

# Improving the provider experience

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## Submissions and final decisions for the application form and application guidelines

July 2020



*Legal Aid Services*

New Zealand Government

# Foreword

Thank you to everyone who engaged with the review of the proposed application form and *Applying to be a legal aid provider – Step-by-step guide*.

Your contributions have helped us ensure the application form gathers the right information and the step-by-step guide provides helpful advice to applicants navigating the application process.

Overall, your feedback told me you're supportive of finding ways to make it easier to engage with us. I'm committed to making this vision a reality while maintaining the integrity and high standards of legal aid services. As a result, we intend to implement solutions that improve the current and future experience legal aid providers have with our Ministry.

This document provides a summary of your feedback and our responses. I'm confident that the new application form and step-by-step guide for applicants will greatly improve the process when applying for legal aid approval.

Thank you to everyone involved in the legal aid system for your ongoing commitment to providing quality legal aid services.

**Andrew Kibblewhite**

**Secretary for Justice**

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# Introduction

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In early 2019, the Ministry completed several discovery interviews with lawyers who recently went through the application, approval and contracting processes to provide legal aid services. We found that participants experienced similar difficulties. The processes were administratively burdensome and discouraged lawyers from applying to provide these services.

Currently, the application form comprises 22 separate forms across the different areas of law. The forms aren't easy to use and there's no guidance to support applicants to provide the relevant information for the Secretary for Justice (Secretary) to make an informed decision pursuant to the Legal Services Act 2011 (the Act) and the Legal Services (Quality Assurance) Regulations 2011 (the Regulations).

Simplifying these forms and providing guidance to support applicants through this process is a start to improving the legal aid provider experience.

This document sets out our process for the review and summarises the feedback that helped to inform the design of the new application form and *Applying to be a legal aid provider – Step-by-step guide* (step-by-step guide).

## Process

A review was conducted of the application process. This involved interviews with lawyers who had recently been through the process, workshops with Selection Committee members and internal staff, and a question analysis of the current forms. This informed the redesign of the application form and the content of the step-by-step guide.

In September 2019, the Ministry asked for feedback on the proposed application form and step-by-step guide via the Ministry's web-based platform, Consultation Hub. At the same time, the project met with representatives from the Judiciary, New Zealand Law Society, New Zealand Bar Association and Parole Board to seek their feedback on the proposed changes.

The project was put on hold in March 2020 while the Ministry responded to the COVID-19 pandemic and it has now recommenced.

This document sets out the feedback received and our responses.

Should you have any further questions, contact information is available at the end of this document.

# Feedback and decisions

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## Summary

### Feedback

We received a wide range of feedback in response to the consultation on the proposed application form and step-by-step guide.

We received feedback that the form and guide could be further improved by:

- clarifying case examples and the supporting documents, and what's expected for each
- amending some of the criteria in the experience and competence table to make it more realistic for applicants to achieve
- clarifying what's expected from an applicant applying for approval as a supervised provider and what's expected from their supervisor
- encouraging applicants to apply for supervised approval if they decide they're not quite ready for lead approval.

We also received positive comments, in particular:

- over three quarters of respondents agreed the new form and guide are simple and easy to understand and use
- over three quarters of respondents agreed that it's clear what needs to be attached to complete an application, and the overall process is explained well
- consolidating the forms is a good idea
- the work sample coversheet is great.

### Our responses

In response to the feedback, we have:

- continued to consolidate the different parts of the application form
- clarified the case examples coversheet and provided more explanation around case examples in the step-by-step guide
- updated the experience and competence table so the indicative numbers provide a reasonable guide. We've also identified which requirements are legislative.

These changes clarify what's required and should reduce the time and effort needed to fill out the form and collate supporting documents.

## Key feedback and our responses

The table below outlines the key feedback we received and our responses. It also identifies where the feedback has been incorporated to improve the final documents. We've ordered the table by sections in the new form and guidelines.

### Application form

Feedback	Our responses
<b>Introduction</b>	
There should be information on the top of the form to identify what parts supervised providers need to complete.	We agree. We've updated the form to identify the parts applicants for supervised approval don't need to complete. This is also covered in the step-by-step guide.
<b>Contact details</b>	
It should be clear what information you're seeking from applicants, for example, bank account details, postal address etc.	We agree. We've added further information to the step-by-step guide and application form.
The line 'please do not provide contact details if you wish to remain private' needs to be on the application form, not just in the guidance.	We agree. We've added this to the application form.
An alternative email address is required in case a lawyer leaves Legal Aid and we need to contact them.	Providers are required to update their contact information with Provider Services if their details change or if they leave. This information is better captured at that time than when providers originally apply for approval as their email address may change.
Firm/chambers should be changed to Practice Name.	We agree. We've updated the application form accordingly.
Should you ask for applicants' ages so you can monitor any upcoming issues relating to the available pool of legal aid providers.	We agree. We've added a question about date of birth to the application form. This information will be used solely for the purposes of monitoring the age distribution of the provider pool for planning purposes. It is not mandatory to answer this question.
<b>Area(s) of law you are applying for</b>	
The Police Detention Legal Assistance (PDLA) question needs to allow for an after-hours phone number and stipulate police stations chosen must be proximate to the lawyer's home.	We agree. We've updated the application form to reflect this. We explain PDLA regions further in the step-by-step guide.
The following approval types are missing from	We agree. We've added these to the

Feedback	Our responses
<p>the drop-down box list:</p> <ul style="list-style-type: none"> <li>• Parole</li> <li>• Duty Lawyer</li> <li>• Family Legal Advice Service (FLAS)</li> <li>• Police Detention Legal Advice (PDLA)</li> </ul>	<p>application form.</p>
<b>Information about you and your practice</b>	
<p>There should be a question for cancelled or suspended Legal Aid approvals.</p>	<p>We agree. We've added a question about cancelled or suspended legal aid approvals (including overseas) to the application form.</p>
<p>The New Zealand Law Society (NZLS) doesn't ask if a lawyer has indemnity insurance – does the Secretary need to know this information?</p>	<p>We've decided that the Secretary doesn't need this information. We've removed this question.</p>
<p>More specific questions should be added to ensure the Secretary is fully informed of an applicant's complaint history, for example, 'have you ever been struck off the roll of barristers and solicitors of the High Court of New Zealand'.</p> <p>Other professional bodies were also recommended to be listed in the question about substantiated complaints.</p>	<p>We've broadened the question about complaints to capture a wider range of information.</p>
<p>Complaints shouldn't be capped at 5 years.</p>	<p>We agree. The question about complaints is no longer limited to a period of time.</p>
<p>What's the purpose of asking how long a lawyer has held a practicing certificate for? This doesn't inform their litigation experience.</p>	<p>The length of time a lawyer has held a practicing certificate gives a general indication of the length of time they've been working as a lawyer. However, we agree that it's also useful to know how long they've been undertaking litigation work. We've updated the form to add an additional question asking how many years' litigation experience an applicant has.</p>
<p>The question 'have you been approved as a legal aid provider' has been removed. For Ministry administrative purposes you need to ensure you're not entering a provider in twice.</p>	<p>We agree. We've re-added this question to the application form.</p>
<p>Previously you requested further details for</p>	<p>We've updated the application form to ask whether any bankruptcy has been</p>

