, promptly:
- 5.1.1. make decisions relating to Approvals;
 - 5.1.2. objectively and fairly deal with Legal Aid Complaints in accordance with clause 9 of this Contract, the Complaints Management policy in the Provider Manual, and the principles of natural justice;
 - 5.1.3. reply to correspondence about this Contract and answer any question raised by the Provider about an action taken or decision made by the Secretary under this Contract;
 - 5.1.4. refer claims for payment received from the Provider (if the Provider is a Lead Provider) to the Commissioner (section 99(1) of the Act); and
 - 5.1.5. pay all claims approved by the Commissioner for payment (section 100 of the Act), provided the Secretary has not placed a hold on payments under section 101(2)(a), suspended payments under section 92(4), or made a deduction under section 107(4) of the Act.
- 5.2. The Secretary will give reasonable notice to the Provider of intended or impending changes to relevant policies.

6. Payment

Entitlement to payment by Secretary

- 6.1. The Provider is only entitled to payment by the Secretary if:
- 6.1.1. the Provider is (or was) the Lead Provider for an Accepted Assignment (sections 22 and 97(1) of the Act) or has completed a Rostered Duty (including as a replacement for another provider); and
 - 6.1.2. the Commissioner has approved payment (section 99 of the Act).
- 6.2. The Provider is not entitled to payment by the Secretary if, and to the extent that:
- 6.2.1. the Commissioner has deferred or declined the payment under section 99(2) of the Act;
 - 6.2.2. the Commissioner has made deductions under section 107(4) of the Act;
 - 6.2.3. the Secretary has placed a hold on payments under section 101(2)(a) of the Act; or
 - 6.2.4. the Secretary has suspended payments under section 92(4) of the Act.



Rates of payment

- 6.3. An Assignment for Legal Aid Services will be paid at the rate specified in the Assignment, including any amendments. The rate may be set:
 - 6.3.1. by reference to an hourly rate for legal aid providers set by the Secretary and published on the Ministry's website;
 - 6.3.2. by application of a fixed fee set by the Commissioner and published on the Ministry's website; or
 - 6.3.3. as otherwise specified in the Assignment.
- 6.4. The rate of payment for Specified Legal Services is that specified in the policy for the relevant Service published on the Ministry's website.
- 6.5. The rates of payment published on the Ministry's website may be varied from time to time.

Disbursements

- 6.6. The Provider is responsible for paying all Disbursements for Legal Aid Services or Specified Legal Services (unless otherwise authorised by the Secretary) but may claim for reimbursement of those costs under section 97 of the Act (section 106 of the Act).
- 6.7. Disbursements that will be reimbursed for Legal Aid Services, and the rate at which they will be reimbursed, are determined by the Secretary and specified in the Disbursements Policy in the Grants Manual, which may be varied from time to time.
- 6.8. Disbursements that will be reimbursed for Specified Legal Services, and the rate at which they will be reimbursed, are determined by the Secretary and specified in the policy for the relevant Service published on the Ministry's website, which may be varied from time to time.
- 6.9. The Secretary is not liable to pay for the office overheads of the Provider. Office overheads are the general costs associated with running a law practice, such as general stationary and phone rental, that cannot be attributed to a particular Accepted Assignment.

Claims and Method of Payment

- 6.10. All claims for payment for Legal Aid Services or Specified Legal Services submitted by the Provider (being a Lead Provider) must:
 - 6.10.1. be accurate;
 - 6.10.2. be made in the manner prescribed by the Secretary (section 97(1) of the Act)
 - 6.10.3. comply with section 97 of the Act and regulation 19 of the Legal Services Regulations 2011; and
 - 6.10.4. comply with any other requirements of the Act, regulations made under the Act, and any applicable policies.
- 6.11. All claims for Disbursements submitted by the Provider must be accurate, directly attributable to the conduct of the Legal Aid Service or Specified Legal Service, actual and reasonable.
- 6.12. The Secretary will pay the Provider by direct credit, subject to a completed Schedule 3 undertaking (where applicable).

Responsibility for taxes, levies and other charges

- 6.13. The Provider is solely liable and responsible for all taxes, levies, premiums and any other charges imposed on the Provider in respect of the Cost of Services under this Contract or other fees and Disbursements incurred by the Provider. The Provider will file all necessary returns for such taxes, levies and other charges with the appropriate authority.
- 6.14. The Secretary will pay the Provider the GST (if any) claimed in respect of the Legal Aid Services or Specified Legal Services supplied by the Provider, subject to a completed Schedule 3 undertaking (where applicable).

Firm's undertakings and arrangements if the Provider leaves a firm

- 6.15. If the Provider is, or becomes, an employee, partner, or director of a law firm or incorporated law firm, the Provider must ensure that an authorised signatory of the firm's bank account signs the undertaking contained in Schedule 3.
- 6.16. If clause 6.15 applies, the Provider must not supply, and the Secretary is not liable to pay for, any Legal Aid Services or Specified Legal Services until the signed undertaking is received by the Secretary's Contract Manager.
- 6.17. Any payments for Legal Aid Services or Specified Legal Services supplied while the Provider was employed by, or a partner or director of, a firm will be paid to that firm's account as specified in Schedule 3 unless the Secretary and the Provider mutually agree to another arrangement.
- 6.18. If the Provider leaves a firm, the Provider must notify the Secretary of the date that they cease to be employed by that firm and nominate a new account for payment. This will require a new undertaking to be provided in accordance with clause 6.15 if the Provider has moved to another firm. Any Legal Aid Services or Specified Legal Services supplied after that date will be paid to the new nominated account.

Overpayments and underpayments

- 6.19. If the Secretary overpays the Provider for Legal Aid Services or Specified Legal Services, the Secretary must notify the Provider of the overpayment and may:
- 6.19.1. require repayment of the amount of the overpayment from the Provider; or
 - 6.19.2. deduct the amount of the overpayment from a later payment due to the Provider.
- 6.20. If the Secretary notifies the Provider under clause 6.19.1 and requires repayment of the amount of the overpayment, the Provider will pay the Secretary the amount of the overpayment within 20 Working Days after receipt of the notice.
- 6.21. If the Secretary underpays the Provider, the Secretary will pay the Provider the shortfall within 20 Working Days of becoming aware of the mistake.

Secretary's failure to pay

- 6.22. If the Secretary fails to pay any claim made by the Provider and:
- 6.22.1. the claim is due and properly payable in accordance with this clause 6;
 - 6.22.2. the payment is not made within 20 Working Days of the date the Commissioner approves payment; and
 - 6.22.3. the claim is not the subject of a good faith dispute between the Parties;
- then the Provider will notify the Secretary of the default and the Secretary will remedy the default within 10 Working Days of such notice.

7. Quality Assurance Checks, Audits, and Examinations

Quality Assurance Check

- 7.1. The Secretary may carry out a Quality Assurance Check of the Provider at any time under section 88 of the Act to ensure that services are delivered in an efficient and effective manner.
- 7.2. The Secretary will undertake any Quality Assurance Check in accordance with the Quality Assurance Check policy in the Provider Manual.
- 7.3. The Provider will comply with any reasonable request by the Secretary for information relevant to a Quality Assurance Check.

Audit

- 7.4. The Secretary may Audit the Provider at any time under section 91 of the Act.
- 7.5. The Secretary will undertake any Audit in accordance with the Audit policy in the Provider Manual.
- 7.6. The Provider must, in accordance with section 92 of the Act, provide all documentation and other information requested by the auditor. (Note that failure to comply with a request under section 92 may constitute an offence under section 113 of the Act).

Outcome of Audit or Quality Assurance Check

- 7.7. The results of a completed Audit or Quality Assurance Check will be reviewed by the Secretary. The Secretary will release the findings to the Provider.
- 7.8. If, as the result of an Audit or Quality Assurance Check, the Secretary has reasonable grounds to believe that the Provider is in breach of the Contract, the Secretary may take action under clause 8.

Examination of claims made by Provider

- 7.9. The Commissioner may examine a claim, or part of a claim, for payment by the Provider under section 89 of the Act.
- 7.10. The Provider must, in accordance with section 92 of the Act, provide all documentation and other information requested by the person undertaking the examination. (Note that failure to comply with a request under section 92 may constitute an offence under section 113 of the Act).
- 7.11. If, as the result of an Examination, the Secretary has reasonable grounds to believe that the Provider is in breach of the Contract, the Secretary may take action under clause 8.

8. Breach of contract

- 8.1. The Provider is in breach of this Contract if, in the Secretary's reasonable opinion, the Provider has not taken all reasonable steps to comply with any obligation under this Contract.
- 8.2. If the Secretary has reasonable grounds to believe that the Provider is in breach of the Contract, the Secretary may, depending on the circumstances, including the nature and seriousness of the breach:
 - 8.2.1. issue the Provider with a default notice;
 - 8.2.2. consider the matter as a Legal Aid Complaint under clause 9; or
 - 8.2.3. consider cancellation or variation of the Provider's Approvals under clause 10.

Default notice

- 8.3. A default notice issued under subclause 8.2.1 must:
- 8.3.1. specify the nature and seriousness of the breach; and
 - 8.3.2. if, in the Secretary's opinion, the breach is capable of being remedied and the Secretary requires the Provider to remedy the breach, specify:
 - 8.3.2.1. directions to remedy the breach; and
 - 8.3.2.2. the period within which the breach must be remedied, being a reasonable period taking into account the nature of the breach.
- 8.4. The Provider may seek a review of any first instance decision of the Secretary to issue a default notice. The Provider must notify the Secretary that the Provider requests a review in writing within 10 Working Days of receiving the default notice. The Secretary will notify the Provider of the outcome of a review, with reasons. The default notice remains in force pending the outcome of any review, but the Provider is not, in the absence of a specific direction from the Secretary, required to comply with any directions to remedy the breach in the interim.
- 8.5. If subclause 8.3.2 applies and the Provider fails to remedy the breach within the period specified in the default notice, the Secretary may:
- 8.5.1. give the Provider further directions to remedy the breach, with which the Provider must promptly comply;
 - 8.5.2. remedy the breach and recover the reasonable costs of doing so from the Provider;
 - 8.5.3. consider the matter as a Legal Aid Complaint under clause 9; or
 - 8.5.4. consider cancellation or variation of the provider's approvals under clause 10.

Effect of breach clause on other remedies

- 8.6. The Secretary may choose to utilize or not to utilize any remedy under this clause 8 without prejudice to, or waiver of, any other rights or remedies the Secretary may have under this Contract, the Act, or otherwise at law.

9. Legal Aid Complaints

- 9.1. The following process will apply to consideration of any Legal Aid Complaint, subject to any contrary or additional provisions in the Complaints Management policy in the Provider Manual:
- 9.1.1. The Secretary will notify the Provider of any Legal Aid Complaint received by the Secretary as soon as reasonably practicable, unless the Secretary does not intend to take the Complaint further;
 - 9.1.2. The Provider will, if s/he receives a Legal Aid Complaint directly and cannot resolve it with the complainant within 10 Working Days, provide details and a copy of the Complaint to the Secretary within 15 Working Days of the date of receiving the Complaint;
 - 9.1.3. The Secretary may ask questions, or seek further information, about a Complaint from the Provider. The Secretary must specify the timeframe for the Provider's response, which must be at least 10 Working Days from the date of the request. The Provider must respond within the timeframe or any extension agreed by the Secretary;
 - 9.1.4. The Secretary will give the Provider the opportunity to make submissions on the Complaint and will give fair and objective consideration to such submissions;

- 9.1.5. If the Secretary substantiates a Complaint, the Secretary may take any action the Secretary considers appropriate under the Act, the Complaints Management policy, or this Contract including:
- 9.1.5.1. issuing a notice;
 - 9.1.5.2. recommending to the Commissioner that a particular Accepted Assignment be reassigned to another provider;
 - 9.1.5.3. recommending to the Commissioner that the Provider be removed from a Rotational Assignment List;
 - 9.1.5.4. removing the Provider from a Roster;
 - 9.1.5.5. requiring repayment of money paid to the Provider;
 - 9.1.5.6. initiating a Quality Assurance Check or Audit;
 - 9.1.5.7. considering cancellation or variation of the Provider's Approvals under clause 10;
 - 9.1.5.8. referring the Provider to the New Zealand Law Society Complaints Service.
- 9.1.6. The Secretary will notify the Provider of the outcome, with reasons, of any Complaint as soon as reasonably practicable;
- 9.1.7. The Provider may seek a review of any first instance decision of the Secretary on a Complaint. The Provider must notify the Secretary that the Provider requests a review in writing within 10 Working Days of being notified of the outcome of a Complaint. The Secretary will notify the Provider of the outcome of a review, with reasons. The Secretary's decision remains in force pending the outcome of any review.

10. Cancellation, variation, and expiry of Approvals

Process

- 10.1. Clause 10.2 applies if the Secretary:
- 10.1.1. has reason to believe that one of the grounds for cancelling the Provider's Approval/s under section 103 of the Act applies; or
 - 10.1.2. refers the Provider to the Performance Review Committee.
- 10.2. The following process will apply, subject to any contrary or additional provisions in the Act or the Cancellation of Approvals policy in the Provider Manual:
- 10.2.1. The Secretary will notify the Provider as soon as reasonably practicable, if the Secretary:
 - 10.2.1.1. has reason to believe that one of the grounds for cancelling the Provider's Approval/s under section 103 of the Act applies; or
 - 10.2.1.2. refers the Provider to the Performance Review Committee, and of any interim restrictions that will apply under section 101 of the Act.
 - 10.2.2. The Secretary may ask questions or seek further information from the Provider. The Secretary must specify the timeframe for the Provider's response, which must be at least 10 Working Days from the date of the request. The Provider must respond within the timeframe or any extension agreed by the Secretary;
 - 10.2.3. The Provider will comply with any request for information from the Performance Review Committee;

- 10.2.4. The Secretary will give the Provider the opportunity to make submissions (unless the Performance Review Committee has given the Provider the opportunity to make submissions) and will give fair and objective consideration to such submissions;
- 10.2.5. The Secretary will cancel all of the Provider's Approvals if any of the circumstances outlined in section 103(1) of the Act apply;
- 10.2.6. The Secretary may, after considering the Performance Review Committee's advice on any matter referred to it:
 - 10.2.6.1. take any of the actions in section 102 of the Act, including modifying or cancelling the Provider's Approval/s, requiring the Provider to be supervised by another provider, or barring the Provider from applying for Approval for a period between 3 months and 2 years;
 - 10.2.6.2. take any other action the Secretary considers appropriate under this Contract or the Cancellation of Approvals policy in the Provider Manual, including any of the actions listed in clause 9.1.5;
- 10.2.7. The Secretary will notify the Provider of the Secretary's decision, with reasons, as soon as reasonably practicable (section 103(3) of the Act);
- 10.2.8. If the Secretary cancels one or more of the Provider's Approvals, the Provider must, in relation to the cancelled Approval/s:
 - 10.2.8.1. cease providing the Legal Aid Services or Specified Legal Services from the date the cancellation takes effect (section 75(a) of the Act);
 - 10.2.8.2. transfer the relevant files in accordance with clause 3.19;
 - 10.2.8.3. advise the Secretary of any files with securities requiring registration that are yet to be registered; and
 - 10.2.8.4. forward any client repayments or Proceeds of Proceedings outstanding to the Secretary;
- 10.2.9. Under section 82 of the Act, the Provider may apply to the Review Authority for a review of any decision of the Secretary to impose interim restrictions under section 101, impose a sanction under section 102, or cancel the Provider's Approvals under section 103 of the Act. The Provider must lodge any application for review with the Review Authority within 20 Working Days of being notified of the Secretary's decision. The Secretary's decision remains in force pending the outcome of any review.

Effect of cancellation, variation, or expiry of Approvals

- 10.3. If the Secretary cancels any of the Provider's Approvals, or any of the Provider's Approvals expire, the person ceases to be Approved to provide the relevant service and the Secretary is not obliged to pay for any services of that kind provided after the date of cancellation or expiry (section 103(2) of the Act).
- 10.4. If:
 - 10.4.1. the Secretary cancels all of the Provider's Approvals under section 102 or 103 of the Act;
 - 10.4.2. all of the Provider's Approvals expire; or
 - 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 their Approvals,

the Secretary will provide written notice to the Provider that the Contract is terminated and the Contract terminates on the date specified in the written notice.

- 10.5. If the Secretary has modified one or more of the Provider's Approvals under section 102 of the Act (including requiring the Provider to be supervised by another Provider):
 - 10.5.1. the Provider must immediately comply with the modified Approvals;
 - 10.5.2. this Contract must, from the date of the Secretary's decision, be read as if Schedule 1 had been varied accordingly, regardless of whether the Provider has been provided with a copy of the varied Schedule 1.

11. Disputes

Application of this clause

- 11.1. Unless otherwise agreed by the Parties, clauses 11.3 to 11.6 do not apply:
 - 11.1.1. where a right to apply for a review or appeal of a decision made by the Secretary under this Contract or the Act exists; or
 - 11.1.2. to any Audit or Quality Assurance Check.
- 11.2. Clauses 11.3 to 11.6 do not apply to any decision or function of the Commissioner. For the processes applying to disputes relating to decisions of the Commissioner see the Act and the Grants Manual.

Process for dealing with disputes

- 11.3. Subject to clause 11.1, the Parties will take all reasonable steps to resolve promptly and in good faith any dispute that may arise in connection with this Contract.
- 11.4. The following process applies to disputes:
 - 11.4.1. The Party claiming a dispute will give written notice detailing the nature of the dispute. Both Parties will then try their best to settle the dispute by negotiation.
 - 11.4.2. If the Parties have not resolved the dispute within 10 Working Days of the notice, the Parties may participate in mediation with a mutually accepted mediator. If they cannot agree on a mediator within 20 Working Days of the notice, the Chairperson of LEADR New Zealand Incorporated will appoint the mediator.
- 11.5. Each Party agrees to pay its own costs of mediation under clause 11.4.2.
- 11.6. The Parties agree to continue to perform their respective obligations under this Contract pending the resolution of any dispute.

12. Provider's details

- 12.1. The Provider's Details are recorded in Schedule 1 as they are at the date of signing this Contract.
- 12.2. The Provider must notify the Secretary's Contract Manager of any change to the Provider's Details in accordance with clause 3.8.

13. The Secretary's contact details

Matters relating to this Contract

- 13.1. The Provider must address all correspondence regarding this Contract to the Secretary's Contract Manager.



- 13.2. The Provider must give all notices required to be given under this Contract to the Secretary's Contract Manager.
- 13.3. The Contract Manager's details may be updated from time to time by publication on the Ministry's website. The format and delivery requirements of clause 14 do not apply to this clause.

Matters relating to Accepted Assignments or Rostered Duties

- 13.4. Any queries or correspondence relating to Accepted Assignments should be addressed to the relevant grants officer (for Legal Aid Services) or person specified in the relevant policy (for Specified Legal Services).
- 13.5. Any queries or correspondence relating to a Roster or to Rostered Duties should be addressed to person specified in the relevant policy.

14. Format and delivery of notices and communications

- 14.1. The Parties will communicate with each other and provide any notices in relation to this Contract or the Act electronically, in accordance with the Electronic Transactions Act 2002. Specifically (but without limitation), the Secretary and the Provider:
 - 14.1.1. will send and receive all notices and communications with the other that are required by this Contract and the Act by email;
 - 14.1.2. agree that any document required by this Contract or the Act to be signed by one or both Parties, will be signed using an "electronic signature" as defined by the Electronic Transactions Act 2002;
 - 14.1.3. may choose the particular form of electronic signature for their own use, which may, without limitation, be a typed name or scanned manuscript signature.
- 14.2. Clause 14.1 applies, with any necessary modifications, to any communication from the Provider to the Commissioner.
- 14.3. The Provider will use the Provider's email address nominated in Schedule 1 to send and receive email.

15. The relationship between the Parties

- 15.1. Nothing in this Contract constitutes a legal relationship between the Parties of partnership, joint venture, agency, or employment. The Provider is responsible for his or her own salary, wages, holiday or redundancy payments, and for such payments to his or her personnel. This includes any GST, corporate, personal and withholding taxes, ACC premiums or other levies attributable to the provision of the Legal Aid Services or Specified Legal Services.
- 15.2. The Provider is responsible for payment of any fees, expenses and Disbursements claimed by any Supervised Providers who have provided Legal Aid Services or Specified Legal Services on behalf of the Provider under an Accepted Assignment or from any other subcontractors engaged by the Provider.
- 15.3. Both Parties will act in good faith in the exercise of their rights and the performance of their obligations under this Contract.
- 15.4. Neither Party has authority to bind or represent the other Party in any way or for any purpose.
- 15.5. The Secretary and the Provider will, at all times, conduct dealings with integrity, respect, and courtesy.

16. Entire agreement

- 16.1. This Contract records everything agreed between the Parties relating to the provision of Legal Aid Services or Specified Legal Services by the Provider. It replaces any previous agreements and communications between the Parties relating to the provision of Legal Aid Services or Specified Legal Services by the Provider, whether verbal or in writing.

17. Variations to the Contract

- 17.1. The Secretary has the right to unilaterally vary this Contract in accordance with this clause 17 by giving written notice to the Provider. Otherwise, the provisions of this Contract may only be varied by mutual agreement, in writing, and signed by the authorised representatives of the Parties.

Variations to the Contract by the Secretary

- 17.2. The Secretary may unilaterally amend or delete any provisions of this Contract to achieve consistency with a relevant change in the Act, Regulations, government policy or a change in appropriation. Any such amendment or deletion must be consistent with the Act.
- 17.3. If the Secretary intends to vary the Contract under clause 17.2, the Secretary will notify the Provider in writing of the intended variation and the date it takes effect.
- 17.4. If the Provider's Approvals or the conditions on the Provider's Approvals change, the Secretary may unilaterally vary Schedule 1 from time to time to reflect the changes.
- 17.5. If the Secretary varies the Contract under clause 17.4, the Secretary will issue the Provider with a revised Schedule 1. The revised Schedule will replace the existing Schedule 1 from the date of issue by the Secretary and will form part of this Contract from that date.

18. Transfer of rights under this Contract

- 18.1. Neither Party has the right to assign or transfer, in whole or in part, its rights, obligations or benefits under this Contract to any third party.

19. Liability

- 19.1. The Secretary will not be liable to any third party as a direct or indirect result of anything done or omitted to be done by the Provider in connection with providing Legal Aid Services or Specified Legal Services.

20. Authorisation for collection and disclosure of personal information

- 20.1. The Provider authorises the Secretary to collect personal information about the Provider from the New Zealand Law Society or any other organisation responsible for regulating the Provider if this is necessary for the Secretary to meet his or her obligations under the Act or any other legislation. The Provider also authorises the Secretary to disclose such personal information to these organisations, if necessary.
- 20.2. The Secretary will comply with the Privacy Act 1993 in collecting, storing and disclosing the Provider's personal information under clause 20.1.
- 20.3. The Secretary is subject to the Official Information Act 1982, including in relation to personal information about the Provider.

21. Force majeure

- 21.1. Neither Party will be liable for any act, omission or failure to fulfil its obligations under this Contract if such act, omission or failure arises from any cause reasonably beyond its control. The Party unable to fulfill its obligations will immediately notify the other in writing of the reasons for its failure to fulfill its obligations; any damage or loss caused (or likely to be caused); and any proposed remedial action.
- 21.2. The Parties will seek to reach agreement on the extent of any such damage or loss and any remedial action to be taken.

22. Privity of contract

- 22.1. No third party may enforce any of the provisions of this Contract. The provisions of section 4 of the Contracts (Privity) Act 1982 do not apply to this Contract.

23. Governing law

- 23.1. This Contract is governed by New Zealand law.

24. Severance

- 24.1. If any part or provision of this Contract is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of the Contract will be binding on the Parties.

25. Continuing provisions

- 25.1. The clauses in this Contract that are capable of surviving the expiry or termination of this Contract will continue beyond the termination or expiry of this Contract.

26. Definitions

- 26.1. When used in this Contract, the following words in bold have the meaning beside them, unless the text clearly states that a different meaning is intended:

Accepted Assignment	means an assignment to the Provider as a Lead Provider and in respect of which the Provider has not notified the Commissioner (or the Secretary, if applicable) that he or she declines or withdraws from the Assignment.
Act	means the Legal Services Act 2011.
Application for Assistance	means an application for a grant of legal aid or for the provision of any Specified Legal Services that require an application to be made.
Approval	means the instrument signed by the Secretary which specifies that a provider is approved under the Act to provide a particular type of Legal Aid Services or a particular Specified Legal Service, as may be amended by the Secretary from time to time. A provider may have multiple Approvals.
Assignment	means: <ul style="list-style-type: none"> (a) a written decision by the Commissioner to allocate the provision of Legal Aid Services to a provider as a Lead Provider and which specifies: <ul style="list-style-type: none"> – the name and contact details of the legally aided person; – the details of the grant of legal aid to that person (including the maximum amount of the grant); – the basis for payment of the Provider's fees; and

	<ul style="list-style-type: none"> – the conditions attaching to the grant of legal aid to the legally aided person; <p>(b) a request by a client for Specified Legal Services (other than as part of a Rostered Duty or as allocated pursuant to a Roster) that a provider is authorized to accept directly on application from the client and has accepted.</p>
Audit	means an audit of the Provider undertaken on behalf of the Secretary under section 91 of the Act.
Commissioner	means the Legal Services Commissioner appointed under section 70 of the Act and includes any person duly delegated by the Commissioner to undertake his or her functions.
Conditions of Approval	means the conditions (if any) imposed by the Secretary under section 77(2) of the Act on the Approvals given to the Provider.
Contract	means this Contract including all the attached Schedules, all Accepted Assignments and Rostered Duties, and any documents referred to in this Contract (whether attached or published on the Ministry's website), and includes all variations to it and any such documents.
Cost of Services	has the same meaning as in section 4 of the Act.
Disbursements	means costs, other than professional fees of a Lead Provider, incurred in relation to the provision of Legal Aid Services or Specified Legal Services, that are specified in the Disbursements policy in the Grants Manual or in the policy for a Specified Legal Service.
Examination	means an Examination carried out by or on behalf of the Commissioner under section 89 of the Act.
Grants Manual	means the Legal Aid Services Grants Handbook issued by the Commissioner and updated from time to time (which can be found on the Ministry's website)
Legal Aid Complaint	means a complaint made to the Provider or the Secretary, Commissioner or Ministry about the Provider (whether made by staff of the Ministry or a person outside of the Ministry). The complaint must relate to the Legal Aid Services or Specified Legal Services provided or which should have been provided to an aided person, but excludes a Request for Examination.
Legal Aid Services	has the same meaning as in section 4 of the Act.
Lead Provider	means the provider who is allocated (paragraph (a)) or accepts (paragraph (b)) an assignment under the definition of Assignment.
Ministry	means the Ministry of Justice and its successors.
Parties	means the Secretary and the Provider.
Practice Standards	has the same meaning as in section 4 of the Act and are as documented and published on the Ministry's website (as amended from time to time).
Proceeds of Proceedings	has the same meaning as in section 4 of the Act.
Provider's Details	means the Provider's details set out in Schedule 1 or as otherwise notified by the Provider under clause 12.2.
Provider Manual	means the Legal Aid Provider Manual issued by the Secretary and updated from time to time (which can be found on the Ministry's website)
Quality Assurance	means a Quality Assurance Check of the Provider carried out by the Secretary under section 88 of the Act.

Check	
Reassignment	means the process by which the Commissioner transfers the management of an Accepted Assignment from one Lead Provider to another Lead Provider.
Request for Examination	means a request for examination under section 90 of the Act.
Review Authority	means the Review Authority appointed under section 84 of the Act.
Roster	means a list, maintained by the Secretary, of providers approved to provide a particular Specified Legal Service in a particular location and who have applied for and been granted a place on the list for the purpose of scheduling and allocating the Specified Legal Services.
Rostered Duty	means the period on a specified date that the Provider is scheduled to be available to provide Specified Legal Services and in respect of which the Provider has not notified the Secretary that he or she is unavailable or arranged a replacement (depending on the requirements of the policy for the relevant Service)..
Rotational Assignment List	means a list, maintained by the Commissioner, for the purposes of making assignments to providers on a rotational basis.
Secretary	means the Secretary for Justice and includes any person duly delegated by the Secretary to undertake his or her functions.
Secretary's Contract Manager	means the Secretary's Contract Manager named in Schedule 1 or any other person notified in accordance with clause 13.3 from time to time.
Specified Legal Services	has the same meaning as in section 4 of the Act.
Supervised Provider	means a provider whose Approval is subject to a condition that s/he is supervised by a Lead Provider.
Working Day	means any day other than a Saturday, Sunday or statutory public holiday.

Schedule 3 - Firm's Undertaking

Provider to Complete – required where providers are employees, partners or directors of law firms or incorporated law firms

Provider		Reference Schedule 1 c
Firm name (nominated)		Reference Schedule 1
Firm's No.		Reference Schedule 1
Authorised signatory of Firm's account		Reference Schedule 1

The Provider has nominated the **Firm's account** to be the account into which payments for Legal Aid Services or Specified Legal Services provided by the Provider are to be paid by the Secretary.

The authorised signatory of the **Firm's account** undertakes, on behalf of the **Firm**, the following:

1. The Firm will receive all payments from the Secretary for Legal Aid Services and Specified Legal Services provided by the Provider by direct credit only. On receipt, the Firm will promptly pay all approved providers and disbursements incurred in the course of supplying the Services. The Firm will not make any claim for payment in any other manner (for example, by cheque).
2. The Firm will maintain and retain all files and information relating to the Provider's Accepted Assignments in accordance with clauses 3.11 to 3.13 of this Contract for a period of at least seven years from the date of closure or the last activity on the matter. This does not apply to Accepted Assignments that are Reassigned under clause 4.6 or 4.7 of this Contract, or to any files or information that the Provider has taken with them.
3. If an Accepted Assignment is Reassigned to another provider outside the Firm, the Firm will comply with any directions from the Commissioner for the transfer of the file/s, and will:
 - 3.1 ensure that the file is up to date and complies with clause 3.12 of Schedule 2; and
 - 3.2 promptly transfer the file/s in a manner that ensures the interests of any legally aided persons are not prejudiced.
4. At the written request of the Secretary, the Firm will make available for assessment, Examination or Audit the files and information in clause 2 and any other information the Secretary is entitled to assess, Examine or Audit under the Act.
5. The Firm will take all reasonable steps to protect the interests of the Commissioner under a charge, including not doing or permitting anything that would or might effect the transfer of the property without the charge being satisfied.
6. The Firm will advise the Commissioner if it is aware that an aided person has, is, or is attempting, to avoid making payments to the Commissioner from the Proceeds of Proceedings.

Acceptance

In signing this Schedule, the authorised signatory acknowledges that they have read it and agree to be bound by it.

For and on behalf of the Firm : _____ Signature With full authority to bind the Firm with this Undertaking	Name: Position: Date:
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Appendix 3: Summary of proposed changes to Contract

Appendix 3 Summary of proposed changes to Provider Contract (June 2016)

Schedule 2

1. Consideration and operation of contract

Changes	
<ul style="list-style-type: none"> • Clause 1.1 amended to reflect that the Secretary cannot offer (assign) Legal Aid Services. • Minor editorial changes • 'Interpretation' section relocated from page 1 of the Contract to clause 1.5. Existing provisions reworded to be clearer and more tailored to the rest of the contract. New provision to clarify role of bracketed cross references to the Act. 	
Clause	Previous Clause
<p>1. Consideration and operation of contract</p> <p>1.1. In consideration for the Provider entering into this Contract and being bound by its provisions, the Secretary will also be bound by the provisions of the Contract.</p> <p>1.2. This Contract will commence on the date of execution by both Parties. It will continue until 30 November 2019 ("expiry date") unless earlier terminated in accordance with this Contract.</p> <p>1.3. This Contract does not guarantee that the Provider will:</p> <p>1.3.1. receive any Assignments or be offered a minimum number of Assignments;</p> <p>1.3.2. be placed or remain on a Roster for Specified Legal Services. (section 77(3)(e) of the Act)</p> <p>1.4. This Contract does not give the Provider reason to expect that the Secretary will enter into another agreement with the Provider, or that another agreement (if any) will have similar terms to this Contract.</p> <p>1.5. In reading this Contract:</p> <p>1.5.1. unless the context requires otherwise, references to:</p> <p>1.5.1.1. schedules are to the schedules of this contract;</p> <p>1.5.1.2. clauses are to the clauses of the schedule in which the reference occurs;</p>	<p>1. Consideration and Operation of Contract</p> <p>1.1. In consideration for the Provider entering this Contract and being bound by its provisions, the Secretary will also be bound by the provisions of the Contract and may offer the Provider Legal Aid Services or Specified Legal Services in accordance with this Contract and the Act.</p> <p>1.2. This Contract will commence on the date of execution by both parties. It will continue until 30 November 2016 ("expiry date") unless earlier terminated in accordance with this Contract.</p> <p>1.3. ...</p> <p>1.4. In this Contract, "the Provider" who supplies Legal Aid Services or Specified Legal Services can mean either a Lead Provider or a Supervised Provider, depending on the context.</p> <p>1.5. This Contract does not:</p> <p>1.5.1. guarantee that the Provider will be Assigned any Legal Aid Matters or be offered a minimum number of Assignments; or</p> <p>1.5.2. guarantee that the Provider's name will be placed on a roster.</p> <p>1.6. This Contract does not give the Provider reason to expect that the Secretary will enter into another agreement with the Provider, or that another agreement (if any) will have similar terms to this Contract.</p>

<div>1.5.2. references to the singular include the plural and vice versa;</div> <div>1.5.3. headings are inserted for convenience only and do not affect the interpretation of this Contract;</div> <div>1.5.4. references to provisions of the Act in brackets are inserted for convenience and do not affect the interpretation of this Contract, although the provisions of the Act will prevail in the event of any inconsistency with the Contract;</div> <div>1.5.5. “including” and similar words do not imply any limitation;</div> <div>1.5.6. a reference to any Act or Regulation, or any provision of an Act or Regulation, includes any replacement or equivalent Act, Regulation, or provision;</div> <div>1.5.7. a reference to policies generally, or to any particular policy, includes any related guidance, instructions, or procedures, however named, published on the Ministry’s website, and refers to those documents as amended, supplemented or replaced from time to time;</div> <div>1.5.8. where a word or expression is defined, other parts of speech and grammatical forms of that word or expression have corresponding meanings.</div>	<div>From page 1:</div> <div>How to read this Contract</div> <div>This Contract sets out the Parties' rights and obligations. Together the above documents form the Contract. If there are any differences between the documents:</div> <div><ul style="list-style-type: none">• references to clauses refer to clauses in the Schedule in which the reference occurs;• references to clauses and Schedules refer to clauses of, and the Schedules to, this Contract;• references to the singular include the plural and vice versa;• headings are inserted for convenience only and do not affect the interpretation of this Contract;• “including” and similar words do not imply any limitation;• a reference to any law or legislation or legislative provision includes the relevant replacement and/or equivalent provisions of any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;• a reference to any policy, procedure or similar document includes instructions, manuals, processes and guides published on the Ministry’s website and refers to those documents as amended, supplemented or replaced from time to time; and• where under this Contract a word or expression is defined, other parts of speech and grammatical forms of that word or expression have corresponding meanings.</div>
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2. Provision of Legal Aid Services and Specified Legal Services

Changes

- Clauses 2 and 3 combined and rewritten to be clearer and more consistent.

Clause	Previous Clause
<p>2. Provision of Legal Aid Services and Specified Legal Services</p> <p>2.1. The Provider will:</p> <p>2.1.1. only provide Legal Aid Services or Specified Legal Services that he or she is Approved to provide, as specified in Schedule 1;</p> <p>2.1.2. comply with any Condition/s specified in Schedule 1 in providing those Services; and</p> <p>2.1.3. undertake any Accepted Assignment in accordance with the terms of that Assignment and any Rostered Duty in accordance with the terms of that Duty.</p> <p>2.2. If there is any conflict between Schedule 1 and the terms of an Accepted Assignment or Rostered Duty, the terms of Schedule 1 will prevail.</p>	<p>2. Provision of Legal Aid Services</p> <p>2.1. The Provider agrees to provide only Legal Aid Services of the type specified in Schedule 1.</p> <p>2.2. The Provider agrees to undertake any Accepted Assignment in accordance with the terms of the particular Assignment.</p> <p>2.3. If there is any conflict between Schedule 1 and an Assignment, the terms of Schedule 1 will prevail.</p> <p>3. Provision of Specified Legal Services</p> <p>3.1. The Provider agrees to provide only Specified Legal Services of the type specified in Schedule 1 and that are Rostered to him or her by the Ministry.</p>

3. The Provider's general obligations

Changes

- Clauses 3.1 – 3.4 reflect original clauses 4.1 – 4.4 with some minor editorial changes.
- Clause 3.5 is new. It is an explicit reference to the requirement for providers to maintain the standards for approval (primarily competence, service delivery systems, and being a fit and proper person) for the term of the contract. It should be noted that some requirements, such as recent experience, are only relevant at the time that approval or reapproval is sought.
- Clause 3.6 is new. It reflects the obligation in section 105 of the Act not to take unauthorised payments.
- Clause 3.7 is new. It reflects the obligations in section 107 of the Act to protect the Commissioner's interests under a charge and in respect of Proceeds of Proceedings.
- Clauses 3.8 reflects original clause 4.8, with the following material changes:
 - Subclause 3.8.3 extends original subclause 4.8.3 to cover the LCRO and Disciplinary Tribunal;
 - Subclauses 3.8.4, 3.8.6, and 3.8.7 respectively impose **new obligations** on the Provider to advise the Secretary if:
 - A judicial officer imposes a sanction on them;
 - they are declared bankrupt; or
 - their firm is placed into liquidation.
- The obligation in original subclause 4.8.4 has been incorporated into the supervision condition in Schedule 1, which clause 3.9 cross references to.
- The matters in original clause 4.9 will be covered by a new Alternates policy.
- Clause 3.10 is new. It requires the Provider to notify the Commissioner of certain things:
 - Subclauses 3.10.1 and 3.10.2 reflect the Provider's obligations to inform the Commissioner of changes to the aided person's circumstances under section 25 of the Act.
 - Subclause 3.10.3 is a **new obligation** requiring the Provider to inform the Commissioner if the court makes, or is contemplating, a costs order under section 45 of the Act.
 - Subclause 3.10.4 is a **new obligation** requiring the Provider to inform the Commissioner of any matter that materially decreases the prospects of success at first instance (excluding criminal) or the merits of an appeal. This will allow the Commissioner to consider whether aid should continue.
- Clauses 3.12 – 3.14 reflect original clauses 4.11 – 4.13. Clause 3.12 makes explicit reference to keeping information provided in support of the Application for Assistance and there is a new obligation to keep records of Proceeds of Proceedings.
- Clause 3.15 reflects original clause 4.14 with some minor editorial changes.
- Clauses 3.16 – 3.18 reflect original clause 4.15, but contain more detail and clarify certain matters.
- Clause 3.19 is a general provision reflecting original clauses 5.4 - 5.6. Original clause 5.5. is reflected in the general record keeping obligation in clause 3.12

Clause	Previous Clause
<p>3. The Provider's general obligations</p> <p><i>Quality of services and professional conduct</i></p> <p>3.1. The Provider will provide any Legal Aid Services or Specified Legal Services in an effective and efficient manner.</p> <p>3.2. The Provider will:</p> <p>3.2.1. promote and maintain proper standards of professionalism in his or her public dealings with the Secretary, the Commissioner, and the Ministry; and</p> <p>3.2.2. conduct dealings with the Secretary, the Commissioner, and the Ministry with integrity, respect, and courtesy.</p> <p>3.3. In providing any Legal Aid Services or Specified Legal Services, the Provider will comply with:</p> <p>3.3.1. the Act and any regulations made under the Act, and all other applicable statutory obligations;</p> <p>3.3.2. relevant professional obligations, unless any provision of the Act states otherwise (section 81 of the Act);</p> <p>3.3.3. the Practice Standards (the General Practice Standards, General Responsibilities to Clients, and the applicable practice standards for the relevant area of law);</p> <p>3.3.4. policies relating to Legal Aid Services or Specified Legal Services issued by the Secretary and the Commissioner; and</p> <p>3.3.5. the obligations under this Contract.</p> <p>3.4. The obligations in subclauses 3.3.1 to 3.3.5 are listed in order of precedence. If there is any conflict between those obligations, the obligation which appears first takes precedence.</p> <p>3.5. The Provider will, during the term of this contract, maintain the standards required for Approval in the Legal Services (Quality Assurance) Regulations 2011 for each Approval listed in Schedule 1, including the requirements relating to competence (regulation 6), service delivery systems (regulation 9), and being a fit and proper person (regulation 9C).</p> <p>3.6. In accordance with section 105 of the Act, the Provider must not take any payments relating to Legal Aid Services or Specified Legal Services unless those payments are authorized by or under the Act, or are authorised by the Commissioner acting under the Act or any regulations made under the Act.</p>	<p>4. The Provider's General Obligations</p> <p><i>Quality of Services and Professional Conduct</i></p> <p>4.1. The Provider agrees to provide the Legal Aid Services or Specified Legal Services provided under this Contract in an effective and efficient manner.</p> <p>4.2. The Provider agrees that he or she will :</p> <p>4.2.1. promote and maintain proper standards of professionalism in his or her public dealings with the Secretary, the Commissioner and the Ministry; and</p> <p>4.2.2. conduct dealings with the Secretary, the Commissioner and the Ministry with integrity, respect and courtesy.</p> <p>4.3. In providing Legal Aid Services or Specified Legal Services under this Contract, the Provider agrees to comply with:</p> <p>4.3.1. relevant professional obligations, unless any provision of the Act states otherwise;</p> <p>4.3.2. the Act and any regulations made under the Act and all other applicable statutory obligations;</p> <p>4.3.3. the Practice Standards;</p> <p>4.3.4. policies, manuals and procedures relating to Legal Aid Services and Specified Legal Services issued by the Ministry; and</p> <p>4.3.5. the obligations under this Contract.</p> <p>4.4. The compliance obligations in subclauses 4.3.1 to 4.3.5 are listed in order of precedence. If there is any conflict between these obligations, the obligation which appears first takes precedence.</p> <p>...</p>

Provider to protect Commissioner's interests in relation to charges and Proceeds of Proceedings

- 3.7. The Provider must comply with his or her obligations under section 107 of the Act to:
- 3.7.1. take all reasonable steps to protect the interests of the Commissioner under a charge, including not doing or permitting anything that would or might effect the transfer of the property without the charge being satisfied; and
 - 3.7.2. advise the Commissioner if he or she is aware that an aided person has, is, or is attempting, to avoid making payments to the Commissioner from Proceeds of Proceedings.