Feedback	Our responses
bankruptcy.	discharged.
<b>Experience in area(s) of law applied for</b>	
Could you consider the allowances applied to Queen's Counsel for experienced senior lawyers?	Allowances have been made for Queen's Counsel because they've been assessed as meeting the stringent criteria for that office. We would consider exempting any other group of lawyers who have been similarly assessed in terms of their legal experience and competence.
Could there be a maximum number of cases per matter type for the recent experience grid, for example 10+.	We agree. We've updated the application form to reflect this.
Why does a distinction need to be made between junior and senior counsel?	Whether a lawyer's experience was as senior or junior counsel is relevant in assessing their level of experience.
Is the 5-year recent experience period necessary? It needs to be easier for people returning to law to be approved as a provider. For example, parents returning to work after parental leave.	<p><i>Recent experience</i> is defined in the Regulations as: "in relation to an application from a lawyer, experience gained in the 5 years immediately before the date of application".</p> <p>We encourage applicants whose experience is not within this period to apply for a waiver of the recent experience requirement under regulation 6A. This can be done in the <i>Additional information</i> section.</p>
What value does the recent experience table add?	This table provides the Secretary with an applicant's general experience, which is relevant to assessing whether they have the skill, knowledge and experience for approval.
<b>Work samples (renamed case examples)</b>	
Should applicants provide work samples covering various types of matters (such as Care of Child Act, Family Violence, Relationship Property, etc for Family approval)? If so, are they expected to provide work samples on some of less frequent matter types, such as Adoption, Hague, Paternity etc?	There is an expectation that applicants demonstrate their experience, knowledge and skill across a range of matter types within the area of law they're applying for. However, it's not expected applicants provide examples across all matter types. We've updated the step-by-step guide to clarify this.
<b>References</b>	



Feedback	Our responses
The referee declaration needs strengthening to ensure referees comment on an applicant's written work and advocacy skills.	We agree. We've updated the referee declaration in the application to ask the referee to comment on the applicant's written abilities and advocacy skills.
<b>Additional information</b>	
The additional information section needs to be clearer about what is optional and what is compulsory. There are certain requirements of the legislation and regulations that are expected to be answered in this section.	We agree. We've updated the application form and the step-by-step guide to clarify the legislative requirements.
Additional bullet points need to be added for publications written, limited approvals, life experience etc.	We're unable to supply an exhaustive list of what can be provided in the additional information section. However, we've updated the step-by-step guide to reflect these scenarios.
This section should specify that additional information can take the form of a covering letter or attached documents.	We've designed the electronic form to allow an applicant additional space if they need it.
<b>Checklist and confirmation</b>	
For consistency, the confirmation should list that the applicant has disclosed and attached any complaints decisions.	We agree. We've updated the application form to reflect this.
The checklist requires applicants to confirm they have service delivery systems that support them to provide legal aid services in an effective, efficient and ethical manner. This needs to be further defined.	We agree. We've added a checklist and confirmation section to the step-by-step guide.
There are two types of certificate of standing issued by the New Zealand Law Society: A Certificate of Standing and a Legal Aid Certificate of Standing. The application form needs to request the Legal Aid Certificate of Standing.	We agree. We've updated the application form to request the 'Legal Aid Provider Certificate of Standing' and include a link to the NZLS website.
Why is it necessary to have access to a trust account for family? Is this a requirement if you don't provide relationship property services?	A trust account is only necessary if an applicant wants to provide relationship property services. We've updated the application form and step-by-step guide to make this clear.

## Step-by-step guide

Feedback	Our responses
<b>Introduction</b>	
There should be a section that describes the difference between the role of the Selection Committee and the Secretary.	We've updated the step-by-step guide to reflect the different roles of Selection Committees and the Secretary.
The guidelines need to stipulate Queen's Counsel need to complete the experience, work samples or references sections if it isn't their usual area of practice.	Queen's Counsel are not required to complete the experience, work samples or references sections regardless of whether they're applying for approval in their usual area of practice or not.
The guidelines need to clarify what applications go to Selection Committee.	We agree. We've updated the step-by-step guide to reflect this.
Employment advocate should be removed under the definition of supervised provider as applicants cannot apply for approval as a supervised employment advocate.	We agree. We've updated the step-by-step guide to reflect this.
<b>Experience criteria</b>	
It needs to be clear if the information in the experience and competence table is legislative or policy.  The wording in the experience criteria description needs to be re-worded to inform people the indicative column is just an indication not a requirement. It should encourage people to apply for supervised approval if they decide they're not ready for full approval.	We agree. We've updated the step-by-step guide to identify the legislative minimum requirements and to make it clear that the indicative column is a guide only. We've also amended the guide to encourage applicants to apply for supervised approval if they're not yet ready for lead.
How are junior counsel able to achieve the required criteria to be approved, especially in the appellate courts?	Junior counsel will be able to apply for supervised approval in any area of law, including the appellate courts. This will allow them to gain the experience needed to be approved as a lead provider.
The experience and competence table needs to be updated to make the indicative numbers more realistic to achieve.	Following feedback, we've amended some of the numbers in the indicative table.
The sentence "the more experience an applicant has, the more likely the Secretary will be satisfied that they are sufficiently experienced and competent" should be changed to "the more relevant...".	We agree. We've updated the step-by-step guide to reflect this.

Feedback	Our responses
<p>The definition for substantial and active involvement should add the word "meaningful". This is to avoid applicants putting forward poor contributions.</p>	<p>We've updated the step-by-step guide to be clear about what's expected.</p>
<p>Courses completed should appear within the experience and competence criteria rather than in the <i>Additional information</i> section.</p>	<p>The only course required by the Regulations is the duty lawyer course when an applicant is seeking duty lawyer approval. Therefore, we consider that courses are more appropriately noted in the additional information section.</p>
<b>Area(s) of law you are applying for</b>	
<p>Court clusters and PDLA regions need to be explained, including how an applicant should answer these questions.</p>	<p>We agree. We've updated the step-by-step guide to reflect this.</p>
<p>Further clarification is required about what's expected from:</p> <ul style="list-style-type: none"> <li>• an applicant applying for approval as a supervised provider, and</li> <li>• their supervisor.</li> </ul>	<p>We agree. We've updated the step-by-step guide to provide more guidance for this approval type.</p>
<p>The criteria or process for limited applications is not explained.</p>	<p>We agree. We've added a section into the step-by-step guide to provide guidance for this approval type.</p>
<p>There are some areas of approval missing where applicants could benefit from clarification about the Secretary's expectations regarding the skills and experience required for approval and the sections of the form they need to fill out. These areas are:</p> <ul style="list-style-type: none"> <li>• Parole Board</li> <li>• Employment Advocate</li> <li>• FLAS</li> <li>• Mental health</li> </ul>	<p>We agree. We've added sections on these areas to the step-by-step guide.</p>
<p>If a lawyer is currently approved for PAL2 (or above) do they need to fill out another approval form if they wish to be approved for PDLA or Parole? The regulation requirements for these two approval types are the same.</p> <p>The same situation occurs for Family and FLAS approval.</p>	<p>Providers in these situations don't need to fill out an application form. They can simply email Provider Services and ask to have this added.</p>

Feedback	Our responses
<b>Information about you and your practice</b>	
Does the convictions question include or exclude traffic offences?	This question includes traffic offences. We've updated the step-by-step guide to clarify this.
Clearly define if you're only requesting upheld complaints or anything that's currently being investigated that's of a serious matter. Also define the difference between an upheld complaint and a substantiated one.	The NZLS Legal Aid Certificate of Standing lists any complaints that are under investigation, therefore, we only require information on upheld/substantiated complaints. Upheld and substantiated complaints are the same thing (but we use both terms as different decision-makers use different terms). We've updated the application form to reflect this.
<b>Work samples (renamed case examples)</b>	
There seems to be a confusion between case examples and work samples. An applicant should provide an expected number of case examples per application and the work samples should be submitted in support of the case examples.	Given this terminology is confusing, we've updated the step-by-step guide to refer to case examples and supporting documents.
Consideration should be given to expanding the scope of work samples that could be provided by civil applicants, for example, interlocutory matters.	We agree. We've updated the step-by-step guide to reflect this.
There should be a requirement that the work samples must demonstrate an applicant's advocacy skills, for example, provide a transcript from a defended hearing.	To capture better information about an applicant's advocacy skills, we have: <ul style="list-style-type: none"> <li>amended the referee declaration to ask the referee to comment on the applicant's advocacy (and written) skills</li> <li>amended the <i>Case examples</i> section in the step-by-step guide to give a better idea of what's required, including providing an example that includes transcripts.</li> </ul>
It would be useful to outline types of documents an applicant could consider submitting or provide some information on what a good work sample would look like.	We agree. We've amended the <i>Case examples</i> section in the step-by-step guide to give a better idea of what's required, including an example of the documents an applicant for Criminal PAL 1 might submit.