When the Provider must notify the Secretary

- 3.8. The Provider must notify the Secretary's Contract Manager in writing within 5 Working Days if:
- 3.8.1. the Provider's GST status changes;
 - 3.8.2. the Provider's contact or other details, including any Alternate/s, in Schedule 1 change;
 - 3.8.3. a Lawyers Standards Committee, the Legal Complaints Review Officer, or the Disciplinary Tribunal has made, upheld, or quashed a decision against the Provider. The notification must include the reasons and any sanctions imposed, varied or upheld (subject to any restrictions imposed on publication);
 - 3.8.4. a judicial officer has imposed a sanction on the Provider. The notification must include the reason and the sanction imposed.
 - 3.8.5. the Provider is charged with, or convicted of, an offence punishable by a term of imprisonment during the term of this Contract;
 - 3.8.6. the Provider has been declared bankrupt;
 - 3.8.7. the Provider's firm has been placed into liquidation.
- 3.9. If the Provider is a Supervised Provider, s/he must notify the Secretary's Contract Manager of any material change to the supervision arrangements or service delivery systems in accordance with the supervision condition.

When the Provider Must Notify the Ministry

- 4.8. The Provider agrees to notify the Secretary's Contract Manager in writing within 5 Working Days if:
- 4.8.1. the Provider's GST status changes;
 - 4.8.2. the Provider's Contact or other details under Schedule 1 change;
 - 4.8.3. a Lawyers' Standards Committee has upheld a complaint against the Provider. The notification must include the Committee's rationale and conclusions (subject to any restrictions imposed on publication);
 - 4.8.4. a Supervised Provider is no longer being supervised by a Lead Provider while working on a Legal Aid Matter;
 - 4.8.5. the Provider is charged or convicted of an offence punishable by a term of imprisonment during the term of this Contract; or
 - 4.8.6. the Provider nominates, under clause 4.7, a different Alternate to the Alternate stated in Schedule 1.
- 4.9. The following process will apply if the Provider will be unavailable for 15 Working Days or more for any reason:
- 4.9.1. If an Approved Alternate is stated in Schedule 1, the Provider must provide advance written notice of the dates the Provider will be unavailable, and confirm that the Provider's Approved Alternate will manage their current Assignments.
 - 4.9.2. If a Lead Provider other than the Approved Alternate in Schedule 1 will be managing their current Assignments, the Provider must provide advance written notice of the dates the Provider will be unavailable and give details of the Lead Provider who will manage the Provider's current Assignments in the Provider's absence.

When the Provider must notify the Commissioner

- 3.10. The Provider must notify the Commissioner in writing within 5 Working Days if the Provider becomes aware:
- 3.10.1. of any increase in the income or disposable capital of (or being treated as being of) an aided person they represent by an amount that could affect the aided person's eligibility for legal aid (section 25(1)(a) of the Act);
 - 3.10.2. that the aided person's address or other contact details have changed (section 25(1)(b) of the Act);
 - 3.10.3. that a court is considering making, or has made, an order relating to costs under section 45 of the Act;
 - 3.10.4. of any matter that materially decreases the prospects of success of the aided person's matter at first instance, or the merits of any appeal.
- 3.11. Sub-clause 3.10.4 does not apply to defence of criminal charges at first instance.

Record-keeping obligations

- 3.12. Subject to clause 3.13 and in accordance with clauses 11.1 to 11.4 of the Practice Standards, the Provider must endeavour to maintain a coherent file of each Accepted Assignment and ensure that all relevant documents are kept on the file, either electronically or in hard copy, including:
- 3.12.1. all information supporting the Application for Assistance;
 - 3.12.2. all correspondence, including correspondence with the Secretary, the Commissioner, and the client;
 - 3.12.3. a copy of all court documents filed, served, or issued;
 - 3.12.4. file notes of all material telephone conversations and personal attendances;
 - 3.12.5. records of all court attendances;
 - 3.12.6. receipts and records of disbursements;
 - 3.12.7. records of all time spent on the Assignment by the Provider and any other providers or non-lawyers; and
 - 3.12.8. records of any Proceeds of Proceedings.
- 3.13. Research, draft documents and disclosure documents do not need to be retained on the file. Where any of these documents are not retained the Provider must keep an index of the documents.

- 4.9.3. If Schedule 1 does not state an Approved Alternate, the Provider must provide advance written notice of the dates the Provider will be unavailable and describe the arrangements the Provider proposes to put in place to deal with any Assignments. The Provider acknowledges that if the Commissioner is not satisfied with the proposed arrangements, the Commissioner may Reassign the Provider's Assignments to another Provider.

Record-keeping Obligations

- 4.11. Subject to clause 4.12 and in accordance with clause 11.1 of the Practice Standards, the Provider must endeavour to ensure that all relevant documents are kept on the file electronically or in hard copy. This includes:
- 4.11.1. all correspondence, including correspondence with the Ministry in relation to legal aid and with the client;
 - 4.11.2. a copy of all court documents filed, served or issued;
 - 4.11.3. file notes of all material telephone conversations and personal attendances;
 - 4.11.4. records of all court attendances;
 - 4.11.5. receipts and records of expenditure, including records of all time spent by the Provider/s and any non-lawyer/s; and
 - 4.11.6. records of any disbursements.
- 4.12. Research, draft documents and disclosure documents do not need to be retained on the file. Where any of these documents are not retained the Provider must keep an index of the documents.
- 4.13. All closed legal aid files or an electronic or hard copy of those files must be retained for a minimum of seven (7) years from the date of closure.

- 3.14. The Provider must retain an electronic or hard copy of all files for Accepted Assignments for a minimum of seven (7) years from the date of closure or the last activity on the matter.

No lien

- 3.15. The Provider will not, in any way, claim a lien against the Secretary or the Commissioner over a file for Legal Aid Services or Specified Legal Services.

When the Provider must stop providing services

- 3.16. The Provider must immediately stop providing all Legal Aid Services or Specified Legal Services if the Provider is no longer entitled to practise as a lawyer under the Lawyers and Conveyancers Act 2006.
- 3.17. The Provider must stop providing Legal Aid Services or Specified Legal Services in respect of a particular Approval listed in Schedule 1:
- 3.17.1. immediately if the Provider is unable to comply with a Condition of the Approval, including if the Provider is a Supervised Provider but is no longer under the supervision of a Lead Provider (section 75(b) of the Act);
- 3.17.2. on the date specified in any notice of suspension or cancellation of the Approval issued by the Secretary (section 75(a) of the Act).
- 3.18. Subclause 3.17.1 does not apply if the Secretary agrees to suspend or cancel the Condition.

Transfer of files

- 3.19. If the Commissioner reassigns one or more of the Provider's Assignments for any reason, the Provider will comply with any directions from the Commissioner for the transfer of the file/s, and will:
- 3.19.1. ensure that each file is up to date and complies with clause 3.12; and
- 3.19.2. promptly transfer the file/s in a manner that ensures the interests of any legally aided persons are not prejudiced.

No Lien

- 4.14. The Provider agrees not to, in any way, claim a lien against the Ministry, Secretary or the Commissioner over a file for Legal Aid Services or Specified Legal Services.

When the Provider Must Stop Providing Services

- 4.15. The Provider agrees to immediately stop providing Legal Aid Services or Specified Legal Services if:
- 4.15.1. the Provider is no longer entitled to practise as a lawyer under the Lawyers and Conveyancers Act 2006; or
- 4.15.2. the Provider is a Supervised Provider but is no longer under the supervision of a Lead Provider as required by the terms of his or her Approval; or
- 4.15.3. the Secretary has suspended or cancelled the Approval or Approvals listed in Schedule 1.

What the Provider Must Do when a Matter is Reassigned

- 5.4. If the Commissioner advises the Provider that an Accepted Assignment is to be Reassigned to another provider, the Provider agrees to co-operate with the Commissioner to transfer the file in a manner that ensures the interests of any affected legally aided persons are not prejudiced.
- 5.5. The Provider agrees to ensure the file to which the Accepted Assignment relates is:
- 5.5.1. neat and orderly and accords with the requirements of clause 11.1 of the Practice Standards; and
- 5.5.2. transferred promptly to the new Provider specified by the Commissioner.
- 5.6. The Provider agrees to comply with any directions from the Commissioner for the transfer of the relevant file.

4. Delegation of work and arrangements when unable to provide services

Changes

- Clauses 4.1 – 4.3 reflect original clauses 4.5 and 4.6, but contain more detail and cross reference to the relevant policy
- Clauses 4.4 – 4.5 reflect original clause 4.7, but acknowledge that only the Commissioner can approve an Alternate, and contain more detail and cross reference to the relevant policy. Note that the invoice exception in clause 4.5.4 is due to system limitations.
- Clauses 4.6 – 4.8 reflect original clause 5.1 – 5.3, but cross references the relevant policy and differentiates transfer and termination from delegation and use of an Alternate.
- Clause 4.9 reflects and elaborates on original clause 4.10

Clause	Previous Clause
<p>4. Delegation of work and arrangements when unable to provide services</p> <p><i>Delegation of work</i></p> <p>4.1 The Provider may only delegate work on an Accepted Assignment as authorised by, and in accordance with, the Delegation of Work policy in the Grants Manual.</p> <p>4.2 Subject to any contrary or additional provisions in the Delegation of Work policy, if the Provider delegates work, the Provider:</p> <p>4.2.1 retains overall responsibility for the Assignment (unless and until it is reassigned) and any services supplied in respect of it;</p> <p>4.2.2 is responsible for appropriate supervision of any Supervised Provider that the Provider delegates work to;</p> <p>4.2.3 must seek prior approval from the Commissioner before delegating work to another Lead Provider, unless prior approval is not required under the policy;</p> <p>4.2.4 must ensure that any provider he or she delegates work to has the appropriate Approval/s to undertake such work and complies with any Condition/s of his or her Approval/s. This applies whether the delegated provider is to be paid or unpaid;</p> <p>4.2.5 must ensure that any work delegated to a non-lawyer is of a kind permitted by the policy, and must provide appropriate supervision.</p> <p>4.3 Clauses 4.1 and 4.2 apply to an Accepted Assignment for Specified Legal Services as outlined in the policy for the relevant Service published on the Ministry's website.</p>	<p><i>Delegation of Services and Nomination of Alternate Provider in the event of Unavailability</i></p> <p>4.5. The Lead Provider will have overall responsibility for an Assignment, whether or not the Lead Provider completed the work associated with the Assignment. This clause:</p> <p>4.5.1 includes responsibility for supervising other Providers;</p> <p>4.5.2 does not limit the Provider's obligations under this Contract or the Act; and</p> <p>4.5.3 does not apply for work undertaken after the Assignment has been Reassigned.</p> <p>4.6. The Provider may delegate part of an Accepted Assignment to another provider to undertake. The Provider must ensure that the delegated provider has the appropriate Approval for such work and complies with any conditions of his or her Approval. This applies whether the delegated provider is to be paid or unpaid.</p>

Nomination of Alternate in event of unavailability

- 4.4 The Provider may, in accordance with the Alternate policy in the Grants Manual and with the agreement of the Commissioner, make standing arrangements with another Lead Provider ("Alternate") to undertake the work on their Accepted Assignments during periods when the Provider is unavailable to do so.
- 4.5 Subject to any contrary or additional provisions in the Alternate policy, if the Provider arranges for an Alternate to work on their Accepted Assignments:
- 4.5.1 the Provider must ensure that the Alternate, at a minimum, holds the same Approval/s as the Provider in regard to any work the Alternate will undertake;
 - 4.5.2 the Provider retains overall responsibility for the Assignments and any services provided by the Alternate in respect of them;
 - 4.5.3 the Alternate may not accept any new Assignments on behalf of the Provider;
 - 4.5.4 the Alternate may, subject to any restrictions imposed by the Commissioner or the Provider, do anything relating to an Accepted Assignment that the Provider could do, except submit claims for payment to the Secretary under section 97 of the Act.

Transfer and termination of Accepted Assignments

- 4.6 The Provider may only transfer or terminate an Accepted Assignment to provide Legal Aid Services in accordance with the Reassignment and Termination policy in the Grants Manual and with the Commissioner's consent.
- 4.7 The Provider may only transfer or terminate an Accepted Assignment to provide Specified Legal Services in accordance with the relevant policy.
- 4.8 In clauses 4.6 and 4.7, the term transfer includes any transfer of the substantive management of an accepted assignment to another provider, but does not include delegation of work in accordance with clauses 4.1 – 4.3 or work undertaken by the Provider's Alternate in accordance with clauses 4.4 and 4.5.

Replacements for Rostered Duties or unavailability to provide Specified Legal Services

- 4.9 If a Provider is unable to undertake a Rostered Duty, or is otherwise unavailable to provide a Specified Legal Service, he or she must comply with the procedure in the relevant policy, including any requirements to inform the Secretary and find a replacement.

- 4.7 The Provider may make standing arrangements with another legal aid Provider ("Alternate") to undertake the relevant Legal Aid Services during periods when the Provider is unavailable to do so. The Alternate must be Approved to undertake the type of Legal Aid Services described in Schedule 1 under "Approval Details".

5 Reassignment of Legal Aid Matters

When this Clause Applies

- 5.1 Clauses under this heading apply to the transfer of the management of an Accepted Assignment to another Lead Provider.

Process for Reassignment

- 5.2 The Provider or legally aided person must get the Commissioner's consent in writing to the proposed transfer of the management of an Accepted Assignment to another Provider.
- 5.3 The Provider acknowledges that if the Commissioner decides to reassign an Accepted Assignment to another Provider, the Commissioner will notify the Provider and legally aided person.
- 4.10 If the Provider is unable to meet a Rostered commitment, the Provider must advise the Ministry in accordance with the relevant policies.

5. Secretary's obligations

Changes

- Original clause 6.1 deleted as the role of the Ministry (really Secretary) is covered by the first page of the Contract.
- Clause rewritten to be clearer and more accurate

Clause	Previous Clause
5. Secretary's obligations 5.1. The Secretary will, once the Secretary has all relevant information that has been requested from the Provider, promptly: 5.1.1 make decisions relating to Approvals; 5.1.2 objectively and fairly deal with Legal Aid Complaints in accordance with clause 9 of this Contract, the Complaints Management policy in the Provider Manual, and the principles of natural justice; 5.1.3 reply to correspondence about this Contract and answer any question raised by the Provider about an action taken or decision made by the Secretary under this Contract; 5.1.4 refer claims for payment received from the Provider (if the Provider is a Lead Provider) to the Commissioner (section 99(1) of the Act); and 5.1.5 pay all claims approved by the Commissioner for payment (section 100 of the Act), provided the Secretary has not placed a hold on payments under section 101(2)(a), suspended payments under section 92(4), or made a deduction under section 107(4) of the Act. 5.2. The Secretary will give reasonable notice to the Provider of intended or impending changes to relevant policies.	6 Ministry's Obligations 6.1 The Ministry administers the provision of Legal Aid Services or Specified Legal Services, this includes managing: 6.1.1 Approvals and the purchase of services, and 6.1.2 the Rostering and the Assignment of Legal Aid Matters to Providers. 6.2 The Ministry will: 6.2.1 act promptly on decisions on Approvals and correspondence about this Contract once it has all the relevant information it has asked for; 6.2.2 deal with all Legal Aid Complaints fairly and promptly; 6.2.3 promptly answer any question raised by the Provider about an action taken or decision made by the Ministry under this Contract; 6.2.4 give reasonable notice to the Provider of intended or impending changes to relevant policies and procedures; and 6.2.5 pay all claims in a timely manner, provided: (a) the Commissioner does not defer or decline the payment under section 99(2) of the Act; or (b) the Secretary has not placed a hold on payments under section 101(2) of the Act; or (c) the claim is not disputed in good faith.

6. Payment

Changes

- Clauses 6.1 and 6.2 reflect original clauses 8.1 and 8.4, but provide additional detail.
- Clauses 6.3 – 6.5 reflect original clauses 8.2 and 8.5 with some editorial changes.
- Clauses 6.6 – 6.9 reflect original clauses 8.3, 8.5, and 8.7 but cross-reference to the relevant policies.
- Clauses 6.10 – 6.12 reflect original clauses 8.6 – 8.9 with some editorial changes.
- Clauses 6.13 and 6.14 are the same as original clauses 8.10 and 8.11 with some minor editorial changes.
- Clauses 6.15 – 6.18 reflect original clause 8.12, with the addition of :
 - an explicit obligation on the Provider to get the Schedule 3 undertaking signed if they are in a firm when they sign the contract, or join a firm for the first time during the term of the contract (not just when they move from one firm to another);
 - a default position that, when a provider changes firms and then invoices for work completed prior to the move, the Secretary will pay the firm that the Provider was at when they did the work, unless the Provider and the Secretary agree to a different arrangement.
- Clauses 6.19 – 6.21 reflect original clauses 8.13 – 8.15 with some minor editorial changes
- Clause 6.22 reflects original clause 10.7 but with some editorial changes. Original clause 10.8 is deleted in line with the change in policy to align the contract with the Provider's Approvals (see discussion under clause 10).

Clause	Previous Clause
6. Payment <i>Entitlement to payment by Secretary</i> 6.1 The Provider is only entitled to payment by the Secretary if: <ul style="list-style-type: none">6.1.1 the Provider is (or was) the Lead Provider for an Accepted Assignment (sections 22 and 97(1) of the Act) or has completed a Rostered Duty (including as a replacement for another provider); and6.1.2 the Commissioner has approved payment (section 99 of the Act). 6.2 The Provider is not entitled to payment by the Secretary if, and to the extent that: <ul style="list-style-type: none">6.2.1 the Commissioner has deferred or declined the payment under section 99(2) of the Act;6.2.2 the Commissioner has made deductions under section 107(4) of the Act;6.2.3 the Secretary has placed a hold on payments under section 101(2)(a) of the Act; or	8. Payments <i>Payments for Legal Aid Services</i> 8.1 The Provider acknowledges that he or she is only entitled to payments under this Contract if acting as a Lead Provider in a Legal Aid Matter for an Accepted Assignment. 8.2 The fees payable by the Ministry for an Accepted Assignment may be: <ul style="list-style-type: none">8.2.1 set on an hourly rate basis for legal aid Providers as published on the Ministry's website;8.2.2 on a fixed fee arrangement basis; or8.2.3 as set out in an Accepted Assignment. 8.3 In accordance with section 106 of the Act, the Provider is responsible for paying all Disbursements related to a Legal Aid Matter (unless otherwise authorised by the Secretary) but may claim for reimbursement of those costs under section 97 of the Act, and in accordance with clause 8.6 below.