Feedback	Our responses
<b>References</b>	
The referee declaration asks the referee to comment on an applicant's experience in the last 5 years. There's no guidance for applicants returning to the workforce when their references are from 5 years ago or more.	<p>We agree. We've updated the step-by-step guide to clarify this.</p> <p>Note that we've changed the period during which a referee should have observed the applicant from the last 5 years to the last 3 years. This is to encourage applicants to choose referees who have observed them recently. However, that should not discourage applicants who are returning to practice and cannot provide such recent referees.</p>
Clarification is required regarding how many referees are required and who can be a referee.	We agree. We've updated the step-by-step guide to clarify this.
The removal of an independent reference for lead applications is concerning. This is a useful means of ensuring an applicant is objectively capable of holding lead approval.	We've updated the step-by-step guide to explain that an independent reference is preferable where possible and appropriate.
<b>General comments</b>	
Does the Secretary need all the current criteria in addition to the current NZLS practice standards and care conduct rules?	The Regulations prescribe the minimum requirements an applicant must demonstrate to be approved as a legal aid provider. It's not within scope of this project to amend the Regulations.
A 'what happens next' section would be useful, so applicants are aware of what they can expect after they submit their application and provide useful links if they are approved.	We agree. We've updated the step-by-step guide and application form to reflect this.
Given the number of terms used throughout the document a glossary appendix at the end of the document could be quite useful.	We agree. We've added an appendix into the step-by-step guide.
Could there be some guidance added for good practice for mentors/mentees and supervisors/supervisees and how to have a condition removed?	We agree. This will be considered for addition to the Grants Handbook.

# Implementation dates

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The new application form and *Applying to be a legal aid provider – Step-by-step guide* will be available to download from the Ministry website from 3 August 2020. We will begin processing these applications from Monday 17 August 2020. We will accept applications submitted on the old form until Friday 31 July 2020.

We've included below a copy of the final application form and step-by-step guide for your reference.

## Questions

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If you have any questions about the changes outlined in this document, you can contact the project team by email: [designandcommissioning@justice.govt.nz](mailto:designandcommissioning@justice.govt.nz).



MINISTRY OF  
**JUSTICE**  
*Tāhū o te Ture*

Legal Aid

## Application to provide legal aid services

### When to use this form

Use this form to apply for approval as a provider of legal aid services (lead provider, supervised provider or limited approval) or specified legal services under section 77 of the **Legal Services Act 2011**.

You'll need to attach case examples, referee declarations and any other relevant documents listed on page 5 (unless you're a Queen's Counsel).

More information can be found in the **Applying to be a legal aid provider – step by step guide**.

If you have any further questions please email [legalaidprovider@justice.govt.nz](mailto:legalaidprovider@justice.govt.nz)

### Contact details

**1** Title and full name

Title

**2** Are you currently or have you previously been a Legal Aid Provider?

Yes

No

Provider number (if known)

*For questions 3-7 please only provide details you're comfortable with being publicly available.*

**3** Practice name

**4** Practice postal address

**5** Work phone

**6** Mobile phone

**7** Work email

*Please provide your (or your practice's) bank account and GST number, if we don't already have them. You must also provide a copy of a bank deposit slip or similar proof of bank account including bank logo, account name and account number.*

**8** Bank account number

**9** GST number

### Demographic information

*This information is collected solely for the purposes of monitoring the age distribution of the provider pool for planning purposes. It will not be used for any other purposes. Answering this question is optional.*

**10** Date of birth

dd / mm / yyyy

## Area(s) of law you're applying for

### 11 Which areas of law are you applying for?

<input type="checkbox"/> Criminal	<input type="checkbox"/>	<input type="checkbox"/> Family Legal Advice Service	<input type="checkbox"/>
<input type="checkbox"/> Provider Approval Level(s) (PAL)	<input type="checkbox"/>	<input type="checkbox"/> Mental Health	<input type="checkbox"/>
<input type="checkbox"/> Police Detention Legal Assistance	<input type="checkbox"/>	<input type="checkbox"/> Employment Advocate	<input type="checkbox"/>
<input type="checkbox"/> Duty Lawyer	<input type="checkbox"/>	<input type="checkbox"/> Waitangi Tribunal	<input type="checkbox"/>
<input type="checkbox"/> Parole	<input type="checkbox"/>	<input type="checkbox"/> Māori Land Court & Māori Appellate Court	<input type="checkbox"/>
<input type="checkbox"/> Civil	<input type="checkbox"/>	<input type="checkbox"/> Refugee & Protected Persons	<input type="checkbox"/>
<input type="checkbox"/> Family	<input type="checkbox"/>	<input type="checkbox"/> Court of Appeal & Supreme Court	<input type="checkbox"/>

### 12 If you're applying for a Criminal approval, please name the

Court cluster

Courts and PAL level(s) you will cover within the cluster

### 13 If you're applying for Police Detention Legal Assistance (PDLA) approval, please name the local police station(s) you will cover

Please provide your after hours phone number

### 14 If you're applying for a Family approval, do you intend to do relationship property work?

Yes ☐

No ☐

*If no, go to question 15*

If yes, do you have access to a trust account?

Yes ☐

No ☐

## Information about you and your practice

### 15 How many years have you held a practising certificate in New Zealand?

Overseas?

### 16 How many years of litigation experience do you have?

### 17 Have you ever been declared bankrupt or been the director of a company that has been put into receivership or liquidation?

Yes ☐

No ☐

If you have been declared bankrupt, have you been discharged?

Yes ☐

No ☐

### 18 Do you have any convictions? (Answer no if the Clean Slate Act 2004 applies)

Yes ☐

No ☐

If yes, please provide details of the convictions



No

If yes, please provide details of the conditions imposed

No

If yes, please provide a copy of the decision(s) if it was from a body external to the Ministry.

No

If yes and it was a Legal Aid Service overseas, please provide details of the cancellation or suspension

**Your experience in the area(s) of law applied for**

**22** How many years have you practiced in the area(s) of law you are applying for?

## 23 Recent experience

*If you are applying for a supervised approval you do not need to complete this section.*

In the last five years, for each area of law you're applying for, please indicate the approximate number of cases or proceedings where you made a significant contribution to the key parts of the case or proceeding.

If you're applying for Criminal approval at levels 2, 3 or 4, please complete separate entries for cases or proceedings at the level for which you seek approval and the preceding level.

[illegible]

## Case examples

If you are applying for a supervised approval you do not need to complete this section.

- 24** As proof of your recent experience, you need to provide the number of case examples specified in the **Applying to be a legal aid provider – step by step guide**. If you're applying for a limited approval, and cannot provide the required number of case examples, provide as many as you can (if any).

Each case example must have a completed coversheet (page 6 of this form). All supporting documents must be indexed in the table on the coversheet.

The case examples should show substantial and active involvement. This means 'making a significant contribution to all or most key parts of the case or proceeding'.

## References

- 25** The referee declaration forms must be completed by two (or more) referees who have observed your work in the relevant area of law within the last 3 years. If you're applying for approval in more than one area of law, you must provide one (or more) referee declaration(s) for each area. The same person can be a referee for multiple areas of law.

If you're applying for a limited approval, and cannot provide the required number of references in the relevant area of law, you can substitute references from another area of law.

## Supervised provider application

- 26** If you're applying for approval as a supervised provider, you need to provide an undertaking from your employer or supervisor(s).

*Employer undertaking:* must confirm you are employed by them and that they will ensure arrangements are made for a suitable legal aid lead provider to supervise you in those area(s) of law.

*Supervised undertaking:* must confirm they will supervise you in the area(s) of law applied for or make arrangements for another suitable legal aid lead provider to do so. If you have multiple supervisors, you must provide an undertaking from each supervisor.

For information about undertaking and supervisor requirements please see the **Applying to be a legal aid provider – step by step guide**.

## Additional information

- 27** Please provide any additional information that is **required** to support your application such as:
- » any further information required to establish your eligibility under the Legal Services (Quality Assurance) Regulations 2011 (Regulations). For example, completion of the duty lawyer course if applying for Duty Lawyer approval, or Te Reo Māori proficiency and understanding of Tikanga Māori if applying for Waitangi Tribunal or Māori Land Court approval
  - » information required to assess your eligibility as an Employment Advocate
  - » an explanation of why your recent experience and/or case examples are not from the last 5 years and why the Secretary should waive the recent experience requirement under regulation 6A of the Regulations
  - » reasons why the Secretary should waive one of more of the experience and competence requirements under regulation 6B of the Regulations.

You may also choose to provide additional relevant information in support of your application that you wish the Secretary to consider.

## Checklist and confirmation

Please attach a copy of:

- your Legal Aid Provider Certificate of Standing (if you are not an existing provider)
- a copy of your (or your practice's) bank deposit slip or similar proof of bank account including bank logo, account name and account number, if applicable
- any complaints decision(s) from any body external to the Ministry, if applicable
- the required number of case examples, including coversheets and indexes
- the required number of referee declarations
- an undertaking from your employer/supervisor (if you're applying for a supervised approval). Your supervisor must be approved in the area(s) of law applied for
- an undertaking from your firm if you are an employee, partner or director of a law firm or incorporated law firm.

By submitting this application, I confirm that I:

- » have a current practising certificate issued by the New Zealand Law Society (unless you're only applying for Employment Advocate approval)
- » am a member of the Employment Institute of New Zealand (if you're applying for Employment Advocate approval)
- » have service delivery systems that support me to provide and account for legal aid services or specified legal services in an effective, efficient and ethical manner
- » have a client care letter that is suitable for legal aid clients
- » have provided accurate and complete information
- » have disclosed and attached any complaints decision(s) from any body external to the Ministry
- » consent to the Ministry submitting any information held by the Ministry in relation to previous or current approvals to the Selection Committee, if relevant
- » agree to use a buyer-created tax invoice when claiming payment from the Ministry for providing Family Legal Advice Service (if you're applying for Family Legal Advice Service approval)
- » consent to having my contact information published on the Ministry website
- » consent to receiving all correspondence from Legal Aid Services via the email address nominated in the contact details section.

I also understand and accept that:

- » the Secretary may request further information from, and make any relevant enquiries of, third parties for the purposes of considering this application
- » I must disclose to the Ministry any information that might affect my continuing ability to meet the eligibility criteria set out in the Legal Services (Quality Assurance) Regulations 2011
- » by signing the application form, I am agreeing to the terms and conditions in the provider contract prescribed by the Secretary. The contract is available on the Ministry website.

Signature

Date

Click [View](#) → [Tools](#) → [Fill & Sign](#) → [Place Signature](#)

 To learn how to sign a PDF document, go to: <https://helpx.adobe.com/reader/using/sign-pdfs.html>

## What happens next?

Thank you for your application. Once you have filled in this form electronically please email it to [legalaidprovider@justice.govt.nz](mailto:legalaidprovider@justice.govt.nz)

Your application will be assessed at the next available Selection Committee meeting.

A schedule of Selection Committee dates can be found on the **Ministry website**.



## Case example coversheet

### When to use this form

Complete and attach this coversheet for **each case example** provided with your application. Additional coversheets can be downloaded from the Ministry website.

You must index your supporting documents in the table on this coversheet.

Please take your time to provide us with enough information to help us to assess whether your application satisfies the criteria set out in the **Legal Services (Quality Assurance) Regulations 2011**. If there is insufficient information, this may affect the outcome of your application. We strongly recommend reading the *Case examples* section of the **Applying to be a legal aid provider – step-by-step guide** before completing this coversheet.

Alternatively, if you have any questions please email [legalaidtheprovider@justice.govt.nz](mailto:legalaidtheprovider@justice.govt.nz)

Applicant

Role

Case name and citation

Area of law

Main legal/factual issues

Your key contribution to the case

### Indicate your experience evidenced in this case example

Type of involvement	Percentage you provided
	%
	%
	%
	%
	%

### Supporting document index

For each case example you should provide copies of relevant important documents (for example, submissions) that demonstrate your involvement. You do not need to provide your whole file. Please list the documents provided and a brief description of your involvement.

No. Type of document

1 For example, Statement of claim

Your involvement

For example, I drafted most of this document




## Referee declaration

This declaration is filled out by a referee who has, in the last 3 years, observed the applicant's work in the area of law applied for and is able to provide a view about their skill and knowledge. Please see the **Applying to be a legal aid provider – step-by-step guide** if your referee has not observed you in the last 3 years.

If a referee is providing a reference for more than one area of law, they must complete a separate declaration for each area. Additional referee declarations can be downloaded from the Ministry website.

Applicant name

Referee name

Within the last  I have observed the applicant undertaking  in cases or proceedings in the following area of law applied for  and undertaking the following activities:

☐ Providing advice and information to clients

☐ Preparation of cases

☐ Undertaking court proceedings

☐ Producing documents / correspondence

☐ Communication with Judges, other lawyers, experts, court staff

☐ Working with people from different cultural backgrounds

☐ Engaging in peer review discussions

☐ Other (please describe in the comment box below)

Please write in your own words your observations of the applicant's written abilities and advocacy skills in the area of law applied for

I confirm that:

- » I consider that the applicant is sufficiently skilled and knowledgeable in this area of law to be approved to provide legal aid services or specified legal services in that area in  capacity.

I understand that:

- » if I have any additional information that may affect the Secretary's decision, I can provide this via [legallaidprovider@justice.govt.nz](mailto:legallaidprovider@justice.govt.nz)  
» the Ministry may contact me for further information if required.

Referee signature

Relationship to applicant

Date

Click [View](#) → [Tools](#) → [Fill & Sign](#) → [Place Signature](#)

To learn how to sign a PDF document, go to: <https://helpx.adobe.com/reader/using/sign-pdfs.html>

\*A substantial and active role means that the applicant made a significant contribution to key parts of the case or proceeding.

# Applying to be a legal aid provider

## Step-by-step guide

Ministry of Justice

July 2020



MINISTRY OF  
JUSTICE  
*Tabu o te Ture*

New Zealand Government

# Introduction

This guide will help you complete an application to become an approved provider of legal aid services or specified legal services under section 77 of the Legal Services Act 2011 (Act).

The guide explains some of the terms used in the forms and includes a checklist to help you ensure your application is complete.

Before you can provide legal aid services or specified legal services, you need to have first been approved to provide these services (section 75 of the Act) *and* have entered into an agreement with the Secretary to do so (section 69(b) of the Act). The Secretary won't be able to consider retrospective applications.

To be approved, you must provide enough information to satisfy the criteria set out in the Legal Services (Quality Assurance) Regulations 2011 (Regulations).

## When to use the application form

### Applying for the first time

whether as a lead provider, supervised provider, provider of specified legal services or for a limited approval.



### Already an existing provider

and you are applying for approval in another area of law or at a higher level (for Criminal approval).



## Relevant legislation

[Legal Services Act 2011](#)

[Legal Services \(Quality Assurance\) Regulations 2011](#)

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# The application form



## Prescribed manner for applying

It's important you answer every question on the form, except where it is stated the question is optional. Your application will only be assessed if it's complete.

We only accept applications that are completed and sent electronically. You must email your completed application to [legalaidprovider@justice.govt.nz](mailto:legalaidprovider@justice.govt.nz) along with your supporting documentation.

Where possible, send your application and supporting documentation in one email. If you need to send the information in multiple emails, make this clear in the subject line (for example, Email 1 of 3).