- 6.2.4 the Secretary has suspended payments under section 92(4) of the Act.

Rates of payment

- 6.3 An Assignment for Legal Aid Services will be paid at the rate specified in the Assignment, including any amendments. The rate may be set:
- 6.3.1 by reference to an hourly rate for legal aid providers set by the Secretary and published on the Ministry's website;
- 6.3.2 by application of a fixed fee set by the Commissioner and published on the Ministry's website; or
- 6.3.3 as otherwise specified in the Assignment.
- 6.4 The rate of payment for Specified Legal Services is that specified in the policy for the relevant Service published on the Ministry's website.
- 6.5 The rates of payment published on the Ministry's website may be varied from time to time.

Disbursements

- 6.6 The Provider is responsible for paying all Disbursements for Legal Aid Services or Specified Legal Services (unless otherwise authorised by the Secretary) but may claim for reimbursement of those costs under section 97 of the Act (section 106 of the Act).
- 6.7 Disbursements that will be reimbursed for Legal Aid Services, and the rate at which they will be reimbursed, are determined by the Secretary and specified in the Disbursements Policy in the Grants Manual, which may be varied from time to time.
- 6.8 Disbursements that will be reimbursed for Specified Legal Services, and the rate at which they will be reimbursed, are determined by the Secretary and specified in the policy for the relevant Service published on the Ministry's website, which may be varied from time to time.
- 6.9 The Secretary is not liable to pay for the office overheads of the Provider. Office overheads are the general costs associated with running a law practice, such as general stationary and phone rental, that cannot be attributed to a particular Accepted Assignment.

Claims and Method of Payment

- 6.10 All claims for payment for Legal Aid Services or Specified Legal Services submitted by the Provider (being a Lead Provider) must:
- 6.10.1 be accurate;
- 6.10.2 be made in the manner prescribed by the Secretary (section 97(1) of

Payments for Specified Legal Services

- 8.4 The Ministry is liable to pay the Provider for Specified Legal Services only where the Provider has been Rostered to provide such services.
- 8.5 The Ministry will pay fees and Disbursements for Specified Legal Services at the rates set by the Secretary. These rates may be varied from time to time.

...

Reconsiderations and Reviews

- 8.19 The Provider acknowledges that the Commissioner is responsible for approving claims for payment made by the Provider and that the Commissioner may decline some or all of a claim in accordance with the Act. The Provider acknowledges that Reconsiderations or Reviews of decisions made by the Commissioner in respect of payments for legal aid and specified legal services will comply with sections 51 and 52 of the Act.
- 8.20 The Provider further acknowledges that the Secretary may, under section 101(2) of the Act, place a hold on payments ...

Claims and Method of Payment

- 8.6 The Provider agrees to make a claim for payment to the Secretary for Legal Aid Services or Specified Legal Services provided under this Contract in accordance with:
- 8.6.1 sections 97 and 98 of the Act;

the Act);

6.10.3 comply with section 97 of the Act and regulation 19 of the Legal Services Regulations 2011; and

6.10.4 comply with any other requirements of the Act, regulations made under the Act, and any applicable policies.

6.11 All claims for Disbursements submitted by the Provider must be accurate, directly attributable to the conduct of the Legal Aid Service or Specified Legal Service, actual and reasonable.

6.12 The Secretary will pay the Provider by direct credit, subject to a completed Schedule 3 undertaking (where applicable).

Responsibility for taxes, levies and other charges

6.13 The Provider is solely liable and responsible for all taxes, levies, premiums and any other charges imposed on the Provider in respect of the Cost of Services under this Contract or other fees and Disbursements incurred by the Provider. The Provider will file all necessary returns for such taxes, levies and other charges with the appropriate authority.

6.14 The Secretary will pay the Provider the GST (if any) claimed in respect of the Legal Aid Services or Specified Legal Services supplied by the Provider, subject to a completed Schedule 3 undertaking (where applicable).

Firm's undertakings and arrangements if the Provider leaves a firm

6.15 If the Provider is, or becomes, an employee, partner, or director of a law firm or incorporated law firm, the Provider must ensure that an authorised signatory of the firm's bank account signs the undertaking contained in Schedule 3.

6.16 If clause 6.15 applies, the Provider must not supply, and the Secretary is not liable to pay for, any Legal Aid Services or Specified Legal Services until the signed undertaking is received by the Secretary's Contract Manager.

6.17 Any payments for Legal Aid Services or Specified Legal Services supplied while the Provider was employed by, or a partner or director of, a firm will be paid to that firm's account as specified in Schedule 3 unless the Secretary and the Provider mutually agree to another arrangement.

6.18 If the Provider leaves a firm, the Provider must notify the Secretary of the date that they cease to be employed by that firm and nominate a new account for payment. This will require a new undertaking to be provided in accordance with clause 6.15 if the Provider has moved to another firm. Any Legal Aid Services or Specified Legal Services supplied after that date will be paid to the new nominated account.

8.6.2 the applicable regulations; and

8.6.3 the manner prescribed by the Secretary.

8.7 The Provider agrees that the Secretary is not liable to pay for the Office Overheads of the Provider.

8.8 All claims for Disbursements submitted by the Provider must be accurate, directly attributable to the conduct of the Legal Aid Matter, actual and reasonable.

8.9 The Secretary will pay the Provider by direct credit on receipt of an approved claim for payment for services provided according to the requirements of this Contract, subject to a completed Schedule 3 undertaking (where applicable).

Responsibility for Taxes, Levies and Other Charges

8.10 The Provider is solely liable and responsible for all taxes, levies, premiums and any other charges imposed on the Provider in respect of the Cost of Services under this Contract or other fees and Disbursements incurred by the Provider. The Provider agrees to file all necessary returns for such taxes, levies and other charges with the appropriate authority.

8.11 The Secretary will pay to the Provider the GST (if any) claimed in respect of the Legal Aid Services or Specified Legal Services supplied by the Provider, subject to a completed Schedule 3 undertaking (where applicable).

If the Provider Moves to a new Firm

8.12 If the Provider moves to a new firm, the Provider will ensure that the authorised signatory for that new firm's bank account signs the undertaking contained in Schedule 3 of this Contract. The signed undertaking must be returned to the Ministry before the Provider supplies any Legal Aid Services or Specified Legal Services while employed or engaged by that firm. The Provider acknowledges that the Secretary is not liable to make any payments owing to the Provider until such an undertaking has been duly signed and received by the Secretary.

Overpayments and underpayments

- 6.19 If the Secretary overpays the Provider for Legal Aid Services or Specified Legal Services, the Secretary must notify the Provider of the overpayment and may:
- 6.19.1 require repayment of the amount of the overpayment from the Provider; or
 - 6.19.2 deduct the amount of the overpayment from a later payment due to the Provider.
- 6.20 If the Secretary notifies the Provider under clause 6.19.1 and requires repayment of the amount of the overpayment, the Provider will pay the Secretary the amount of the overpayment within 20 Working Days after receipt of the notice.
- 6.21 If the Secretary underpays the Provider, the Secretary will pay the Provider the shortfall within 20 Working Days of becoming aware of the mistake.

Secretary's failure to pay

- 6.22 If the Secretary fails to pay any claim made by the Provider and:
- 6.22.1 the claim is due and properly payable in accordance with this clause 6;
 - 6.22.2 the payment is not made within 20 Working Days of the date the Commissioner approves payment; and
 - 6.22.3 the claim is not the subject of a good faith dispute between the Parties;
- then the Provider will notify the Secretary of the default and the Secretary will remedy the default within 10 Working Days of such notice.

Overpayments and Underpayments

- 8.13 If the Secretary overpays the Provider for Legal Aid Services or Specified Legal Services, the Ministry must notify the Provider of the overpayment and may:
- 8.13.1 require repayment of the amount of the overpayment from the Provider; or
 - 8.13.2 deduct the amount of the overpayment from a later payment due to the Provider under this Contract.
- 8.14 If the Secretary notifies the Provider under clause 8.13.1 and requires repayment of the amount of the overpayment, the Provider agrees to pay the Secretary the amount of the overpayment within 20 Working Days after receipt of the notice.
- 8.15 If the Secretary underpays the Provider, the Secretary will pay the Provider the shortfall within 20 Working Days of becoming aware of the mistake.

10. Breach of Contract***Ministry's Failure to Pay***

- 10.7. If the Ministry fails to pay any claim made by the Provider and:
- 10.7.1 the claim is due and properly payable; and
 - 10.7.2 the Commissioner has not deferred or declined the payment under section 99(2) of the Act; and
 - 10.7.3 the Secretary has not placed a hold on payments under section 101(2)(a) of the Act; and
 - 10.7.4 the payment is overdue by two (2) months following the month in which the Ministry received a correctly rendered invoice from the Provider; and
 - 10.7.5 the claim is not the subject of a good faith dispute between the parties;
- then the Provider will notify the Ministry of the default and the Ministry will remedy the default within 10 days of such notice.
- 10.8 If the Ministry fails to remedy the default within 10 days, the Provider may terminate this Contract immediately on giving notice to the Ministry.

7. Quality Assurance Checks, Audits, and Examinations

Changes

- Changes to reflect that section 92 of the Act only applies to audits and examinations, not quality assurance checks.
- Cross references to relevant policies added.
- Clauses dealing with examinations of claims added.
- Consequential changes to reflect new approach to breach of contract (clause 8).

Clause	Previous Clause
<p>7. Quality Assurance Checks, Audits, and Examinations</p> <p><i>Quality Assurance Check</i></p> <p>7.1 The Secretary may carry out a Quality Assurance Check of the Provider at any time under section 88 of the Act to ensure that services are delivered in an efficient and effective manner.</p> <p>7.2 The Secretary will undertake any Quality Assurance Check in accordance with the Quality Assurance Check policy in the Provider Manual.</p> <p>7.3 The Provider will comply with any reasonable request by the Secretary for information relevant to a Quality Assurance Check.</p> <p><i>Audit</i></p> <p>7.4 The Secretary may Audit the Provider at any time under section 91 of the Act.</p> <p>7.5 The Secretary will undertake any Audit in accordance with the Audit policy in the Provider Manual.</p> <p>7.6 The Provider must, in accordance with section 92 of the Act, provide all documentation and other information requested by the auditor. (Note that failure to comply with a request under section 92 may constitute an offence under section 113 of the Act).</p> <p><i>Outcome of Audit or Quality Assurance Check</i></p> <p>7.7 The results of a completed Audit or Quality Assurance Check will be reviewed by the Secretary. The Secretary will release the findings to the Provider.</p> <p>7.8 If, as the result of an Audit or Quality Assurance Check, the Secretary has reasonable grounds to believe that the Provider is in breach of the Contract, the Secretary may take action under clause 8.</p>	<p>9. Audit or Quality Assurance Check</p> <p>9.1 The Provider must, in accordance with section 92 of the Act, provide all documentation and other information requested by the Ministry to enable the Secretary to carry out an Audit or quality assurance check at any time.</p> <p>9.2 In addition to any powers the Secretary may exercise under the Act, the Secretary may take appropriate action in accordance with clause 10 below if an Audit or quality assurance check shows any of the following results:</p> <p>9.2.1 non-compliance with —</p> <p>(a) the Provider's obligations under the Act or Regulations;</p> <p>(b) the Practice Standards;</p> <p>(c) any conditions imposed on the Provider's Approval;</p> <p>(d) the terms and conditions of this Contract; or</p> <p>(e) guidelines and policies issued or made by the Secretary or Commissioner;</p> <p>9.2.2 any substantiated or unresolved Legal Aid Complaint;</p> <p>9.2.3 where the Provider is providing Legal Aid Services as the Lead Provider, a failure to manage or supervise the relevant Supervised Providers or anyone else used by the Provider to work on a Legal Aid Matter;</p> <p>9.2.4 any other matter which indicates the Legal Aid Services or Specified Legal Services are not being provided in an effective and efficient manner.</p> <p>9.3 The results of a completed Audit or quality assurance check will be reviewed by the Secretary. The Secretary will release the findings to the Provider.</p>

Examination of claims made by Provider

- 7.9 The Commissioner may examine a claim, or part of a claim, for payment by the Provider under section 89 of the Act.
- 7.10 The Provider must, in accordance with section 92 of the Act, provide all documentation and other information requested by the person undertaking the examination. (Note that failure to comply with a request under section 92 may constitute an offence under section 113 of the Act).
- 7.11 If, as the result of an Examination, the Secretary has reasonable grounds to believe that the Provider is in breach of the Contract, the Secretary may take action under clause 8.

8. Breach of contract

Changes

- For breach of contract, clause 8 retains the concept of a default notice, but abolishes the separate regime for cancelling the contract for breach. Instead, clause 8 cross references to the complaints process (clause 9) and cancellation or variation of approvals process (clause 10). The contract is so inextricably linked to the Provider's Approvals that it does not make sense to allow the contract to be cancelled while the Approvals remain in force.
- A new right to seek review of a default notice is added (clause 8.4).

Clause	Previous Clause
<p>8. Breach of contract</p> <p>8.1 The Provider is in breach of this Contract if, in the Secretary's reasonable opinion, the Provider has not taken all reasonable steps to comply with any obligation under this Contract.</p> <p>8.2 If the Secretary has reasonable grounds to believe that the Provider is in breach of the Contract, the Secretary may, depending on the circumstances, including the nature and seriousness of the breach:</p> <p>8.2.1 issue the Provider with a default notice;</p> <p>8.2.2 consider the matter as a Legal Aid Complaint under clause 9; or</p> <p>8.2.3 consider cancellation or variation of the Provider's Approvals under clause 10.</p> <p>Default notice</p> <p>8.3 A default notice issued under subclause 8.2.1 must:</p> <p>8.3.1 specify the nature and seriousness of the breach; and</p> <p>8.3.2 if, in the Secretary's opinion, the breach is capable of being remedied and the Secretary requires the Provider to remedy the breach, specify:</p> <p>8.3.2.1 directions to remedy the breach; and</p> <p>8.3.2.2 the period within which the breach must be remedied, being a reasonable period taking into account the nature of the breach.</p> <p>8.4 The Provider may seek a review of any first instance decision of the Secretary to issue a default notice. The Provider must notify the Secretary that the Provider requests a review in writing within 10 Working Days of receiving the default notice. The Secretary will notify the Provider of the outcome of a review, with reasons. The default notice remains in force pending the outcome of any review, but the Provider is not, in the absence of</p>	<p>10. Breach of Contract</p> <p>Notice of Breach</p> <p>10.1 A Provider is in breach of this Contract if, in the Secretary's reasonable opinion, the Provider has not taken all reasonable steps to comply with one or more of the obligations in clause 4.3.</p> <p>10.2 If, in the Secretary's reasonable opinion, the breach is capable of being remedied, and the Secretary requires the breach to be remedied, the Secretary must promptly give the Provider a default notice.</p> <p>10.2.1 A default notice under clause 10.2 must specify:</p> <p>(a) the nature of the breach;</p> <p>(b) directions to remedy the breach; and</p> <p>(c) the Specified Period within which the breach must be remedied, giving a reasonable period of time taking into account the nature of the breach.</p> <p>Failure to Remedy Breach within Specified Period</p> <p>10.3 If the Provider fails to remedy the breach within the Specified Period, the Secretary may (acting reasonably) do one or more of the following:</p> <p>10.3.1 give the Provider directions, with which he or she must promptly comply, for suspending the Provider's provision of the Legal Aid Services or Specified Legal Services or part of them under this Contract until further notice;</p> <p>10.3.2 give the Provider further directions to remedy the breach, with which he or she must promptly comply;</p> <p>10.3.3 remedy the breach and recover the reasonable costs of doing so from the Provider;</p> <p>10.3.4 take action under section 101 of the Act;</p> <p>10.3.5 notify the Commissioner of the need to Reassign any Accepted</p>

<p>a specific direction from the Secretary, required to comply with any directions to remedy the breach in the interim.</p> <p>8.5 If subclause 8.3.2 applies and the Provider fails to remedy the breach within the period specified in the default notice, the Secretary may:</p> <p>8.5.1 give the Provider further directions to remedy the breach, with which the Provider must promptly comply;</p> <p>8.5.2 remedy the breach and recover the reasonable costs of doing so from the Provider;</p> <p>8.5.3 consider the matter as a Legal Aid Complaint under clause 9; or</p> <p>8.5.4 consider cancellation or variation of the provider's approvals under clause 10.</p> <p><i>Effect of breach clause on other remedies</i></p> <p>8.6 The Secretary may choose to utilize or not to utilize any remedy under this clause 8 without prejudice to, or waiver of, any other rights or remedies the Secretary may have under this Contract, the Act, or otherwise at law.</p>	<p>Assignment to another Provider, in which case the Secretary may reduce the payments to the Provider by the amount of the cost the Secretary incurs in having all or any of the Legal Aid Services or Specified Legal Services provided by that other Provider;</p> <p>10.3.6 notify the Commissioner of the need to remove the Provider's name from a Roster; or</p> <p>10.3.7 terminate this Contract.</p> <p>10.4 The Secretary may take one or more of the actions set out in clause 10.3 without further notice and without prejudice to any other rights the Secretary may have under this Contract or under the Act or otherwise at law.</p> <p><i>Material Breach Leading to Suspension or Termination</i></p> <p>10.5 If the Provider has not remedied a material breach of this Contract within the Specified Period, or the breach is, in the opinion of the Secretary, incapable of remedy, the Secretary may suspend or terminate this Contract, in whole or in part, immediately on giving written notice to the Provider.</p> <p>10.6 The term "material breach" includes, but is not limited to, the following situations:</p> <p>10.6.1 The Provider, without reasonable excuse or reasonable prior notice to the Ministry, ceases, suspends or fails to provide all or any material part of the Legal Aid Services or Specified Legal Services pursuant to an Accepted Assignment or that have been Rostered to him or her. This includes:</p> <p>(a) a transfer of the management of a Legal Aid Matter without the consent of the Commissioner under clause 5.2;</p> <p>(b) a failure to notify the Ministry and to make suitable arrangements for alternative counsel to appear if the Provider is unavailable for Rostered duties.</p> <p>10.6.2 The Provider consistently fails to comply with the Practice Standards or fails to comply with the Practice Standards in a manner which has a significant or potentially significant impact on a legally aided person.</p> <p>10.6.3 The Provider misappropriates or mismanages any payments made to him or her.</p> <p>10.6.4 The Provider engages in action which would have a serious effect on the Provider's ability to perform the Legal Aid Services or Specified Legal Services, or is likely to bring the Secretary, the</p>
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	<p>Commissioner, the Ministry or other providers into disrepute.</p> <p>10.6.5 The Provider knowingly:</p> <ul style="list-style-type: none">(a) conceals information from (subject to the Provider's professional obligations relating to privilege or breach of confidentiality, provided the Provider is not required to provide such information under sections 108, 109 or 110 of the Act);(b) makes false statements to; or(c) provides a false document to, <p>the Secretary, the Commissioner or the Ministry.</p> <p>11 Cancellation or Amendment of Provider's Approval and Termination or Suspension of Contract</p> <p>...</p> <p><i>Termination or Suspension of Contract</i></p> <p>11.3 The Secretary may terminate this Contract in whole or in part for any reason by giving the Provider three (3) months' notice in writing.</p> <p>11.4 The Secretary may terminate this Contract immediately if the termination is due to a change in government policy or a change in appropriation. If this occurs, the Secretary will give as much notice as is reasonably practicable in the circumstances.</p> <p>11.5 The Secretary may suspend or terminate this Contract under clause 10.</p> <p>11.6 The Provider may terminate this Contract in whole or, in relation to the type of Legal Aid Services or Specified Legal Services provided, in part. This can happen at any time by giving one month's notice in writing to the Secretary.</p> <p>11.7 If a party partially terminates this Contract under this clause, clause 12 will apply to the terminated Legal Aid Services or Specified Legal Services.</p>
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9. Legal Aid Complaints

Changes

- Revised and more comprehensive clause setting out the general process for complaints and cross referencing to the relevant policy.