**Supervised providers:** You do not need to complete the *Recent experience* or *Case examples* sections.

**Queen's Counsel:** You do not need to complete the *Recent experience*, *Case examples* or *References* sections.

**Limited approval:** You must complete the whole form (including the *Case examples* and *References* sections, to the extent you can) and explain why you should be granted a limited approval in the *Additional information* section on page 4.

Before submitting your application, make sure you've provided:

1. The completed application using the Ministry of Justice form
2. The required number of case examples with completed coversheets and indexes of supporting documents
3. The required number of referee declarations
4. Your supervision arrangements and undertakings from your employer or nominated supervisor(s) (if applying for supervised approval)
5. Any other documentary evidence requested on page 5 of the application form.

## Provider contract for service

By signing the application form, you're agreeing to the terms and conditions in the provider contract prescribed by the Secretary for Justice (Secretary). The contract is available on the [Ministry of Justice website](#).

# Experience criteria



The Secretary is responsible for assessing whether an applicant applying for approval to provide legal aid services or specified legal services is experienced and competent to provide those services.<sup>1</sup> In deciding whether an applicant is sufficiently experienced and competent, the Secretary must:<sup>2</sup>

- apply the relevant experience and competence requirements in the Schedule to the Regulations (summarised below)
- consider the applicant's experience as a lawyer<sup>3</sup>
- be satisfied that the applicant has the appropriate level of knowledge and skill to provide the relevant services.

The Secretary makes their decision after receiving a recommendation from a Selection Committee. Both the Selection Committee and the Secretary will consider your case examples, general experience and other information provided.

The experience and competence criteria table on the following page provides a guide to help applicants determine whether they're ready to apply for lead approval. If an applicant decides they're not yet ready for lead approval, the Secretary encourages them to apply for approval as a [supervised provider](#). This is a good way for lawyers to gain the experience and competence they'll need to be approved as a lead provider.

The table is split into four columns:

- *Minimum period of recent experience*
- *Minimum number of cases or proceedings (substantial and active)*
- *Indicative number of cases or proceedings (substantial and active)*
- *Other requirements*

The first, second and third columns outline the requirements listed in the Schedule to the Regulations for each area of law. Keep in mind that the first two columns outline the minimum requirements for approval. To be approved, the Secretary must be satisfied an applicant is sufficiently experienced and competent to provide the relevant service(s). The more relevant experience an applicant has, the more likely the Secretary will be satisfied they're sufficiently experienced and competent.

The third column provides a general guide about the level at which the Secretary is likely to be satisfied that a typical applicant has the necessary practical experience to be approved. However, we stress that this is a guide only, and you don't need to have completed this number of cases or proceedings for approval. Provided an applicant satisfies the minimum requirements, the Secretary will be considering whether an applicant is sufficiently experienced and competent to provide the relevant service(s). This will be determined by the individual merits of each application.

<sup>1</sup> Reg 6(1) of the Regulations

<sup>2</sup> Reg 6(2) of the Regulations

<sup>3</sup> Employment advocates don't need to be lawyers.

References to ‘substantial and active involvement’ mean making a significant contribution to all or most key parts of the case or proceeding.

### Experience and competence criteria

Area of law	Minimum period of recent experience	Minimum number of cases or proceedings (substantial and active involvement)	Indicative number of cases or proceedings (substantial and active involvement)	Other requirements
<b>Criminal Provider Approval Level (PAL) 1<sup>4</sup></b>	At least <b>12 months</b> in criminal law practice	Appeared as counsel with substantial and active involvement in at least <b>3</b> trials	Appeared as counsel with substantial and active involvement in <b>5</b> trials that have progressed to at least the close of the prosecution case	-
<b>Criminal PAL 2</b>	At least <b>24 months</b> on Criminal PAL 1 proceedings	Appeared as counsel with substantial and active involvement in at least <b>3</b> trials that are Crown prosecutions	Appeared as counsel with substantial and active involvement in <b>5</b> Crown prosecution trials that have progressed to at least the close of the Crown case	-
<b>Criminal PAL 3</b>	At least <b>36 months</b> on Criminal PAL 2 proceedings	Appeared as counsel with substantial and active involvement in at least <b>4</b> Criminal PAL 3 or 4 proceedings where at least <b>1</b> charge carried a maximum penalty of 10 years’ imprisonment or more or the defendant is likely to face cumulative sentences of more than 10 years’ imprisonment	Appeared as counsel with substantial and active involvement in <b>10</b> Criminal PAL 3 or 4 proceedings that have progressed to at least the close of the Crown case, including at least <b>3</b> proceedings where at least <b>1</b> charge was for a sexual offence carrying a maximum penalty of 14 years’ imprisonment or more	-
<b>Criminal PAL 4</b>	At least <b>24 months</b> on Criminal PAL 3 proceedings	Appeared as counsel with substantial and active involvement in at least <b>4</b> Criminal PAL 3 or 4 proceedings where at least <b>1</b> one of those proceedings is a PAL 4 proceeding	Appeared as counsel with substantial and active involvement in <b>10</b> Criminal PAL 3 or 4 proceedings that progressed to at least the close of the Crown case where at least: <ul style="list-style-type: none"> <li>- <b>3</b> were Criminal PAL 4 proceedings, and</li> <li>- where at least <b>1</b> charge was for a sexual offence carrying a maximum penalty of 14 years’ imprisonment or more</li> </ul>	-
<b>Duty Lawyer</b>	At least <b>6 months</b> in criminal law practice	Appeared as counsel with substantial and active involvement in: <ul style="list-style-type: none"> <li>- <b>1</b> pre-trial hearing</li> <li>- <b>1</b> hearing at which an opposed bail application was made</li> <li>- <b>1</b> trial conducted by or on behalf of Police before a Judge alone, and</li> <li>- <b>1</b> sentencing hearing at which a plea of mitigation was made</li> </ul>	Appeared as counsel with substantial and active involvement in <b>10</b> criminal proceedings	Successfully completed duty lawyer training course (unless waived by Secretary)

<sup>4</sup> If you’re unsure about the approval level to apply for, please refer to Appendix 1 – Guidance for assessing Criminal PALs.

Area of law	Minimum period of recent experience	Minimum number of cases or proceedings (substantial and active involvement)	Indicative number of cases or proceedings (substantial and active involvement)	Other requirements
<b>Police Detention Legal Assistance</b>	At least <b>24 months</b> working on Criminal PAL 1 proceedings	Appeared as counsel with substantial and active involvement in at least <b>3</b> trials that are Crown prosecutions	Appeared as counsel with substantial and active involvement in <b>5</b> Crown prosecution trials that have progressed to at least the close of the Crown case	-
<b>Parole Board</b>	N/A	N/A	At least <b>12 months'</b> experience at Criminal PAL 1  Appeared as counsel with substantial and active involvement in <b>10</b> criminal proceedings, including at least <b>3</b> sentencing hearings where a plea of mitigation was made	-
<b>Family/ Family Legal Advice Service</b>	At least <b>18 months</b> working on family cases	Substantial and active involvement in at least <b>5</b> family cases of various types, including interlocutory hearings, mediation conferences, judicial conferences and proceedings where witnesses gave oral evidence	Substantial and active involvement in <b>10</b> family cases of various types	-
<b>Civil</b>	At least <b>18 months</b> working on civil cases	Appeared as counsel with substantial and active involvement in at least <b>3</b> civil proceedings  Assisted in the preparation of at least <b>2</b> other civil proceedings	Appeared as counsel with substantial and active involvement in <b>5</b> civil proceedings, including at least <b>2</b> where the applicant led evidence from, or cross-examined, witnesses. These may be interlocutory, procedural or case management hearings as well as the substantive hearing  Assisted in the preparation of at least <b>4</b> other civil proceedings	-
<b>Mental Health</b>	At least <b>24 months</b> working on family or criminal law cases	-	Substantial and active involvement in at least <b>15</b> family or criminal law cases	Observed at least <b>3</b> completed mental health cases
<b>Employment Advocate</b>	N/A	N/A	Substantial and active involvement in <b>5</b> employment matters such as: - mediation - dispute resolution - HR issues	-
<b>Court of Appeal and Supreme Court</b>	At least <b>5 years</b> in litigation work	Substantial and active involvement in <b>5</b> appeal proceedings of various types (including, without limitation, pre-trial hearings, Solicitor-General's appeal, and appeal by way of case stated) in the High Court or another higher court	Substantial and active involvement in <b>5</b> appeal proceedings of various types in the High Court or another higher court, at least <b>3</b> of which have been in the Court of Appeal or Supreme Court	-

Area of law	Minimum period of recent experience	Minimum number of cases or proceedings (substantial and active involvement)	Indicative number of cases or proceedings (substantial and active involvement)	Other requirements
<b>Refugees and Protected Persons</b>	At least <b>18 months</b> working on refugee and protected person cases	Substantial and active involvement in at least <b>5</b> cases at the Refugee Status Branch level  Actively participated in at least <b>1</b> proceeding before the Immigration and Protection Tribunal, Deportation Review Tribunal, Refugee Status Appeals Authority, or Removal Review Authority	Substantial and active involvement in <b>10</b> cases at the Refugee Status Branch level  Actively participated in <b>2</b> proceedings before any of the following tribunals/authorities: Immigration and Protection Tribunal, Deportation Review Tribunal, Refugee Status Appeals Authority, or Removal Review Authority	-
<b>Waitangi Tribunal</b>	At least <b>18 months</b> working on Waitangi Tribunal cases	Substantial and active involvement in at least <b>3</b> substantial Waitangi Tribunal proceedings	Substantial and active involvement in <b>5</b> substantial Waitangi Tribunal proceedings	Have sound knowledge of Te Tiriti o Waitangi and Waitangi Tribunal jurisprudence  Have an understanding of tikanga Māori and basic ability in te reo Māori
<b>Māori Land Court and Māori Appellate Court</b>	At least <b>18 months</b> working on Māori Land Court cases	Substantial and active involvement in at least <b>3</b> substantial Māori Land Court proceedings	Substantial and active involvement in <b>5</b> substantial Māori Land Court proceedings	Have sound knowledge of Te Tiriti o Waitangi and Māori land law  Have an understanding of tikanga Māori and basic ability in te reo Māori

## Waiver of requirement that experience be recent

Recent experience is defined in the Regulations as “in relation to an application from a lawyer, experience gained in the 5 years immediately before the date of application”.<sup>5</sup> However, the Secretary may waive the requirement that an applicant’s relevant experience be recent if the Secretary is satisfied that the applicant meets the relevant experience and competence requirements in all other respects.<sup>6</sup>

If your experience isn’t recent, you should outline your previous experience, and any other relevant information (such as recent courses completed), in the *Additional information* section of the form.

<sup>5</sup> Reg 3 of the Regulations

<sup>6</sup> Reg 6A of the Regulations

# Sections of the application form

## Contact details

In this section, we ask you to provide your contact details, including your (or your practice's) bank account and GST numbers if we don't already have them. If you're not sure whether we have these details, please provide them. You must also provide a copy of a bank deposit slip or similar proof of your bank account, including bank logo, account name and account number. Applicants applying for supervised approval don't need to provide bank account or GST details.

The contact details you provide will be used by Legal Aid Services to communicate with you. You'll normally receive correspondence via email. Your contact details will also be provided to your legal aid clients in assignment letters and be published on our website ('[Find a Legal Aid Lawyer/Provider](#)' and/or '[Care of Children](#)'), so please only provide contact details you're comfortable with being publicly available.

## Area(s) of law you're applying for

In this section, tell us which legal aid services and/or specified legal services (for example, Police Detention Legal Assistance, Family Legal Advice Service, or Duty Lawyer) approvals you're applying for.

You need to specify which area(s) of law you're applying for approval in, and whether you're seeking lead provider, supervised provider or limited approval. **Please note:** If you're applying to provide a specified legal service, you can't apply for supervised provider approval.

### Lead providers

Lawyers or employment advocates approved by the Secretary to provide legal aid services or specified legal services in one or more areas of law.

### Supervised providers

Lawyers approved by the Secretary to provide legal aid services in one or more areas of law under the supervision of a lead provider.

### Limited approval

A lawyer approved by the Secretary as a lead provider for:

- a proceeding to provide continuity of services, or
- a proceeding or type of proceeding because of their specialist skills or experience, or a shortage of existing providers with the necessary skills and experience.

## Supervised providers

**Supervised providers are lawyers who don't meet the experience or competence requirements to be approved as a lead provider, but otherwise meet the criteria for approval in the Regulations.**

Approval as a supervised provider is subject to the requirement that the supervised provider is supervised by, and responsible to, a lead provider approved in the area(s) of law applied for. Legal aid cases cannot be assigned to a supervised provider and a supervised provider cannot be paid directly for the work they undertake. Instead, work is delegated to them from the lead provider and Legal Aid is invoiced by the lead provider.

The lead provider is responsible for all work carried out on cases assigned to them. This includes responsibility for:

- all work completed by a supervised provider
- ensuring all work delegated to the supervised provider is adequately supervised, including where supervision is delegated to another lead provider.

Supervision is an interactive process. The lead provider has oversight of all work done by a supervised provider, including:

- reviewing written work
- discussing advice and information for clients
- providing feedback on the supervised provider's performance.

Lead providers may ask supervised providers to self-assess their performance as a basis for ongoing development and training. This aligns with the New Zealand Law Society's Continuing Professional Development Rules, which encourage all lawyers to identify areas for their own development.

It's expected that a lead provider will have held an approval in the relevant area of law (and level for Criminal) for at least 1 year (and actively practised in that area for that period) to perform the role of a supervisor.

## Undertaking of supervision

If you're applying for supervised provider approval, you must attach an undertaking of supervision with your application. This undertaking may be in the form of a signed letter or an email, provided the email address and email signature can be identified.

We accept two types of undertaking:

### Employer undertaking

Your employer must confirm:

- you're employed by their practice
- you'll be adequately supervised in the area(s) of law you're applying for in accordance with the requirements set out in the [Legal Aid Services Grants Handbook](#) and [Practice Standards for Legal Aid Providers](#). A template is provided on the following page.

## Employer undertaking template

*I (name of person authorised to provide undertaking on behalf of employer) of (name of practice) confirm that (name of applicant) is employed by this practice. I confirm (name of applicant) will be adequately supervised in the following areas/s of law (civil, criminal, family etc) in accordance with the requirements set out in the Legal Aid Services Grants Handbook and Practice Standards for Legal Aid Providers.*

## Supervisor undertaking

Your nominated supervisor(s) must confirm they'll supervise you in the area(s) of law you're applying for in accordance with the requirements set out in the [Legal Aid Services Grants Handbook](#) and [Practice Standards for Legal Aid Providers](#).

If you have more than one nominated supervisor, you must provide an undertaking from each supervisor. A template is provided below.

## Supervisor undertaking template

*I (name of supervisor) of (name of practice) confirm that I will supervise (name of applicant) in the following areas/s of law (civil, criminal, family etc) or arrange for another suitable legal aid provider to do so. I confirm the supervision will be carried out in accordance with the requirements set out in the Legal Aid Services Grants Handbook and Practice Standards for Legal Aid Providers.*

## Limited approval

An applicant who doesn't meet the experience and competence requirements for approval as a lead provider may apply for a limited approval to act:<sup>7</sup>

- in a proceeding that relates to another proceeding in which the applicant is acting, or has acted
- in a proceeding, or type of proceeding, for which the applicant has specialist skills or experience, or
- in a proceeding, or type of proceeding, taking place in a region with a shortage of existing providers with the necessary skills and experience to act in the proceeding or type of proceeding.

When determining whether to grant a limited approval, the Secretary must:<sup>8</sup>

- consider how, and the extent to which, the applicant does not meet the experience and competence requirements
- be satisfied that the applicant is suitable to act in the proceeding or type of proceeding, and that it would be more efficient for the applicant to act in the proceeding or type of proceeding than another lawyer.