Clause	Previous Clause
9. Legal Aid Complaints 9.1 The following process will apply to consideration of any Legal Aid Complaint, subject to any contrary or additional provisions in the Complaints Management policy in the Provider Manual: 9.1.1 The Secretary will notify the Provider of any Legal Aid Complaint received by the Secretary as soon as reasonably practicable, unless the Secretary does not intend to take the Complaint further; 9.1.2 The Provider will, if s/he receives a Legal Aid Complaint directly and cannot resolve it with the complainant within 10 Working Days, provide details and a copy of the Complaint to the Secretary within 15 Working Days of the date of receiving the Complaint; 9.1.3 The Secretary may ask questions, or seek further information, about a Complaint from the Provider. The Secretary must specify the timeframe for the Provider's response, which must be at least 10 Working Days from the date of the request. The Provider must respond within the timeframe or any extension agreed by the Secretary; 9.1.4 The Secretary will give the Provider the opportunity to make submissions on the Complaint and will give fair and objective consideration to such submissions; 9.1.5 If the Secretary substantiates a Complaint, the Secretary may take any action the Secretary considers appropriate under the Act, the Complaints Management policy, or this Contract including: 9.1.5.1 issuing a notice; 9.1.5.2 recommending to the Commissioner that a particular Accepted Assignment be reassigned to another provider; 9.1.5.3 recommending to the Commissioner that the Provider be removed from a Rotational Assignment List; 9.1.5.4 removing the Provider from a Roster; 9.1.5.5 requiring repayment of money paid to the Provider; 9.1.5.6 initiating a Quality Assurance Check or Audit;	7. Legal Aid Complaints 7.1 Where the Secretary, Commissioner or the Ministry receives a Legal Aid Complaint, the Ministry will give the Provider a copy of the Legal Aid Complaint, unless the Secretary does not intend to proceed with the Legal Aid Complaint. The Ministry may ask the Provider to respond to any questions about the Legal Aid Complaint. 7.2 If the Provider receives a Legal Aid Complaint and is unable to resolve it within 10 Working Days, the Provider agrees to give details of the Legal Aid Complaint (including a copy) to the Ministry within 20 Working Days of having received the Legal Aid Complaint. 7.3 If asked by the Ministry to respond to questions about a Legal Aid Complaint, the Provider agrees to respond to the Ministry within the required timeframe. The Ministry will give the Provider at least 10 Working Days to respond.

<p>9.1.5.7 considering cancellation or variation of the Provider's Approvals under clause 10;</p> <p>9.1.5.8 referring the Provider to the New Zealand Law Society Complaints Service.</p> <p>9.1.6 The Secretary will notify the Provider of the outcome, with reasons, of any Complaint as soon as reasonably practicable;</p> <p>9.1.7 The Provider may seek a review of any first instance decision of the Secretary on a Complaint. The Provider must notify the Secretary that the Provider requests a review in writing within 10 Working Days of being notified of the outcome of a Complaint. The Secretary will notify the Provider of the outcome of a review, with reasons. The Secretary's decision remains in force pending the outcome of any review.</p>	
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10. Cancellation, variation, and expiry of Approvals

Changes

- Revised and more comprehensive clause setting out the general process for cancellation and variation of approvals and cross referencing to the relevant policy.

Clause	Previous Clause
<p>10. Cancellation, variation, and expiry of Approvals</p> <p><i>Process</i></p> <p>10.1 Clause 10.2 applies if the Secretary:</p> <p>10.1.1 has reason to believe that one of the grounds for cancelling the Provider's Approval/s under section 103 of the Act applies; or</p> <p>10.1.2 refers the Provider to the Performance Review Committee.</p> <p>10.2 The following process will apply, subject to any contrary or additional provisions in the Act or the Cancellation of Approvals policy in the Provider Manual:</p> <p>10.2.1 The Secretary will notify the Provider as soon as reasonably practicable, if the Secretary:</p> <p>10.2.1.1 has reason to believe that one of the grounds for cancelling the Provider's Approval/s under section 103 of the Act applies; or</p> <p>10.2.1.2 refers the Provider to the Performance Review Committee, and of any interim restrictions that will apply under section 101 of the Act.</p> <p>10.2.2 The Secretary may ask questions or seek further information from the Provider. The Secretary must specify the timeframe for the Provider's response, which must be at least 10 Working Days from the date of the request. The Provider must respond within the timeframe or any extension agreed by the Secretary;</p> <p>10.2.3 The Provider will comply with any request for information from the Performance Review Committee;</p> <p>10.2.4 The Secretary will give the Provider the opportunity to make submissions (unless the Performance Review Committee has given the Provider the opportunity to make submissions) and will give fair and objective consideration to such submissions;</p> <p>10.2.5 The Secretary will cancel all of the Provider's Approvals if any of the circumstances outlined in section 103(1) of the Act apply;</p>	<p>11 Cancellation or Amendment of Provider's Approval and Termination or Suspension of Contract</p> <p><i>Cancellation or Amendment of Approval</i></p> <p>11.1 If the Secretary cancels the Provider's Approval under section 103 of the Act, the Approval expires, or the Provider advises the Secretary that the Provider will no longer be providing Legal Aid Services, this Contract terminates on the date which the Secretary specifies that the termination takes effect in the written notice given to the Provider.</p> <p>11.2 If the Secretary has modified the Provider's Approval under section 102 of the Act (including requiring the Provider to be supervised by another Provider), the Legal Aid Services or Specified Legal Services provided by the Provider must comply with the modified Approval, whether or not a variation has been made to this Contract.</p>

10.2.6 The Secretary may, after considering the Performance Review Committee's advice on any matter referred to it:

10.2.6.1 take any of the actions in section 102 of the Act, including modifying or cancelling the Provider's Approval/s, requiring the Provider to be supervised by another provider, or barring the Provider from applying for Approval for a period between 3 months and 2 years;

10.2.6.2 take any other action the Secretary considers appropriate under this Contract or the Cancellation of Approvals policy in the Provider Manual, including any of the actions listed in clause 9.1.5;

10.2.7 The Secretary will notify the Provider of the Secretary's decision, with reasons, as soon as reasonably practicable (section 103(3) of the Act);

10.2.8 If the Secretary cancels one or more of the Provider's Approvals, the Provider must, in relation to the cancelled Approval/s:

10.2.8.1 cease providing the Legal Aid Services or Specified Legal Services from the date the cancellation takes effect (section 75(a) of the Act);

10.2.8.2 transfer the relevant files in accordance with clause 3.19;

10.2.8.3 advise the Secretary of any files with securities requiring registration that are yet to be registered; and

10.2.8.4 forward any client repayments or Proceeds of Proceedings outstanding to the Secretary;

10.2.9 Under section 82 of the Act, the Provider may apply to the Review Authority for a review of any decision of the Secretary to impose interim restrictions under section 101, impose a sanction under section 102, or cancel the Provider's Approvals under section 103 of the Act. The Provider must lodge any application for review with the Review Authority within 20 Working Days of being notified of the Secretary's decision. The Secretary's decision remains in force pending the outcome of any review.

Effect of cancellation, variation, or expiry of Approvals

10.3 If the Secretary cancels any of the Provider's Approvals, or any of the Provider's Approvals expire, the person ceases to be Approved to provide the relevant service and the Secretary is not obliged to pay for any services of that kind provided after the date of cancellation or expiry (section 103(2) of the Act).

Reconsiderations and Reviews

...

8.20 The Provider further acknowledges that the Secretary may, under section 101(2) of the Act, place a hold on payments and, if that occurs, the Provider has a right to apply for a review of that decision by the Review Authority established under the Act. The Provider agrees that clause 13 (Disputes) of this Contract does not apply to any such decision made by the Secretary.

10.4 If:

10.4.1 the Secretary cancels all of the Provider's Approvals under section 102 or 103 of the Act;

10.4.2 all of the Provider's Approvals expire; or

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 their Approvals;

the Secretary will provide written notice to the Provider that the Contract is terminated and the Contract terminates on the date specified in the written notice.

10.5 If the Secretary has modified one or more of the Provider's Approvals under section 102 of the Act (including requiring the Provider to be supervised by another Provider):

10.5.1 the Provider must immediately comply with the modified Approvals;

10.5.2 this Contract must, from the date of the Secretary's decision, be read as if Schedule 1 had been varied accordingly, regardless of whether the Provider has been provided with a copy of the varied Schedule 1.

11. Disputes

Changes

- Clarification that the dispute process does not apply to any decisions by the Commissioner (because the Commissioner is not a party to the Contract).
- Change to clause 13.5 (now 11.6) to reflect new approach to align Contract and Approvals.
- Minor editorial changes

Clause	Previous Clause
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11. Disputes

Application of this clause

- 11.1 Unless otherwise agreed by the Parties, clauses 11.3 to 11.6 do not apply:
- 11.1.1 where a right to apply for a review or appeal of a decision made by the Secretary under this Contract or the Act exists; or
 - 11.1.2 to any Audit or Quality Assurance Check.
- 11.2 Clauses 11.3 to 11.6 do not apply to any decision or function of the Commissioner. For the processes applying to disputes relating to decisions of the Commissioner see the Act and the Grants Manual.

Process for dealing with disputes

- 11.3 Subject to clause 11.1, the Parties will take all reasonable steps to resolve promptly and in good faith any dispute that may arise in connection with this Contract.
- 11.4 The following process applies to disputes:
- 11.4.1 The Party claiming a dispute will give written notice detailing the nature of the dispute. Both Parties will then try their best to settle the dispute by negotiation.
 - 11.4.2 If the Parties have not resolved the dispute within 10 Working Days of the notice, the Parties may participate in mediation with a mutually accepted mediator. If they cannot agree on a mediator within 20 Working Days of the notice, the Chairperson of LEADR New Zealand Incorporated will appoint the mediator.
- 11.5 Each Party agrees to pay its own costs of mediation under clause 11.4.2.
- 11.6 The Parties agree to continue to perform their respective obligations under this Contract pending the resolution of any dispute.

13 Disputes

Application of this Clause

- 13.1 The Provider acknowledges and agrees that clause 13 does not apply:
- 13.1.1 where a right to apply for a review or appeal of a decision made by the Secretary or the Commissioner under the Act exists (including a legally aided person's right to apply for a review or appeal under Part 2, Subpart 7 of the Act); or
 - 13.1.2 to the resolution of a Legal Aid Complaint
 - 13.1.3 to any Audit or quality assurance check
- unless otherwise agreed by the Parties.
- 13.2 Subject to clause 13.1, the Parties will take all reasonable steps to resolve promptly and in good faith any dispute that may arise in connection with this Contract.

Process for Dealing with Disputes

- 13.3 The following process applies to disputes:
- 13.3.1 The Party claiming a dispute will give written notice detailing the nature of the dispute. Both Parties will then try their best to settle the dispute by negotiation.
 - 13.3.2 If the dispute is about a granting or invoicing matter, negotiation must follow the Legal Aid's Granting and Invoicing Disputes Resolution Process.
 - 13.3.3 For disputes other than disputes about Legal Aid's granting and invoicing, if the Parties have not resolved the dispute within 10 Working Days of the notice, the parties may participate in mediation with a mutually accepted mediator. If they cannot agree on a mediator within 28 days of the notice, the Chairperson of LEADR New Zealand Incorporated will appoint the mediator.
- 13.4 Each Party agrees to pay its own costs of mediation under clause 13.3.3.
- 13.5 Before any dispute is resolved, the Parties agree to continue to perform their respective obligations under this Contract. This does not apply if the dispute relates to purported termination by the Ministry.

12. Provider's Details

Changes No change	
Clause	Previous Clause
12. Provider's details 12.1 The Provider's Details are recorded in Schedule 1 as they are at the date of signing this Contract. 12.2 The Provider must notify the Secretary's Contract Manager of any change to the Provider's Details in accordance with clause 3.8.	14.Provider's Details 14.1 The Provider's Details are recorded in Schedule 1 as they are at the date of signing this Contract. 14.2 The Provider must notify the Secretary's Contract Manager of any change to the Provider's Details in accordance with clause 4.8.

13. The Secretary's contact details

Changes

- Changes to clarify that matters to do with the Contract should be referred to the Secretary's Contract Manager and that matters to do with day to day work should be referred to the person identified in the relevant policy.

Clause	Previous Clause
<p>13. The Secretary's contact details</p> <p><i>Matters relating to this Contract</i></p> <p>13.1 The Provider must address all correspondence regarding this Contract to the Secretary's Contract Manager.</p> <p>13.2 The Provider must give all notices required to be given under this Contract to the Secretary's Contract Manager.</p> <p>13.3 The Contract Manager's details may be updated from time to time by publication on the Ministry's website. The format and delivery requirements of clause 16 do not apply to this clause.</p> <p><i>Matters relating to Accepted Assignments or Rostered Duties</i></p> <p>13.4 Any queries or correspondence relating to Accepted Assignments should be addressed to the relevant grants officer (for Legal Aid Services) or person specified in the relevant policy (for Specified Legal Services).</p> <p>13.5 Any queries or correspondence relating to a Roster or to Rostered Duties should be addressed to person specified in the relevant policy.</p>	<p>15. The Ministry's Contact Details</p> <p>15.1 All notices to be given by the Provider to the Commissioner under this Contract relating to the Assignment and Reassignment of a Legal Aid Matter must be given to the legal aid case manager named in the Accepted Assignment, or as advised by the Ministry in subsequent correspondence about that Legal Aid Matter.</p> <p>15.2 All notices to be given by the Provider in respect of a Rostering matter must be given to the:</p> <p>15.2.1 Legal Aid Office;</p> <p>15.2.2 Initial Criminal Legal Services Unit; or</p> <p>15.2.3 other office or person indicated in the applicable manual or instruction published by the Ministry,</p> <p>as the context requires.</p> <p>15.3 Notices under clause 4.9 must be sent to the Provider's local Legal Aid Office.</p> <p>15.4 The Provider must give all other notices required to be given under this Contract to the Secretary's Contract Manager recorded in Schedule 1. This includes notices under clauses 4.8, and 11 and 14.2.</p> <p>15.5 The Secretary's Contract Manager's details may be updated from time to time by publication on the Ministry's website. The format and delivery requirements of clause 16 do not apply to this clause 15.4.</p>

14. Format and delivery of notices and communications

Changes

- Changes to reflect the roles of the Secretary and the Commissioner, and that the Commissioner is not a party to the Contract

Clause	Previous Clause
14. Format and delivery of notices and communications 14.1 The Parties will communicate with each other and provide any notices in relation to this Contract or the Act electronically, in accordance with the Electronic Transactions Act 2002. Specifically (but without limitation), the Secretary and the Provider: 14.1.1 will send and receive all notices and communications with the other that are required by this Contract and the Act by email; 14.1.2 agree that any document required by this Contract or the Act to be signed by one or both Parties, will be signed using an "electronic signature" as defined by the Electronic Transactions Act 2002; 14.1.3 may choose the particular form of electronic signature for their own use, which may, without limitation, be a typed name or scanned manuscript signature. 14.2 Clause 14.1 applies, with any necessary modifications, to any communication from the Provider to the Commissioner. 14.3 The Provider will use the Provider's email address nominated in Schedule 1 to send and receive email.	16.Format and Delivery of Notices and Communications 16.1 The Parties agree to communicate with each other and provide any notices in relation to this Contract or the Act electronically, in accordance with the Electronic Transactions Act 2002. Specifically (but without limitation), the Ministry and the Provider: 16.1.1 agree to send and consent to receive all notices and communications with the other that are required by this Contract and the Act by email; 16.1.2 agree that any document required by this Contract or the Act to be signed by one or both parties, will be signed using an "electronic signature" as defined by the Electronic Transactions Act 2002; 16.1.3 may choose the particular form of electronic signature for their own use, which may, without limitation, be a typed name or scanned manuscript signature. 16.2 The Provider agrees to use the Provider's email address nominated in Schedule 1 to send and receive email.

15. The relationship between the Parties

Changes

- Minor editorial changes.

Clause	Previous Clause
15.The relationship between the Parties 15.1 Nothing in this Contract constitutes a legal relationship between the Parties of partnership, joint venture, agency, or employment. The Provider is responsible for his or her own salary, wages, holiday or redundancy payments, and for such payments to his or her personnel. This includes any GST, corporate, personal and withholding taxes, ACC premiums or other levies attributable to the provision of the Legal Aid Services or Specified Legal Services. 15.2 The Provider is responsible for payment of any fees, expenses and Disbursements claimed by any Supervised Providers who have provided Legal Aid Services or Specified Legal Services on behalf of the Provider under an Accepted Assignment or from any other subcontractors engaged by the Provider. 15.3 Both Parties will act in good faith in the exercise of their rights and the performance of their obligations under this Contract. 15.4 Neither Party has authority to bind or represent the other Party in any way or for any purpose. 15.5 The Secretary and the Provider will, at all times, conduct dealings with integrity, respect, and courtesy.	17.The Relationship between the Parties 17.1 Nothing in this Contract constitutes a legal relationship between the parties of partnership, joint venture, agency, or employment. The Provider is responsible for his or her own salary, wages, holiday or redundancy payments, and for such payments to his or her personnel. This includes any GST, corporate, personal and withholding taxes, ACC premiums or other levies attributable to the provision of the Legal Aid Services under an Accepted Assignment or Specified Legal Services Rostered to the Provider. 17.2 The Provider is responsible for payment of any fees, expenses and Disbursements claimed by any Supervised Providers who have provided Legal Aid Services or Specified Legal Services on behalf of the Provider under an Accepted Assignment or from any other subcontractors engaged by the Provider. 17.3 Both Parties agree to act in good faith in the exercise of their rights and the performance of their obligations under this Contract. 17.4 Neither Party has authority to bind or represent the other party in any way or for any purpose. 17.5 The Secretary, the Ministry and the Provider agree that they will at all times conduct dealings with integrity, respect and courtesy.

16. Entire agreement

Changes

- Clause rewritten to align with equivalent provision in government model contract

Clause	Previous Clause
<p>16. Entire agreement</p> <p>16.1 This Contract records everything agreed between the Parties relating to the provision of Legal Aid Services or Specified Legal Services by the Provider. It replaces any previous agreements and communications between the Parties relating to the provision of Legal Aid Services or Specified Legal Services by the Provider, whether verbal or in writing.</p>	<p>18. Entire Agreement</p> <p>18.1 This Contract (which includes all Assignments accepted by the Provider) and any variations to it (and to any Accepted Assignments) constitute the full agreement between the parties about the Legal Aid Services or Specified Legal Services to be provided by the Provider under this Contract.</p> <p>Also:</p> <p>1.3 The Provider may have had a previous contract with the Legal Services Agency or the Ministry for the provision of:</p> <p>1.3.1 Legal Aid Services or Specified Legal Services under the Act; and</p> <p>1.3.2 legal aid services under previous legislation.</p> <p>If such a contract existed immediately before entering into this Contract the parties agree that the previous contract ends from the date this Contract is signed by both parties.</p>

17. Variations to the Contract

Changes <ul style="list-style-type: none"> • Changes to simplify the clause. • References to the Provider signing and returning a unilateral variation (and deemed variation in the absence) removed as unnecessary. The Provider will still be asked to acknowledge receipt of a variation. • Ability for the Provider to terminate the contract if they do not agree to the variation is removed in line with the change in policy to align the contract with the Provider's approvals (see discussion under clause 10). 	
Clause	Previous Clause
17. Variations to the Contract <p>17.1 The Secretary has the right to unilaterally vary this Contract in accordance with this clause 17 by giving written notice to the Provider. Otherwise, the provisions of this Contract may only be varied by mutual agreement, in writing, and signed by the authorised representatives of the Parties.</p> <p><i>Variations to the Contract by the Secretary</i></p> <p>17.2 The Secretary may unilaterally amend or delete any provisions of this Contract to achieve consistency with a relevant change in the Act, Regulations, government policy or a change in appropriation. Any such amendment or deletion must be consistent with the Act.</p> <p>17.3 If the Secretary intends to vary the Contract under clause 17.2, the Secretary will notify the Provider in writing of the intended variation and the date it takes effect.</p> <p>17.4 If the Provider's Approvals or the conditions on the Provider's Approvals change, the Secretary may unilaterally vary Schedule 1 from time to time to reflect the changes.</p> <p>17.5 If the Secretary varies the Contract under clause 17.4, the Secretary will issue the Provider with a revised Schedule 1. The revised Schedule will replace the existing Schedule 1 from the date of issue by the Secretary and will form part of this Contract from that date.</p>	19. Variations to Contract <p>19.1 The Secretary has the right to unilaterally vary this contract under clauses 19.2 and 19.3. Otherwise, the provisions of this Contract may be varied by mutual agreement, in writing, and signed by the authorised representatives of the Parties.</p> <p><i>Variations to the Contract by the Secretary</i></p> <p>19.2 The Secretary may unilaterally amend or delete any provisions of this Contract in accordance with clause 19.5 to achieve consistency with a relevant change in the Act, Regulations, government policy or a change in appropriation. Any such amendment or deletion must be consistent with the Act.</p> <p>19.3 The Secretary may unilaterally vary Schedule 1 from time to time to by:</p> <p>19.3.1 amending the Legal Aid Services or Specified Legal Services the Provider may provide if the Provider's Approval changes; or</p> <p>19.3.2 amending any conditions attaching to the Provider's Approval.</p> <p>19.4 Where the Secretary varies the Contract under clauses 19.3.1 and 19.3.2, the Ministry will issue the Provider with a revised Schedule 1. The revised Schedule will replace the existing Schedule 1 of this Contract from the date of issue by the Secretary and will form part of this Contract from that date.</p> <p>19.5 Where the Secretary intends to vary the Contract under clause 19.2, the Ministry will notify the Provider in writing of the intended variation. The Provider must either sign and return the variation to the Ministry or terminate the Contract upon written notice to the Secretary within one month of the date of the notice. If the Provider fails to respond, the Ministry will deem the Contract to have been varied from the date that is one month after the date the notice of intended variation is given to the Provider.</p>

18. Transfer of rights under this Contract

Changes <ul style="list-style-type: none">• Minor editorial change	
Clause	Previous Clause
18. Transfer of rights under this Contract 18.1 Neither Party has the right to assign or transfer, in whole or in part, its rights, obligations or benefits under this Contract to any third party.	20. Transfer of rights under this Contract 20.1 Neither Party has the right to assign or transfer, in whole or in part, its rights, obligations or benefits under this Contract to any other Party.

19. Liability

Changes <ul style="list-style-type: none">• Minor editorial changes• Reference to Ministry replaced with reference to Secretary.	
Clause	Previous Clause
19. Liability 19.1 The Secretary will not be liable to any third party as a direct or indirect result of anything done or omitted to be done by the Provider in connection with providing Legal Aid Services or Specified Legal Services.	21. Liability 21.1 The Ministry will not be liable to any third party as direct or indirect result of anything done or omitted to be done by the Provider in connection with providing Legal Aid Services or Specified Legal Services under this Contract.

20 Authorisation for collection and disclosure of personal information

Changes <ul style="list-style-type: none">• Minor editorial changes	
Clause	Previous Clause
20. Authorisation for collection and disclosure of personal information <p>20.1 The Provider authorises the Secretary to collect personal information about the Provider from the New Zealand Law Society or any other organisation responsible for regulating the Provider if this is necessary for the Secretary to meet his or her obligations under the Act or any other legislation. The Provider also authorises the Secretary to disclose such personal information to these organisations, if necessary.</p> <p>20.2 The Secretary will comply with the Privacy Act 1993 in collecting, storing and disclosing the Provider's personal information under clause 20.1.</p> <p>20.3 The Secretary is subject to the Official Information Act 1982, including in relation to personal information about the Provider.</p>	22. Authorisation for Collection and Disclosure of Personal Information <p>22.1 The Provider authorises the Secretary to collect personal information about the Provider from the New Zealand Law Society or any other organisation responsible for regulating the Provider if this is necessary for the Secretary to meet their obligations under the Act or any other legislation. The Provider also authorises the Secretary to disclose such personal information to these organisations, if necessary.</p> <p>22.2 In collecting and disclosing the Provider's personal information under clause 22.1, the Secretary will comply with the Privacy Act 1993.</p> <p>22.3 The Provider acknowledges that the Secretary is subject to the Official Information Act 1982.</p>

21. Force majeure

Changes <ul style="list-style-type: none">• Minor editorial changes	
Clause	Previous Clause
21. Force majeure <p>21.1 Neither Party will be liable for any act, omission or failure to fulfil its obligations under this Contract if such act, omission or failure arises from any cause reasonably beyond its control. The Party unable to fulfill its obligations will immediately notify the other in writing of the reasons for its failure to fulfill its obligations; any damage or loss caused (or likely to be caused); and any proposed remedial action.</p> <p>21.2 The Parties will seek to reach agreement on the extent of any such damage or loss and any remedial action to be taken.</p>	23. Force Majeure <p>23.1 Neither Party will be liable for any act omission, or failure to fulfil their obligations under this Contract if such act, omission or failure arises from any cause reasonably beyond their control. The Party unable to fulfill their obligations will immediately notify the other in writing of the reasons for its failure to fulfill their obligations; any damage or loss caused (or likely to be caused); and any proposed remedial action.</p> <p>23.2 The Parties will seek to reach agreement on the extent of any such damage or loss and any remedial action to be taken.</p>

22. Privity of contract

Changes No change	
Clause	Previous Clause
22. Privity of contract 22.1 No third party may enforce any of the provisions of this Contract. The provisions of section 4 of the Contracts (Privity) Act 1982 do not apply to this Contract.	24.Privity of Contract 24.1 No third party may enforce any of the provisions of this Contract. The provisions of section 4 of the Contracts (Privity) Act 1982 do not apply to this Contract.

23. Governing law

Changes No change	
Clause	Previous Clause
23. Governing law 23.1 This Contract is governed by New Zealand law.	25.Governing Law 25.1 This Contract is governed by New Zealand law.

24. Severance

Changes No change	
Clause	Previous Clause
24. Severance 24.1 If any part or provision of this Contract is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of the Contract will be binding on the Parties.	26.Severance 26.1 If any part or provision of this Contract is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of the Contract will be binding on the parties.

25. Continuing provisions

Changes No change	
Clause	Previous Clause
25. Continuing provisions 25.1 The clauses in this Contract that are capable of surviving the expiry or termination of this Contract will continue beyond the termination or expiry of this Contract.	27.Continuing Provisions 27.1 The clauses in this Contract which are capable of surviving the expiry or termination of this Contract will continue beyond the termination or expiry of this Contract.

26. Definitions

Changes

No change to clause. Changes to definitions are in the table below.

Clause	Previous Clause
26. Definitions 26.1. When used in this Contract, the following words in bold have the meaning beside them, unless the text clearly states that a different meaning is intended:	28. Definitions 28.1. When used in this Contract, the following words in bold have the meaning beside them, unless the text clearly states that a different meaning is intended:

Term	Definition	Previous definition	Change
Accepted Assignment	means an assignment to the Provider as a Lead Provider and in respect of which the Provider has not notified the Commissioner (or the Secretary, if applicable) that he or she declines or withdraws from the Assignment.	means a matter Assigned to the Provider as a Lead Provider in respect of which the Provider has not notified the Commissioner that he or she declines the Assignment.	Minor editorial changes
Act	means the Legal Services Act 2011.	means the Legal Services Act 2011.	No change
Application for Assistance	means an application for a grant of legal aid or for the provision of any Specified Legal Services that require an application to be made.	N/A	New definition
Approval	means the instrument signed by the Secretary which specifies that a provider is approved under the Act to provide a particular type of Legal Aid Services or a particular Specified Legal Service, as may be amended by the Secretary from time to time. A provider may have multiple Approvals.	means the instrument signed by the Secretary which specifies the particular Legal Aid Services or Specified Legal Services the Secretary has approved the Provider to provide, as may be amended by the Secretary from time to time.	Minor editorial changes
Assignment	means: <ul style="list-style-type: none"> (a) a written decision by the Commissioner to allocate the provision of Legal Aid Services to a provider as a Lead Provider and which specifies: <ul style="list-style-type: none"> – the name and contact details of the legally aided person; – the details of the grant of legal aid to that person (including the maximum amount 	means a letter outlining a decision made by the Commissioner to allocate a Legal Aid Matter to a Provider as a Lead Provider and which specifies: <ul style="list-style-type: none"> – the name and contact details of the legally aided person; – the details of the grant of legal aid to that person (including the maximum amount of the grant); – the basis for payment of the Provider's fees; 	Minor editorial changes and inclusion of new (b) to cover FLAS assignments

Term	Definition	Previous definition	Change
	<p>of the grant);</p> <ul style="list-style-type: none"> – the basis for payment of the Provider's fees; and – the conditions attaching to the grant of legal aid to the legally aided person; <p>(b) a request by a client for Specified Legal Services (other than as part of a Rostered Duty or as allocated pursuant to a Roster) that a provider is authorized to accept directly on application from the client and has accepted.</p>	<p>and</p> <ul style="list-style-type: none"> – the conditions attaching to the grant of legal aid to the legally aided person <p>which, unless the Provider notifies the Commissioner that he or she declines the Assignment, is deemed to have been accepted by the Provider upon receipt of the Assignment by the Provider.</p>	
Audit	means an audit of the Provider undertaken on behalf of the Secretary under section 91 of the Act.	means an audit of the Provider undertaken on behalf of the Secretary under section 91 of the Act.	No change
Commissioner	means the Legal Services Commissioner appointed under section 70 of the Act and includes any person duly delegated by the Commissioner to undertake his or her functions.	means the Legal Services Commissioner appointed under section 70 of the Act and includes any person duly delegated by the Commissioner to undertake his or her functions.	No change
Conditions of Approval	means the conditions (if any) imposed by the Secretary under section 77(2) of the Act on the Approval/s given to the Provider.	means the conditions (if any) imposed by the Secretary under section 77(2) of the Act on the Approval given to the Provider.	No change
Contract	means this Contract including all the attached Schedules, all Accepted Assignments and Rostered Duties, and any documents referred to in this Contract (whether attached or published on the Ministry's website), and includes all variations to it and any such documents.	means this Contract including all the attached Schedules, all Accepted Assignments, and any documents referred to in this Contract (whether attached or published on a website), and includes all variations to it and any such documents.	Minor editorial changes
Cost of Services	has the same meaning as in section 4 of the Act.	has the same meaning as in section 4 of the Act.	No change
Disbursements	means costs, other than professional fees of a Lead Provider, incurred in relation to the provision of Legal Aid Services or Specified Legal Services, that are specified in the Disbursements policy in the Grants Manual or in the policy for a Specified Legal Service.	are defined in the Grants Manual issued by the Ministry and updated from time to time (which can be found on its website).	Definition revised to provide more clarity
Examination	means an Examination carried out by or on behalf of the Commissioner under section 89 of the Act.	means an Examination carried out by or on behalf of the Commissioner under section 90 of the Act.	Minor editorial changes
Grants Manual	means the Legal Aid Services Grants Handbook issued by the Commissioner and updated from time to	N/A	New definition

Term	Definition	Previous definition	Change
	time (which can be found on the Ministry's website)		
Legal Aid Complaint	means a complaint made to the Provider or the Secretary, Commissioner, or Ministry about the Provider (whether made by staff of the Ministry or a person outside of the Ministry). The complaint must relate to the Legal Aid Services or Specified Legal Services provided or which should have been provided to an aided person, but excludes a Request for Examination.	means a complaint made to the Provider or the Secretary, Commissioner or the Ministry about the Provider (whether made by staff of the Ministry or a person outside of the Ministry). The complaint must relate to the Legal Aid Services or Specified Legal Services provided or which should have been provided to an aided person, but excludes a Request for Examination.	No change
Legal Aid Services	has the same meaning as in section 4 of the Act.	has the same meaning as in section 4 of the Act.	No change
Lead Provider	means the provider who is allocated (paragraph (a)) or accepts (paragraph (b)) an assignment under the definition of Assignment.	has the same meaning as in section 4 of the Act.	Definition changed to reflect change in definition of Assignment
Ministry	means the Ministry of Justice and its successors.	means the Ministry of Justice and its successors.	No change
Parties	means the Secretary and the Provider.	means the Secretary and the Provider.	No change
Practice Standards	has the same meaning as in section 4 of the Act and are as documented and published on the Ministry's website (as amended from time to time).	has the same meaning as in section 4 of the Act and are as documented and published on the Ministry's website (as amended from time to time).	No change
Proceeds of Proceedings	has the same meaning as in section 4 of the Act.	N/A	New definition using definition in Act
Provider's Details	means the Provider's details set out in Schedule 1 or as otherwise notified by the Provider under clause 12.2.	means the Provider's details set out in Schedule 1 or as otherwise notified by the Provider under clause 14.2.	No change
Provider Manual	means the Legal Aid Provider Manual issued by the Secretary and updated from time to time (which can be found on the Ministry's website)	N/A	New definition
Quality Assurance Check	means a Quality Assurance Check of the Provider carried out by the Secretary under section 88 of the Act.	N/A	New definition using definition in Act
Reassignment	means the process by which the Commissioner transfers the management of an Accepted	means the process by which the Commissioner transfers the management of a Legal Aid Matter	Consequential revision to reflect change in other definitions

Term	Definition	Previous definition	Change
	Assignment from one Lead Provider to another Lead Provider.	Assigned to one Lead Provider to another Lead Provider.	
Request for Examination	means a request for examination under section 90 of the Act.	means a request by an aided person for the Commissioner to examine the Cost of Services under a grant of legal aid to the person if he or she considers that a Lead Provider — <ul style="list-style-type: none"> (a) has claimed for more time than was actually spent providing services under the grant; or (b) has claimed for Disbursements that were not in fact used in providing these services. 	Simplified definition
Review Authority	means the Review Authority appointed under section 84 of the Act.	means the Review Authority appointed under section 84 of the Act.	No change
Roster	means a list, maintained by the Secretary, of providers approved to provide a particular Specified Legal Service in a particular location and who have applied for and been granted a place on the list for the purpose of scheduling and allocating the Specified Legal Services.	Means a list maintained by the Ministry of Providers who have been approved by the Secretary to provide Specified Legal Services and whose applications to have their names placed on such a list have been approved by the Ministry for the purpose of scheduling and allocating the Specified Legal Services.	Minor editorial changes
Rostered Duty	means the period on a specified date that the Provider is scheduled to be available to provide Specified Legal Services and in respect of which the Provider has not notified the Secretary that he or she is unavailable or arranged a replacement (depending on the requirements of the policy for the relevant Service).	N/A	New definition
Rotational Assignment List	means a list, maintained by the Commissioner, for the purposes of making assignments to providers on a rotational basis.	N/A	New definition
Secretary	means the Secretary for Justice and includes any person duly delegated by the Secretary to undertake his or her functions.	means the Secretary for Justice and includes any person duly delegated by the Secretary to undertake his or her functions.	No change
Secretary's Contract Manager	means the Secretary's Contract Manager named in Schedule 1 or any other person notified in accordance with clause 13.3 from time to time.	means the persons named in Schedule 1, as applicable, and as updated in accordance with clause 15.4 from time to time.	Minor editorial change
Specified Legal Services	has the same meaning as in section 4 of the Act.	has the same meaning as in section 4 of the Act.	No change

Term	Definition	Previous definition	Change
Supervised Provider	means a provider whose Approval is subject to a condition that s/he is supervised by a Lead Provider.	means a Provider who is required to be supervised by a Lead Provider in accordance with the Act, the Legal Services (Quality Assurance) Regulations 2011, the Approval, the Practice Standards and the Ministry's applicable policies and procedures.	Simplified definition
Working Day	means any day other than a Saturday, Sunday or statutory public holiday.	means any day other than a Saturday, Sunday or statutory public holiday.	No change

Definitions deleted as no longer required: Legal Aid Matter, Office Overheads, Specified Period

Schedule 3 – Firm’s Undertaking

Clause	Previous Clause	Changes
<p>1. The Firm will receive all payments from the Secretary for Legal Aid Services and Specified Legal Services provided by the Provider by direct credit only. On receipt, the Firm will promptly pay all approved providers and disbursements incurred in the course of supplying the Services. The Firm will not make any claim for payment in any other manner (for example, by cheque).</p>	<p>1. The Firm will receive all payments from the Secretary for Legal Aid Services or Specified Legal Services supplied by the Provider by direct credit only. On receipt, the Firm will promptly pay all approved providers and disbursements incurred in the course of supplying Legal Services. The Firm will not make any other claim for payments to be made in any other manner (for example, by cheque).</p>	<p>Minor editorial changes.</p>
<p>2. The Firm will maintain and retain all files and information relating to the Provider’s Accepted Assignments in accordance with clauses 3.11 to 3.13 of this Contract for a period of at least seven years from the date of closure or the last activity on the matter. This does not apply to Accepted Assignments that are Reassigned under clause 4.6 or 4.7 of this Contract, or to any files or information that the Provider has taken with them.</p>	<p>2. The Firm will maintain and retain all information supporting the applications for legal aid submitted by the Provider for a minimum of seven years, except where files are transferred and Reassigned under clause 5 of this Contract, or the Provider has taken the relevant file to another firm.</p> <p>4. At the written request of the Secretary, the Firm will make available for assessment, Examination or Audit the records of the Legal Aid Services or Specified Legal Services supplied by the Provider, except where files are transferred and Reassigned under clause 5 of this Contract, or the Provider has taken the relevant file to another firm. The Firm will ensure it can meet such requests for a minimum of seven years.</p>	<p>Similar aspects of clauses 2 and 4 combined and minor editorial changes.</p>
<p>3. If an Accepted Assignment is Reassigned to another provider outside the Firm, the Firm will comply with any directions from the Commissioner for the transfer of the file/s, and will:</p> <p>3.1 ensure that the file is up to date and complies with clause 3.12 of Schedule 2; and</p> <p>3.2 promptly transfer the file/s in a manner that ensures the interests of any legally aided persons are not prejudiced.</p>	<p>3. If a Legal Aid Matter is Reassigned to another legal aid provider outside the Firm, the Firm will make such file available for immediate transfer to the provider to whom the Legal Aid Matter has been Reassigned.</p>	<p>Changes to align with the equivalent obligation on the Provider.</p>
<p>4. At the written request of the Secretary, the Firm will make available for assessment, Examination or Audit the files and information in clause 2 and any other information the Secretary is entitled to assess, Examine or Audit under the Act.</p>	<p>4. At the written request of the Secretary, the Firm will make available for assessment, Examination or Audit the records of the Legal Aid Services or Specified Legal Services supplied by the Provider, except where files are transferred and Reassigned under clause 5 of this Contract, or the Provider has taken the relevant file to another firm. The Firm will ensure it can meet such requests for a minimum of seven years.</p> <p>5. At the written request of the Secretary, the Firm will provide any other information the Secretary is entitled to assess, Examine or Audit under the Legal Services Act 2011.</p>	<p>Similar aspects of clauses 4 and 5 combined and minor editorial changes.</p>

Clause	Previous Clause	Changes
<p>5. The Firm will take all reasonable steps to protect the interests of the Commissioner under a charge, including not doing or permitting anything that would or might effect the transfer of the property without the charge being satisfied.</p>	<p>N/A</p>	<p>New obligation mirroring Provider's obligation under section 107 of the Act and clause 3.7 of the contract. The obligation reflects the fact that this is something the firm will have control over and is particularly relevant in situations where, for example, the Provider has left the firm.</p>
<p>6. The Firm will advise the Commissioner if it is aware that an aided person has, is, or is attempting, to avoid making payments to the Commissioner from the Proceeds of Proceedings.</p>	<p>N/A</p>	<p>New obligation mirroring Provider's obligation under section 107 of the Act and clause 3.7 of the contract. The obligation reflects the fact that this is something the firm will have control over and is particularly relevant in situations where, for example, the Provider has left the firm.</p>

Appendix 4 Proposed changes to Practice Standards

The proposed new standards are presented as highlighted text

Proposed Practice Standards for Legal Aid Providers

Consultation proposal – the proposed new standards are presented as highlighted text

June 2016



MINISTRY OF
JUSTICE
Tabu o te ture

New Zealand Government

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General Practice Standards

1. These practice standards set out principles and procedures to assist lawyers in the effective, efficient and economic delivery of high quality legal aid services. For many lawyers the practice standards will reflect the way they currently practise.