<sup>7</sup> Reg 6B(1) and (2) of the Regulations

<sup>8</sup> Reg 6B(3) of the Regulations



If you're applying for limited approval, you must explain why you should be granted a limited approval in the *Additional information* section on page 4 of the application form. You must also tell us:

- if your client's hearing date is within 15 working days, or
- if the reason for your limited approval is because your client has had their charges increased, or additional charges laid, and you don't hold the appropriate Criminal PAL approval.

## Criminal

If you're applying for approval as a Criminal provider, you must specify which PAL (1 to 4) you're applying for. If you're unsure about which PAL to apply for, please refer to [Appendix 1 – Guidance for assessing Criminal PALs](#).

You must indicate the court cluster you wish to cover. You can only be assigned to one court cluster at a time. You must also indicate the courts and PAL you wish to be added to within the court cluster. See the below example:

***Cluster: Auckland***

***Courts and PALs you'll cover within the cluster: Auckland (PAL 1-3), Waitakere (PAL 3), Manukau (PAL 1-2).***

### Cluster list (courts within each cluster)

- Whangarei (Whangarei, Kaitia, Kaikohe, Dargaville)
- Auckland (North Shore, Auckland, Waitakere, Manukau, Papakura, Pukekohe)
- Hamilton (Hamilton, Te Awamutu, Huntly, Te Kuiti, Morrinsville, Thames, Taumaranui)
- Rotorua (Rotorua, Taupo, Tokoroa)
- Gisborne (Gisborne, Wairoa, Ruatoria)
- Tauranga (Tauranga, Whakatāne, Opotiki, Waihi)
- Napier/Hastings (Napier, Hastings, Waipukurau, Dannevirke)
- New Plymouth (New Plymouth, Hawera)
- Whanganui (Whanganui, Marton, Taihape)
- Palmerston North (Palmerston North, Levin)
- Wellington (Wellington, Porirua, Hutt Valley, Masterton)
- Nelson/Blenheim (Nelson, Blenheim, Kaikoura)
- Christchurch (Christchurch, Timaru, Ashburton, Greymouth, Westport)
- Dunedin (Dunedin, Alexandra, Oamaru)
- Invercargill (Invercargill, Gore, Queenstown)

**Please note:** The Porirua District Court, within the Wellington cluster, is piloting a Young Adult List for participants aged 18 to 25 years old. The Commissioner requires you to complete the Young Adult List online induction training before you can receive assignments for this List. This training can be found on the [Ministry website](#).

## Parole Board

Parole Board approval is granted for proceedings before the New Zealand Parole Board that:

- are held under ss 27, 65 or 107 of the Parole Act 2002, or
- otherwise concern an offender who is entitled, under ss 49(3)(c) of the Parole Act, to be represented by counsel in the proceeding.

To be eligible for approval for Parole Board, it's expected you will:

- have at least 12 months' experience at criminal PAL 1
- have appeared as counsel with substantial and active involvement in 10 criminal proceedings, including at least 3 sentencing hearings where a plea of mitigation was made
- demonstrate the relevant skills and knowledge to appear as counsel for a postponement order, recall application, or an order that the offender not be released.

If you've already been granted approval at PAL 2 or higher, you're able to accept assignments for Parole Board and don't need to fill out an application form or obtain a separate Parole Board approval.

## Police Detention Legal Assistance (PDLA)

If you're seeking PDLA approval, you must specify which police station(s) you'll cover and provide an afterhours phone number. You must only nominate police station(s) that are local to your home to ensure you're able to attend in person if necessary.

Obtaining PDLA approval won't necessarily result in a place on the PDLA roster or list. For more information, please refer to the [PDLA Operational Policy](#).

## Family and Family Legal Advice Service (FLAS)

If you're applying for Family approval and intend to practise in relationship property matters, the Secretary requires you to have access to a trust account. If you answer 'no' to the question about whether you have access to a trust account at question 14 of the form, your approval will probably be subject to a condition that you cannot do relationship property work.

The requirements for Family approval and FLAS approval are the same. If you already have Family approval and wish to apply for FLAS, please advise Provider Services by emailing [legalaidtheprovider@justice.govt.nz](mailto:legalaidtheprovider@justice.govt.nz). You don't need to fill out a new application form.

## Employment Advocate

To be eligible for Employment Advocate approval, it's expected that you:

- can demonstrate experience dealing with mediation, dispute resolution and/or HR issues
- are a member of the Employment Law Institute of New Zealand.

If you're applying for Employment Advocate approval:

- you don't need to complete questions 12, 13, 14, 15, 16 or 21 of the application form. You do need to complete all other questions on the form.
- you must provide the following information in the *Additional information* section:
  - your qualifications
  - a brief employment history, including any experience you have with mediation, dispute resolution and/or HR issues
  - any relevant courses or training you've completed.

## Information about you and your practice

In this section, we ask you for general information about you and your practice, including whether you have any convictions (including traffic convictions) and whether you have had any complaints upheld/substantiated by any professional body (past or present) or the Ministry.

If you answer 'yes' to question 20 of the form regarding complaints, you must provide a copy of any decision(s) made by any body external to the Ministry. This means if a complaint has been upheld/substantiated by the Ministry (including the Secretary) or the Legal Complaints Review Officer, you don't need to attach this.

If you have one or more convictions (including traffic convictions) but are eligible to conceal those convictions under the Criminal Records (Clean Slate) Act 2004, you should answer 'no' to question 18. If you're unsure whether you're eligible to conceal your convictions under the Clean Slate Act, you can request a copy of your criminal record from the Ministry's Criminal Records Unit (see [www.justice.govt.nz/criminal-records/](http://www.justice.govt.nz/criminal-records/)). If you're eligible, your criminal record will say you have no convictions.

## Your experience in area(s) of law applied for

In this section, we ask you about your general experience in the area(s) of law for which you're applying for approval.<sup>9</sup>

First, we ask how many years you've practised in the relevant area(s) of law.

Then we ask you to provide the **approximate** number of cases or proceedings in the last 5 years in which you made a significant contribution to key tasks or activities for the types of proceedings listed in the table (please note, you must select each type of proceeding separately as it won't auto-populate from the area of law). Please use the correct column to identify whether your involvement was as senior or junior counsel.

If you're applying for approval at criminal PAL 2, 3 or 4, please complete separate entries for cases or proceedings at the level for which you seek approval and the preceding level. For example, if applying for PAL 3 approval, fill out separate entries for your experience in PAL 2 proceedings and PAL 3 proceedings.

If a type of proceeding you want to demonstrate experience in is missing from the drop-down list, please select the option 'enter matter type manually'. Once selected, you'll be able to input text into the drop-down box.

## Case examples

In this section, we ask you to provide the number of case examples specified in this guide.<sup>10</sup> The minimum number of case examples we require differs depending on the area of law (and level for Criminal). The following table sets out the minimum number of case examples we require:

Area of law/ level	Minimum number of case examples
Criminal PAL 1	3 trials
Criminal PAL 2	3 trials that are Crown prosecutions
Criminal PAL 3	4 PAL 3 or 4 proceedings
Criminal PAL 4	4 PAL 3 or 4 proceedings, at least 1 being PAL 4
Duty Lawyer	2 (or 1 if applying for a Criminal lead approval at the same time)
Police Detention Legal Assistance	3 trials that are Crown prosecutions
Family/Family Legal Advice Service	5
Civil	5 including substantial, interlocutory and procedural hearings
Mental Health	3 (examples can be family or criminal)
Court of Appeal and Supreme Court	5, with at least 3 being Court of Appeal or Supreme Court
Refugee and Protected Persons	5, with at least 1 being for a proceeding before any of the following: Immigration and Protection Tribunal, Deportation Tribunal, Refugee Status Appeal Authority, or Removal Review Authority
Waitangi Tribunal	3 substantial Waitangi Tribunal proceedings
Maori Land Court and Maori Appellate Court	3 substantial Māori Land Court Proceedings

Case examples are one of the main ways the Selection Committee and the Secretary assess your experience and competence. For each case example, you should fill out the coversheet and index of documents. If you're applying for a limited approval and cannot provide the required number of case examples, provide as many as you can (if any).