The practice standards form two parts, namely:

- 1.1 General practice standards that are applicable to all areas of law, and
- 1.2 Additional standards that are applicable to the following areas of law:
 - 1.2.1 Criminal
 - 1.2.2 Family
 - 1.2.3 Māori Land Court/ Māori Appellate Court proceedings
 - 1.2.4 Waitangi Tribunal proceedings
 - 1.2.5 Mental Health proceedings.
- 1.3 If you have doubts about how the standards apply, or what they mean, you should contact an experienced lawyer to discuss them.
- 1.4 These practice standards are not a comprehensive code. In addition to these standards lawyers need to know and comply with their obligations as lawyers as set out in:
 - 1.4.1 The Lawyers and Conveyancers Act 2006;
 - 1.4.2 The rules and regulations made pursuant to the above Act, including the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008;
 - 1.4.3 The Legal Services Act 2011;
 - 1.4.4 The regulations and policies made pursuant to the above Act;
 - 1.4.5 The general legislation and rules applicable to the relevant court including the Family Courts Act 1980 and the Family Court Rules 2002, the District Courts Act 1947 and the District Court Rules 2009, and the Judicature Act 1908 and the High Court Rules;
 - 1.4.6 The specific legislation, case-law;
 - 1.4.7 Common law (in particular the lawyer's duty as an officer of the Court and to the client); and
 - 1.4.8 Relevant practice notes.
- 1.5 Lawyers acting under a legal aid contract are expected to act and conduct cases in accordance with the above, as well as any applicable additional practice standards, such as the Family Law Practice Standards or Mental Health Practice Standards, where the provider is approved to provide those legal aid services. A failure to do so may raise disciplinary issues, and may impact on both payment to the lawyer for work on the particular matter and the lawyer's continued eligibility to provide services pursuant to legal aid funding.

- 1.6 It is recognised that the lawyer's role is determined by the instructions of her or his client, subject to the lawyer's fundamental obligation to uphold the rule of law and facilitate the administration of justice.

General Principles

2. A lawyer must:

- 2.1 Have knowledge and understanding of the substantive law that applies in the area of law being undertaken pursuant to legal aid and be in a position to address any substantive issue as it arises.
- 2.2 Have knowledge and understanding of the procedural law that applies in the area of law being undertaken pursuant to legal aid and be in a position to address any procedural issue as it arises.
- 2.3 Have up to date knowledge of relevant legal aid legislation and processes and inform clients of their rights and obligations in relation to legal aid.
- 2.4 Recognise cross-cultural issues and issues facing socially and economically disadvantaged people.
- 2.5 Decline to accept, or return for re-assignment, any matter for which he or she has insufficient experience or skill to competently represent the client, or is too busy to undertake.
- 2.6 Exercise independent professional judgment on a client's behalf and exercise due care in giving appropriate advice to a client that is legally correct and appropriate, including on calling evidence, the use of experts, dispute resolution and options following the outcome of the case.
- 2.7 Communicate with the client in a way that is clear, appropriate and tailored to the client's circumstances and keeps the client informed about the progress of their case, the procedure and substantive issues.
- 2.8 Maintain a record of important advice given and a record of key instructions.
- 2.9 Conduct him or herself in a way that respects the parties involved and does not inflame the dispute between the parties. Lawyers should avoid conducting proceedings in a manner that will increase distrust, hostility or animosity between the parties without achieving any significant and legitimate benefit for the client.
- 2.10 Maintain networks of support to provide adequate back up in case of illness or other genuine unavailability.
- 2.11 Supervise adequately and have a plan for the review and supervision of any person undertaking legal aid work under their supervision.
- 2.12 Take care to maintain the privacy interests of people named in Court documents so that unintended parties do not obtain access to personal information.

General Responsibilities to Clients

Legal Aid Funding

3. Where a client may be eligible for legal aid, the lawyer shall:
 - 3.1 Advise the client of the availability of legal aid funding and his or her potential eligibility for that funding.
 - 3.2 If the client seeks legal aid funding, assist the client to apply for this funding or advise the client where he or she can receive assistance (for example, from another lawyer, the Ministry, a community law centre or the Citizens Advice Bureau).
 - 3.3 If assisting the client to make an application for legal aid funding agree with the client as to who (the lawyer or the client) will compile the relevant information and documentation and file the application with the Ministry. In addition, the lawyer shall, as appropriate:
 - 3.3.1 Seek instructions from or advise the client in sufficient detail to enable the application to be completed by the appropriate person;
 - 3.3.2 Inform the client of his or her initial and ongoing obligations and liabilities pursuant to legal aid funding (for example, the client's ongoing obligations to be honest in legal aid documentation and to disclose to the Ministry changes in financial circumstances, and give the client initial advice as to repayment obligations), or advise him or her where such information can be obtained (for example, from the Ministry, a community law centre or the Citizens Advice Bureau);
 - 3.3.3 Take reasonable steps to seek from the client any third party information that is needed for an application for legal aid funding, or obtain from the client the relevant written authorities for the lawyer to obtain that third party information and then seek that information in a timely manner, or advise the client of the third party information that he or she will need to provide with the application for legal aid funding;
 - 3.3.4 Provide, or advise the client to provide, the legal aid application and the relevant information to the Ministry in a timely manner; and
 - 3.3.5 In the event of funding being refused, advise the client of any right of reassessment by Legal Aid, reconsideration by the Legal Services Commissioner, review by the Legal Aid Tribunal and right of appeal to the courts.

Relations with Clients

4. A lawyer in acting for a client must:
 - 4.1 When communicating with the client, endeavour to use language that is understandable, free from unnecessary jargon and appropriate to the age, gender and capacity of the client.
 - 4.2 If appropriate, seek the use of a qualified interpreter. If legal aid funding is required for this, apply for and obtain that funding in a timely manner in advance.
 - 4.3 Give timely, appropriate and sufficiently detailed advice and explanations to the client to enable him or her to make an informed decision about the matter.
 - 4.4 Advise the client of the steps that he or she can or ought to take in order to assist the efficient and effective conduct of the matter.
 - 4.5 Advise the client of relevant aspects of the matter, including the material evidence, risks, costs, liability and merits of settlement.
 - 4.6 At appropriate times, reassess and again advise the client of the relevant aspects of the matter.
 - 4.7 In a timely manner, keep the client informed of the progress of the matter, including advising the client of the stages through which a matter progresses and the opportunity a stage might provide to resolve matters.
 - 4.8 Where appropriate and practical, advice should be provided to the client in writing, subject to client instructions to the contrary. Some circumstances where it will not be practical include:
 - 4.8.1 Where there is a risk sensitive documents could be accessed by unintended recipients;
 - 4.8.2 Where there are issues of literacy or comprehension although remembering a client with such difficulties may be able to find a trusted person to explain such documents;
 - 4.8.3 Where a client's mental health could be an issue;
 - 4.8.4 Some criminal matters where there is not sufficient time to provide advice in writing due to guilty pleas and quick progression through first and second appearances;
 - 4.8.5 Some family matters where there is not sufficient time to provide advice in writing due to the urgent nature of the application, such as urgent protection orders; and
 - 4.8.6 There is no known address.
 - 4.9 On conclusion of a matter, in a timely manner, provide the client with a copy of the relevant agreement, order or judgment.
 - 4.10 Not make any public statements regarding a client's affairs without the client's specific consent.

Conduct of Matter

Evidence and submissions

5. In conducting proceedings the lawyer must:
 - 5.1 Advise the client of the right to give and/or call evidence on his or her behalf (whether by affidavit, brief of evidence, oral evidence or in some other form) that is relevant and legally admissible;
 - 5.2 Consider whether agreement might be reached with other parties to the proceeding that evidence could be introduced by consent or offered in a manner that is cost effective, and, if so, seek instructions to endeavour to reach agreement with the other party on that basis;
 - 5.3 Advise the client that a lawyer has a duty not to take any step the main purpose of which is to cause delay in the determination of any proceeding or interlocutory application;
 - 5.4 Record the client's factual instructions in a signed brief of evidence unless there is a good reason not to, for example where a client is not a witness or has already given a full account such as in a Police interview or where the evidence will be in an affidavit.

Experts

6. A lawyer must:
 - 6.1 Consider whether expert evidence would be substantially helpful.
 - 6.2 If expert evidence would be substantially helpful apply for legal aid funding in a timely manner and in advance of engaging an expert. When seeking that funding it is important to set out the reason why expert evidence is appropriate and a realistic estimate of the cost that would be involved.
 - 6.3 Where the cost of an expert increases seek approval for the increase before the corresponding work is undertaken.
 - 6.4 Ensure the expert is aware that they are subject to the estimate and that they need to advise the engaging lawyer if the estimate is going to be exceeded.
 - 6.5 Help ensure that when an expert is preparing and giving evidence, the expert is aware of the need to conduct herself or himself in accordance with the applicable rules relating to the conduct of experts.

Without notice applications

7. A lawyer must:
 - 7.1 Consider whether the circumstances are sufficient to justify the client being advised to make an application without notice and whether it is desirable to make an application on this basis.
 - 7.2 If the client wishes to make an application without notice, advise the client

that he or she owes to the court a duty of utmost good faith to make full disclosure to the court of all facts relevant to the application. That duty extends to:

- 7.2.1 All matters relevant to the application, including prejudicial information, whether or not the applicant considers them important; and
- 7.2.2 Disclosing to the Court any known defence to the application together with the facts on which it is based.

Settlement and dispute resolution

8. A lawyer must:

- 8.1 Encourage the client to resolve the matter where appropriate. This will be in most cases, with the exception of some cases affecting the safety of a person and criminal cases for which there are limitations and specific processes, such as restorative justice conferences. It may include making or considering settlement offers and, where available, using other appropriate dispute resolution methods, for example; alternative dispute resolution (ADR), mediation, arbitration and settlement conferences.
- 8.2 Avoid knowingly taking steps to promote conflict or to artificially prolong proceedings.
- 8.3 Where appropriate dispute resolution is to take place, advise the client to approach appropriate dispute resolution in a manner consistent with the philosophy of appropriate dispute resolution and take reasonable steps to ensure that he or she is properly informed about the matter and relevant process to enable meaningful and effective participation by him or her.

Conflicts of interest

9. A lawyer must:

- 9.1 Take steps to avoid an actual or potential conflict of interest and to identify any actual or potential conflict of interest at the earliest possible opportunity.
- 9.2 If an actual or potential conflict of interest arises, advise the client and the Ministry of Justice in a timely manner and, if appropriate, cease acting. Explain to the client that in some circumstances a lawyer cannot continue to act where there is an actual or potential conflict of interest, even if informed consent can be obtained.
- 9.3 Avoid giving evidence about, or being a witness in, a matter in which the lawyer is either solicitor or counsel. Where any such evidence is contentious then the solicitor or counsel will need to seek leave to withdraw and the Ministry should be advised promptly.

Dealings with Other People

10. A lawyer must:

- 10.1 In dealing with Judges, other lawyers, litigants in person, experts, court staff

and the Ministry of Justice, conduct him or herself in a courteous and professional manner in order to encourage and not impede good working relationships.

- 10.2 Be punctual at court and arrange for alternative counsel if unable to appear (with approval from the Ministry, if required).
- 10.3 Answer or respond to telephone inquiries promptly.
- 10.4 Provide a timely and meaningful reply to correspondence, reply promptly to all urgent matters and advise clients that a detailed response for advice might require more time.
- 10.5 When dealing with litigants in person, endeavour to communicate using language that is understandable, free of unnecessary jargon and appropriate to the age, gender and capacity of the person.
- 10.6 Avoid criticising other lawyers involved in the case except where the other lawyer's conduct materially affects the case. This provision does not prevent a lawyer from the appropriate use of complaints mechanisms such as those under the Legal Services Act 2011 or the Lawyers and Conveyancers Act 2006.

File Maintenance

11. A lawyer must use best endeavour to ensure that:

- 11.1 Files are kept in such a way that if anyone, other than the lawyer conducting the matter, assumes management of the file it is possible for that person promptly to ascertain relevant matters. Relevant matters include:
 - 11.1.1 Any client instructions;
 - 11.1.2 The purpose and extent of legal aid funding;
 - 11.1.3 The stage the matter is at, including when the matter is next before the court or scheduled, for example, for ADR; and
 - 11.1.4 The relevant orders or agreements in respect of the matter.
- 11.2 All relevant documents, correspondence received and a copy of correspondence sent is kept on the file including:
 - 11.2.1 Correspondence in relation to legal aid with the Ministry and the client. It is preferable that the correspondence be kept in a separate part of the file so that it is easily identifiable and accessible;
 - 11.2.2 All other correspondence;
 - 11.2.3 A copy of all court documents filed, served or issued in the matter. It is preferable that the documents are in a separate bundle or brief file, and indexed;
 - 11.2.4 File notes of all material telephone conversations and personal attendances in relation to the matter, preferably with the date, name of person spoken to, material details of the conversation and noting if it was held on a without prejudice basis;
 - 11.2.5 A record of all court attendances, including the name of the Judge(s), counsel and parties present, a summary of any

negotiations or submissions, orders or directions made and the time involved; and

11.2.6 Records of all proceeds of proceedings and associated transactions.

11.3 Any disbursement properly incurred is paid in a timely manner. Where payment of a disbursement is dependent on legal aid funding (approval for which must be obtained in advance), the lawyer must seek payment from the Ministry of Justice in a timely manner. A record of receipts and expenditure is to be included in the file, or in a separate system (for example, a trust account system) that records receipts and expenditure.

11.4 Where lawyers are charging in full or part based on time spent on a matter a time recording system (preferably electronic) is used to record all time spent by the lawyer(s) approved by the Ministry to act on the matter. Any time spent by non-lawyers on the matter is to also be recorded.

11.5 All legal aid files must be retained for a minimum of seven (7) years from the date of closure or the last activity on the matter. Files can be retained in either hard copy or electronic form.

Other Obligations

12. A lawyer acting in a matter subject to a grant of legal aid must:

12.1 Use his or her best endeavours to comply with the terms and conditions of the grant of legal aid insofar as they are imposed on him or her.

12.2 Where a professional negligence claim has been determined against the lawyer, notify the Ministry of Justice promptly of that determination.

12.3 Comply promptly with any request by the Ministry for files to be provided to it for a legitimate and authorised statutory purpose (such as, for the purpose of an audit or to enable an informed granting decision to be made on that file).

12.4 Notify the Ministry promptly of any potential or actual costs claimed under section 45 of the Legal Services Act 2011 and comply promptly with any reasonable Ministry requests for information or assistance in relation to that claim.

12.5 Review all files for legal aid services on completion of the matter to ensure that, subject to client instructions, all appropriate steps have been taken to conclude the matter, before notifying the Ministry that the matter is finished.

Criminal Practice Standards

Responsibilities to Clients and the Prosecution

13. A lawyer who receives a legal aid assignment must:
 - 13.1 Decline to accept or return for reassignment any matter where he or she has a conflict or potential conflict of interest.
 - 13.2 When acting for more than one co-accused, take particular care to ensure she or he has considered the duties owed to each client and any potential conflicts, and, if any doubt that there may be conflicting duties, she or he must decline to accept the matter or return it for reassignment.
 - 13.3 Make all reasonable effort to make contact with the client by the most practical method.
 - 13.4 On assignment, and subsequently if necessary, consider the appropriateness of applications for name suppression and/or bail, and make any application in a timely fashion.
 - 13.5 Advise the prosecution that she or he is acting and request relevant disclosure.
 - 13.6 Meet with the client as soon as reasonably practicable, and, preferably before the first court appearance after assignment. Where the client is remanded in custody, the first meeting may be immediately prior to court.
 - 13.7 Take particular care to ensure that any client remanded in custody is kept fully informed of the progress of the proceeding.
 - 13.8 Advise the client at the first reasonable opportunity and throughout the case about the sentencing discounts for pleas of guilty in terms of *R v Hessel* [2011] 1 NZLR 607 (SC). The lawyer will remind the client of the discounts prior to any status hearing or call-over, and before any trial or hearing.
 - 13.9 Before the client enters any election or plea:
 - 13.9.1 Obtain relevant disclosure from the prosecution, and discuss it with the client; and
 - 13.9.2 Advise the client of defence disclosure obligations.
 - 13.10 Assist the client to enter the plea or election at the earliest practicable time.
 - 13.11 If more than one lawyer is assigned, advise the client of the role each lawyer will take in the proceeding.
 - 13.12 Consider whether the client may present with any issues that raise the following questions in relation to the client:
 - 13.12.1 Does the client have any intellectual disability or mental health issues and, if so, when and how are they to be addressed?

- 13.12.2 Does the client have any addiction, alcohol or drug issues and, if so, when and how are they to be addressed?
- 13.12.3 Is the matter suitable for restorative justice?
- 13.12.4 Is domestic violence involved?
- 13.12.5 Is the matter suitable for diversion?
- 13.13 Wherever practicable, obtain instructions in writing concerning the incident or events giving rise to the charge(s). Details as to the client's background, physical health and other relevant details should be obtained. When it is not possible to obtain instructions in writing, a lawyer should make clear file notes of instructions (or the lack of instructions).
- 13.14 Be familiar with a client's previous convictions before a plea is entered.
- 13.15 Where appropriate discuss the availability of a sentencing indication hearing with the client.
- 13.16 Retain written copies of advice given to the client on matters of particular significance or that may be contentious.

Hearings

- 14. A lawyer must:
 - 14.1 Subject to client instructions, give appropriate consideration to notifying the prosecution of any issues the defence intends to raise at a status hearing. Where appropriate, the notification must be given in sufficient time for the prosecution to be able to respond at the status hearing.
 - 14.2 Advise the client as to relevant defences in the light of witness statements. On receipt of the prosecution's briefs of evidence, the lawyer must discuss the briefs with the client.
 - 14.3 Take instructions from the client as to whether the defence will call or give evidence.
 - 14.4 Comply with the relevant Practice Notes.

Appeals to Court of Appeal or Supreme Court

- 15. A lawyer must:
 - 15.1 Be familiar with, and comply with, the relevant Court Rules, and Practice Notes procedures set out in authorities relating to appeal proceedings.
 - 15.2 Where the client wishes to appeal, consider whether it is proper to act;
 - 15.3 Where the client wishes to appeal, or the lawyer considers there is merit in an appeal (whether against conviction or sentence or both), take instructions from the client in sufficient time for a notice of appeal, or an application for leave to appeal, to be filed within the statutory time limit.
 - 15.4 Consider whether there are grounds for seeking bail pending appeal.
 - 15.5 Provide advice on grounds that appear arguable, and assist the client to draft those grounds and complete the notice of appeal or application for

leave to appeal and file with the Court of Appeal or Supreme Court.

- 15.6 Advise the client of the availability of legal aid, the need to complete an application for legal aid for the appeal, the time limits for filing an appeal, and the need for an explanation of the delay that may be needed for a late appeal.
- 15.7 Where assisting an appellant to complete a notice of appeal, ensure that any information relevant to the mode of hearing is included in the notice to appeal. A copy of the notice must be provided to the Ministry of Justice as part of any application for a grant of full aid for the appeal.
- 15.8 Counsel drafting the grounds of appeal in a notice for appeal or an application for leave to appeal to the Supreme Court must seek from the Ministry and obtain in advance adequate funding, and on receipt of funding, ensure that the notice or application gives sufficient information to properly support the grounds of appeal/leave to apply for appeal, by reference to the grounds available in the Crimes Act 1961 and the Supreme Court Act 2003.
- 15.9 On receipt of appropriate instructions, where trial counsel is not assigned to an appeal, then that trial counsel shall forthwith on provision of instruction from the client/former client provide to new counsel the entirety of his or her file in a form that ensures that new counsel will be able to identify:
 - 15.9.1 The court, judge and date of the proceedings at first instance;
 - 15.9.2 The charges;
 - 15.9.3 The outcome in relation to each charge;
 - 15.9.4 The date of filing the appeal;
 - 15.9.5 Any particular or unusual features;
 - 15.9.6 A brief outline of any particular matters raised by the client;
 - 15.9.7 The note of any material missing from the brief and the reason;
 - 15.9.8 The date of expiry of the notice of intention to appeal; and
 - 15.9.9 The current custodial status and place of custody of the client.
- 15.10 The brief to counsel in a Court of Appeal matter should include:
 - 15.10.1 The notice of intention to appeal;
 - 15.10.2 Any application for extension of time;
 - 15.10.3 Any appeal report obtained from trial counsel;
 - 15.10.4 The transcript of the proceedings at trial and sentence;
 - 15.10.5 Any interlocutory judgments;
 - 15.10.6 The transcript of the summing up;
 - 15.10.7 The sentencing notes;
 - 15.10.8 Any relevant correspondence;
 - 15.10.9 Any fresh evidence; and
 - 15.10.10 Any comments of the client regarding the appeal.
- 15.11 Subject to client instructions, counsel acting in an appeal is to ensure that the client is provided with copies of all documents filed in the court, and copies of all judgments and minutes, providing advice as to the availability of

any further appeal and any grounds that may exist to support any further appeal.

- 15.12 Where issues of trial counsel incompetence arise counsel is to seek legal aid funding to enable them to undertake due diligence, and advise the client and Ministry of the merits of the proposed ground, in accordance with the Court of Appeal's directions in *R v Clode* [2009] 1 NZLR 312.
- 15.13 If an appeal court makes a finding that trial counsel was incompetent, trial counsel must notify the Ministry of that finding in a timely manner.

Family Practice Standards

Statement of Principles

16. A lawyer must:

- 16.1 Recognise that family violence is a serious problem. The safety of children and parents is to be considered at all stages of a family law dispute.
- 16.2 Recognise the principles set out in the Care of Children Act 2004, and, in particular, that the welfare and best interests of the child, in his or her circumstances, are the paramount consideration.
- 16.3 Recognise the need for parents to consult and cooperate with each other, and to reach their own decisions in matters affecting their children.
- 16.4 Be aware of their obligation under the Family Proceedings Act 1980 to promote reconciliation, or where this is not possible, conciliation in all family law matters.
- 16.5 Encourage the client to take a conciliatory rather than a litigious approach to family disputes where appropriate. This will be in most cases, other than those affecting the safety of the client and/or their children, and/or where statutory provisions set out a mandatory approach. Parties should be encouraged to find their own solutions, because this has a positive impact on the parties and any children involved.
- 16.6 Be aware of the special need in family law matters for them to conduct themselves in a way that does not inflame the dispute between the parties. They should endeavour to avoid conducting themselves in a manner that will increase distrust or animosity between the parties, and ensure that their own personal emotions or opinions do not influence the advice given to a client.

Responsibilities to Clients

17. A lawyer must:

- 17.1 Inform the client of the requirements of, and ensure compliance with, any current and/or local procedures in court proceedings where applicable.
- 17.2 Subject to the client's instructions provide the client with copies of all applications, affidavits and reports filed in the proceedings (subject to any court restrictions as to release of documents). When the matter is concluded the client must be provided with a sealed copy of any order or agreement, and a copy of any judgment. The client must be advised about the basis for any appeal, the chances of success of the appeal, and time limits for review or appeal.
- 17.3 Explain to the client what processes are available within the Family Court for resolution of disputes, counseling, mediation, and types of hearings, and, once a matter is in the Family Court system, provide an appropriate explanation of the applicable process in a way the client can understand.

- 17.4 Keep the client informed of the progress of their matter in a timely manner and ensure that the client is aware of the stages through which a matter progresses in the court system, and of opportunities that each stage may provide to resolve matters.
- 17.5 Where the matter proceeds to a hearing, mediation or settlement conference, ensure that the client is properly briefed on the process, including on how evidence is given, how the hearing is run, and the basic conduct expected of litigants and counsel in the Family Court.
- 17.6 Advise the client of the necessity for compliance with rules, regulations and statutory provisions concerning publication of family law proceedings, including providing advice as to the effect of such provisions, and warn clients of any sanctions that may be imposed for the publication of family law proceedings.
- 17.7 Where the client is seeking to be a welfare guardian or property manager under the Protection of Personal and Property Rights Act 1988, advise the client of the limitations and obligations they may be subject to under the Act.
- 17.8 If the other party is a litigant in person, a lawyer should advise the client of the differences in process in the courtroom, and the mechanisms available for avoiding direct, intrusive questioning by the self-represented party.

Without Notice Applications

- 18. A lawyer must take particular care when advising family clients on without notice applications and comply with any specific relevant provisions of the Family Courts Rules, the High Court Rules, and any associated legislation over which the Family Court has jurisdiction. A lawyer must:
 - 18.1 Consider whether the circumstances are sufficient to justify the client being advised to make an application without notice and whether it is desirable to make an application on this basis.
 - 18.1.1 If the client wishes to make an application without notice, advise the client that he or she owes to the court a duty of utmost good faith to make full disclosure to the court of all facts relevant to the application. That duty extends to:
 - 18.1.2 All matters relevant to the application, whether or not the applicant considers them important; and
 - 18.1.3 Disclosing to the court all relevant circumstances, whether they are advantageous to the applicant (and any other person for whose benefit the order is sought) as well as meeting any other disclosure requirements.
 - 18.2 Advise of the possible consequences of a failure to disclose a relevant circumstance (including, but not limited to, the fact that any order made on a without notice basis where it is later revealed that a material fact was not disclosed may be rescinded or overturned on re-hearing or appeal as well as the jeopardy of having an adverse cost order being made).
 - 18.3 Advise the client of the consequences of the order sought not being made on a without notice basis (that is, the order will be put on notice and served on the respondent).

Care of Children Act 2004

19. In addition to advising clients of the provisions relevant to their specific case, a lawyer must:
 - 19.1 Where the matter involves the guardianship of, or the provision of day-to-day care for, or contact with, children, advise the client (subject to any safety issues, including family violence issues) of the benefits of making arrangements for children in co-operation with the other party rather than through a court hearing.
 - 19.2 Advise the client in matters involving the guardianship of, the role of providing day-to-day care for, or contact with children, of the provisions of sections 4, 5 and 6 of the Care of Children Act 2004.
 - 19.3 Explain to the client the role of lawyer for the child or any other court-appointed counsel, any costs associated with such an appointment, and the circumstances in which a contribution towards such costs may be directed by the court.
 - 19.4 Advise the client of the requirements in section 6 that the child be given a reasonable opportunity to express her or his view, and the methods by which this is generally done (including through lawyer for child, and the child/ren meeting with a Judge).
 - 19.5 Ascertain whether or not there are any allegations of violence to which sections 59 to 61 would apply. If there are any such allegations, the lawyer must advise as to court processes which must be completed in accordance with the above provisions.
 - 19.6 At all stages of the process and, where appropriate (subject to sections 59 to 61), advise clients of alternatives to parenting orders and other ways in which parenting arrangements can be agreed and recorded.
 - 19.7 Where an interim parenting order has been made, advise the client of the requirement that all reasonable steps should be taken to obtain a final order within 12 months of the making of the interim order, and that any interim order will, unless an application is made, expire 12 months after the date upon which it was made.
 - 19.8 Once a parenting order (whether interim or final) has been made, advise the client of the consequences of a breach of such an order.
 - 19.9 Explain to the client the provisions relating to the release of specialist reports and take all reasonable steps to ensure compliance.
 - 19.10 Subject to the client's instructions, where appropriate and practicable, ensure that written copies of advice are provided to the client and placed on the client's file.

Children, Young Persons, and Their Families Act 1989

20. A lawyer must:
 - 20.1 Advise the client of the requirement for the child's welfare and interests to be

the paramount consideration, and the principles in the Act that are relevant to the client's matter.

- 20.2 Explain restrictions on counsel for a party attending a family group conference, the need to seek permission from the coordinator to attend the conference, and the need to seek specific legal aid funding.
- 20.3 If instructed to do so, apply for legal aid to appear at a family group conference.
- 20.4 Explain the process and the need to reapply for legal aid for each review of a family group conference order and the limited availability of legal aid funding for this.
- 20.5 Subject to the client's instructions, where appropriate and practical, ensure that written copies of advice are provided to the client and placed on the client's file.

Domestic Violence Act 1995

21. A lawyer must:

- 21.1 Advise the client fully of the consequences of the making of any order under the Domestic Violence Act 1995 and (when acting for applicants) that the respondent will be informed of the application and receive a copy of any affidavit in support.
- 21.2 When acting for an applicant, advise of the provisions whereby they may withhold their address and contact details from the service copy of documents, and, when instructed to do so, ensure that the service copy provided to the court does not contain such details.
- 21.3 When acting for an applicant, advise of the limits of any order under the Act, and the need to take other practical steps to ensure their safety.
- 21.4 Advise the client of the need to authorise access to any family violence records so they can be attached to an application under the Act.
- 21.5 Advise the client of the need to obtain copies of any relevant medical information (when appropriate) and, where there is any such information, the need to authorise access.
- 21.6 When acting for an applicant, advise the client of any known programmes available for themselves and their children.
- 21.7 When acting for a respondent, advise the client of the timeframe for objecting to attending a domestic violence programme, and ensure that, if they are instructed to file an objection, it is filed within the requisite time if possible otherwise make an application to file an objection out of time if there are good reasons why the objection could not be filed on time.
- 21.8 Subject to the client's instructions, where appropriate and practical, ensure that written copies of advice are provided to the client and placed on the client's file.

Property (Relationships) Act 1976

22. A lawyer must:

- 22.1 Advise the client of the need to make full disclosure of relevant information, including documentary evidence, and that this obligation extends to disclosure of all property or interests in property (including trust and company assets) whether the client considers that property to be relationship property or not.
- 22.2 Advise the client of the provisions in the Legal Services Act 2011 relating to charges over property and the need to repay legal aid from proceeds of relationship property settlements.
- 22.3 Subject to the client's instructions, where appropriate and practical, ensure that written copies of advice are provided to the client and placed on the client's file.

File Maintenance

23. A lawyer must:

- 23.1 Where a file contains a section 133 Care of Children Act 2004 or section 178 Children, Young Persons, and Their Families Act 1989 report, or any other report the release of which is restricted by statute, ensure that such report is kept on the file in such a manner that it cannot be inadvertently released to any person (including the client). This includes ensuring that such report is removed from the file, if a client seeks to uplift the file, before the file is handed over, unless the specific consent of the court to release the report has been obtained.

Protecting the Commissioner's interests

24. A lawyer must:

- 24.1 Take all reasonable steps to protect the interests of the Commissioner under a charge, including not doing or permitting anything that would or might effect the transfer of the property without the charge being satisfied (section 107(2)(a) and (b) Legal Services Act 2011)
- 24.2 Advise the Commissioner if he or she is aware that an aided person has, is, or is attempting, to avoid making payments to the Commissioner from proceeds of proceedings (section 107(2)(c) Legal Services Act 2011).
- 24.3 Ensure that any instructing solicitor or any other relevant person (including the person(s) responsible for payments from the lawyer/firm's trust account) is aware of the obligations in 24.1. and 24.2.
- 24.4 Ensure that any proceeds of proceedings are received by the lawyer or his or her firm, and particularly that any proceeds in the form of money is paid into the lawyer/firm's trust account.

24.5 Before distributing proceeds of proceedings or assisting a legally aided person to dispose of any property subject to a charge in favour of the Commissioner, at a minimum:

24.5.1 check with the managing Legal Aid Office to ascertain the status of the client's legal aid debt, if any;

24.5.2 check whether deductions need to be made from the proceeds of proceedings or from the proceeds of the sale or transfer of the property subject to the charge; and

24.5.3 make any necessary arrangements for payment to the Commissioner before any residue is distributed to the legally aided person.

Māori Land Court, Māori Appellate Court Practice Standards

General Principles

1. A lawyer representing a legally aided client should recognise that:
 - 1.1 Notwithstanding some parties may have minor interests in land the subject to the proceedings, it will have a high cultural value that may outweigh the economic value of the land; and
 - 1.2 Any dispute that may exist in the proceedings will generally involve whānau/family. The collective nature of Māori land means the parties will have to preserve an ongoing relationship. Consequently a lawyer must conduct himself or herself in a way that does not inflame the dispute between the parties. The lawyer should endeavour to avoid conducting proceedings in a manner that will increase distrust or animosity between the parties without achieving any significant and legitimate benefit for the client.

Māori Land Act 1993: Conduct of Matter

2. In conducting proceedings the lawyer must:
 - 2.1 Be aware of and advise the client of the principles and policy underlying the regulation of Māori land under the Māori Land/Te Ture Whenua Act 1993;
 - 2.2 Explain what processes are available once a matter is in the Māori Land Court, and provide an appropriate and full explanation of each process in a way the client can understand;
 - 2.3 Have regard to the rules, regulations, statutory provisions and practice notes relating to matters involving Māori land. A lawyer must advise any affected client of any such provisions and to act in accordance with them;
 - 2.4 Where the matter proceeds to a hearing, ensure that the client has knowledge of how evidence is given, how the hearing is run, and basic conduct expected of litigants and lawyers in the Māori Land Court;
 - 2.5 If another party is self-represented, advise the client of how the Judge and lawyer will deal with the other party throughout the hearing;
 - 2.6 Be able to manage the client's interests within a hearing process in which there should not be unnecessary formality and where participants in the hearing may not be "parties" in a formal sense;
 - 2.7 Be familiar with forms used in the Māori Land Court and the Māori Land Court pānui system;
 - 2.8 In dealings with clients, Māori land owners and members of their whānau and hapū, be cognisant of tikanga Māori and Māori protocol and be able to conduct proceedings where the Court applies marae kawa;

- 2.9 Be able to lead evidence and cross-examine on matters of tikanga Māori and be cognisant of customary rights, principles and practices;
- 2.10 Be cognisant of tikanga Māori, and preferably be able to conduct proceedings and effectively represent the client's interests where evidence is given, and other court processes carried out, in te reo Māori;
- 2.11 Recognise that many Māori Land Court proceedings do not involve disputes but relate to dealings in interests in land in accordance with the principles, policy and provisions underlying the regulation of Māori land;
- 2.12 Be cognisant of and able to work with, and advise the client about, the records of the Māori Land Court and the Māori land information system;
- 2.13 Be cognisant of the relationship between Māori Land Court orders, practices and procedures and the land transfer system; and
- 2.14 Be aware of, understand, and provide advice about the Māori Land Court special aid fund and the differences between assistance under that fund and legal aid (note: cannot apply for or be granted legal aid if in receipt of Māori Land Court special aid).

Waitangi Tribunal Practice Standards

General Principles

3. A lawyer representing a legally aided client in the Waitangi Tribunal should:
 - 3.1 Recognise, even though they may involve contest between individuals, iwi, and other groups, that the proceedings are not unlike most other litigation proceedings between private parties, but are brought against the Crown;
 - 3.2 Recognise that the Waitangi Tribunal is a Commission of Inquiry and its proceedings are regulated under the Commissions of Inquiry Act 1908 as well as the Treaty of Waitangi Act 1975. Consequently, its role and functions are different to that of the ordinary courts;
 - 3.3 Recognise that the Waitangi Tribunal has a specific function under the Treaty of Waitangi Act 1975 to make findings and recommendations in respect to actions, omissions and policies of the Crown as against the standard of the principles of the Treaty of Waitangi;
 - 3.4 In all dealings with clients and other claimants before the Waitangi Tribunal be cognisant of tikanga Māori and Māori protocol;
 - 3.5 Be informed of the historical issues affecting the client; and
 - 3.6 Ensure that legal aid is only claimed for work and attendance specifically required in relation to the client's claim.

General Responsibilities to Clients

4. A lawyer representing a legally aided client should:
 - 4.1 Be aware that, although claimants before the Waitangi Tribunal are individuals, they may be there as representatives of a wider group of beneficiaries whether whānau, hapū, iwi or some other collective group; and
 - 4.2 Make an effort to diligently work with the wider group in the claims to the extent practicable.

Treaty of Waitangi Act 1975: Conduct of Matter

5. In conducting proceedings, the lawyer must:
 - 5.1 Explain what processes are available once a claim is before the Waitangi Tribunal, and provide an appropriate and full explanation of each process in

- a way the client can understand;
- 5.2 Ensure that, where the claims of the clients are similar or identical, submissions or evidence in support of these claims are not unnecessarily duplicated and are tailored to the individuals concerned as much as possible;
 - 5.3 Ensure that, where multiple claims are filed on behalf of the same claimant group, repetitive evidence is not laid before the Tribunal unnecessarily extending the time required to give a proper hearing to these related claims;
 - 5.4 Observe and meet deadlines set by the Tribunal in all but extraordinary circumstances;
 - 5.5 Have regard to the rules, regulations, statutory provisions and practice notes relating to matters involving Treaty of Waitangi claims. Lawyers shall advise any affected client of any such provisions;
 - 5.6 Where the matter proceeds to a hearing, ensure that the client has knowledge of how evidence is given, how the hearing is run, and basic conduct expected of claimants and counsel in the Waitangi Tribunal; and
 - 5.7 Ensure compliance with any directions concerning the restrictions on publication and circulation of certain evidence (such as that relating to wāhi tapu) and advise the client of the effect of such directions and warn them of any sanctions that may be imposed for the publication of any such material.

Evidence and submissions

6. A lawyer must:
 - 6.1 Advise the client of the need to adduce evidence (whether by affidavit, brief of evidence, oral evidence or in some other form) that is relevant to the claims against the Crown;
 - 6.2 Ensure that:
 - 6.2.1 The primary focus of the evidence relates to the identified claims against the Crown;
 - 6.2.2 Where the evidence is culturally sensitive, advise clients of the options to ensure its restricted circulation; and
 - 6.2.3 Where the claims are on behalf of a wider group, that the evidence of individual members and of the group reflects the experience of that group to the greatest extent possible.
 - 6.3 Be willing to work cooperatively with other claimant counsel and consider whether a collaborative approach might be appropriate.

Experts

7. A lawyer must:
 - 7.1 Consider what expert evidence would be appropriate and relevant;
 - 7.2 Advise the client of the need to obtain or access specialist historical evidence which relates to the particular claims as well as their wider historical context; and

-
- 7.3 Assist the client in obtaining support for and commissioning of the necessary expert evidence from recognised funding agencies (such as the Crown Forestry Rental Trust) or from the Tribunal.

Mental Health Practice Standards

General Principles

8. Where appropriate, lawyers should be mindful of the best practice guidelines set out in the Mental Health Roster Guidelines, issued by the Auckland District Law Society (Inc).
9. A lawyer must:
 - 9.1 Use reasonable endeavours to conduct the proceedings in a manner that does not unnecessarily:
 - 9.2 Increase any distrust a client may feel towards the responsible clinician and any other mental health professionals involved in the proceedings; or
 - 9.3 Damage the therapeutic relationship that exists between the client and the responsible clinician and any other mental health professional(s) involved in the proceedings.
 - 9.4 Represent the client in a professional manner and without the use of inappropriately emotive language.
 - 9.5 Presume every client is competent to make an informed choice and give informed instructions, unless there are reasonable grounds for believing that the client is not competent.
 - 9.6 Consider whether there are reasonable grounds for believing that a client is not competent. They may arise as a result of factors such as the type and level of medication and the symptoms of any illness of the patient.
 - 9.7 Where a client is not competent or cannot give instructions, consider whether it is appropriate and in the client's interests to seek appointment as amicus curiae or invite the court to appoint another counsel as amicus curiae and/or to advise the relevant District Inspector of Mental Health.

Responsibilities to Clients

10. A lawyer must:
 - 10.1 Make contact with the client as soon as practicable after instructions are received.
 - 10.2 At the initial interview, to the extent relevant and practicable, advise the client of:
 - 10.2.1 The provisions of the Act under which the client is being assessed or treated;
 - 10.2.2 The legal options available to the client in respect of that assessment or treatment;
 - 10.2.3 Any application under the Act to which the client is subject or that the client may make, including the nature and effect of any

order that might be made as a result of that application; and

10.2.4 The court process.

- 10.3 If the lawyer seeks to obtain medical information about the client, obtain the client's consent to that, preferably in writing.
- 10.4 Act on the instructions of the client and not those of the client's family or whānau.
- 10.5 Take care to avoid any potential or actual conflict. For example, information obtained from the client in the mental health context may not be disclosed for any purpose, without the client's consent. That can cause difficulties where the lawyer holds information gathered in the mental health context that is relevant to another context in which the lawyer is acting (e.g., the family or criminal context) but the client does not authorise disclosure.
- 10.6 If an actual or potential conflict of interest arises, advise the client and the Ministry of Justice in a timely manner and, if appropriate, cease acting. To the extent practicable he or she must explain to the client that in some circumstances a lawyer cannot continue to act where there is an actual or potential conflict of interest, even if informed consent can be obtained.

Preparing for the Hearing

11. A lawyer must, where appropriate and on the instructions from the client:

11.1 Liaise with:

- 11.1.1 The responsible clinician, including discussing the nature of the order to be sought, whether an alternative order might be sought and whether there is any benefit in seeking an adjournment of the hearing;
- 11.1.2 Other relevant health professionals including nursing staff and social workers; and
- 11.1.3 The family or whānau of the client.

- 11.2 Obtain relevant medical information about the client including, with the client's consent, accessing the client's mental health medical file.
- 11.3 Seek any second psychiatric opinion in a timely manner (including obtaining any legal aid funding, if required, in a timely manner and in advance of engaging the second opinion writer).
- 11.4 Make any other inquiries necessary for the purpose of a hearing (e.g., inquiries as to a possible community placement if that is to be submitted to the hearing Judge).

Ministry of Justice
Tāhū o te Ture

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