<sup>9</sup> For Mental Health approval, you should outline your experience in family and/or criminal cases.

<sup>10</sup> The Regulations refer to these as 'work samples' (reg 9A), but we use the term 'case examples'.

We don't expect you to provide case examples for all matter types within an area of law. However, we do expect you to provide case examples for a range of matter types across the area(s) of law you're applying for approval in to demonstrate your knowledge across these area(s) of law.

The Secretary wants to know about cases where you actively participated in and completed a substantial amount of work in that area/matter/hearing type from **start to finish**.



The Regulations and the application form talk about 'substantial and active involvement' in cases or proceedings. Each case example should show substantial and active involvement. This means making a significant contribution to all, or most, key tasks and activities and encompasses participation in:

1. **Pre-court or preparation** - This includes research, client consent, liaising with opposing counsel, and drafting submissions and other court documents; and
2. **Court proceedings** - This includes trials or hearings (where relevant), experience and attendance at court, making opening addresses, leading evidence, examining and cross-examining witnesses and experts, addressing the court, closing addresses and presenting submissions.

Ideally, you should provide case examples where you made a significant contribution to all key tasks and activities in a matter that's proceeded through all stages (for example, a criminal matter that has proceeded to trial). However, we recognise that the realities of practice mean this might not be possible (for example, a matter may settle at an earlier stage or the lead provider may not give you the opportunity to be involved in every stage). In these circumstances, you should provide case examples that, together, show your experience across all (or at least most) key tasks and activities in the relevant area of law, and that you can run a matter from start to finish by yourself.

Each case example should be accompanied by copies of important documents demonstrating your involvement in the case. You don't need to provide your whole file on the matter – we ask that you be discerning in the documents you choose to provide, as this will assist in a timely decision being made on your application. You should list your supporting documents in the index provided on the coversheet along with a brief description of your role in relation to the document.

The following example demonstrates what an applicant may choose to submit:

### **Criminal PAL 1: 3 trial case examples**

#### *Case example 1 – Trial*

Supporting documents – research notes on legal issue, transcript from witness cross-examination and sentencing submissions you co-drafted.

#### *Case example 2 – Trial*

Supporting documents – interlocutory application to exclude evidence and decision, affidavit you drafted, research notes and correspondence with your client.

#### *Case example 3 – Trial*

Supporting documents – transcript from witness evidence in chief and re-examination and sentencing submissions you drafted.

# References

You need to provide completed referee declaration forms from at least two referees who have observed your work in the relevant area of law in the last 3 years.

If you're applying for approval in more than one area of law, you must provide at least one referee declaration for each area (the same person can complete a referee declaration for multiple areas of law). For example:

- If you're seeking approval for Criminal only, you must provide two referee declarations from two different referees, both relating to your criminal experience.
- If you're seeking approval for Criminal and Family, you must provide two referee declarations, one for Criminal and one for Family, from two different referees. The same referee may comment on your competence and experience for both areas of law, however, two different referees are still required.
- If you're seeking approval for Criminal, Family and Civil, you must provide three referee declarations, one for each area, from at least two different referees. The same referee may comment on your competence and experience for more than one area of law, meaning you may not need three different referees.

Referees don't need to be approved legal aid providers unless you're applying for supervised approval. If you're applying for supervised approval, ensure one of your referees is your nominated supervisor. Your second referee could be, for example, a colleague, mentor, employer or another nominated supervisor.

Independent referees are preferable where possible and appropriate. However, this isn't a requirement.

If you haven't practiced within the last 3 years and are unable to provide recent referees, please provide:

- 1 referee declaration from someone who observed you when you last practiced law
- 1 (or more) referee declaration(s) from someone who can attest to your knowledge and skill, for example, a colleague or employer.

If you're applying for a limited approval and cannot provide the required number of references in the relevant area of law, you can substitute references from another area of law.

## **When selecting your referees:**

Please ensure that your referees:

- are experienced in the area of law for which you're seeking approval
- have direct experience and recent knowledge of your skill in the area of law or category for which you're seeking approval
- don't have any potential conflicts of interest in providing a reference for you
- have a higher PAL level than the PAL level you're applying for (or are a peer at PAL 4) if you're applying for Criminal approval

If applying for supervised approval, please ensure that one (or more) of your referees is your nominated supervisor(s).

## Referee declaration

Referees must complete the referee declaration on page 7 of the application form and return this to you to submit with your application. If the referee is providing a reference in respect of more than one area of law, they must complete a separate declaration for each area.

It's expected that your referees will have observed you undertaking a substantial and active role and can comment on your skills and knowledge in most, if not all, of the following activities:

- providing advice and information to clients
- preparation of cases
- undertaking court proceedings
- producing documents/correspondence
- communication with Judges, other lawyers, experts and court staff
- working with people from different cultural backgrounds
- engaging in peer review discussions.

Your referee will be expected to comment on your written abilities and advocacy skills. This must be in their own words and based on their observations. Referees also have the option of providing further information to Provider Services by emailing [legalaidthprovider@justice.govt.nz](mailto:legalaidthprovider@justice.govt.nz).

We may contact your referees to verify the information they've provided.

## Additional Information

This section allows you to provide any relevant additional information not captured elsewhere in the form. This may be information that you're required to provide for particular areas of law or may be additional relevant information that you want the Secretary to consider in support of your application. This section may not apply to all applicants.

### Additional information required (if applicable):

- Further information required to establish eligibility for certain approvals under the Regulations:
  - **Duty Lawyer approval:** Confirmation you have successfully completed the duty lawyer training course and the date it was completed.
  - **Mental health approval:** Confirmation that you've observed at least 3 completed mental health cases.
  - **Waitangi Tribunal approval:** Information about your knowledge of te Tiriti o Waitangi and Waitangi Tribunal jurisprudence, your level of understanding of tikanga Māori and your ability in te reo Māori.
  - **Māori Land Court approval:** Information about your knowledge of te Tiriti o Waitangi and Māori land law, your level of understanding of tikanga Māori and your ability in te reo Māori.

- **Employment advocate approval:** Information required to assess your eligibility as an [Employment Advocate](#).
- **Experience not recent:** An explanation of why your experience and/or case examples are not from the last 5 years and why the Secretary should waive the recent experience requirement under regulation 6A of the Regulations
- **Limited approval:** Reasons why the Secretary should waive one or more of the experience and competence requirements under regulation 6B of the Regulations
- **Porirua District Court Young Adult List assignments:** Confirmation you have completed the online induction training to receive assignments for the Porirua District Court [Young Adult List](#).

You may also choose to provide additional relevant information in support of your application.

**Examples of relevant information you may want the Secretary to consider include:**

- If you want a matter type excluded from your approval, for example, Family approval excluding Relationship Property
- If you only wish to apply for approval for a specific matter type(s) within an area of law, for example, Civil but only ACC and Employment
- Professional development or courses completed

**Please note:** The Secretary will take into consideration any courses you've completed and that are relevant to support your application. However, the Ministry does not endorse any courses run by private entities. Examples of courses you may consider relevant are:

- NZLS Litigation Skills Course
  - NZLS How to Run a Jury Trial Course
  - NZBA Mastering Advocacy Cross Examination Workshop
  - NZBA Mastering Appellate Advocacy Workshop
- Further factors that demonstrate your experience
- Life experience
- Publications you've written.



# Checklist and confirmation

This section:

- provides a checklist of documents that should be attached to your application (if applicable)
- asks you to confirm various matters relevant to the Secretary's decision on your application, including that you have satisfactory service delivery systems and that your client care letter is suitable for legal aid clients (discussed further below)
- asks you to confirm your consent or agreement to certain matters should you be approved, including that you'll be subject to the terms and conditions in the provider contract prescribed by the Secretary.

## Service delivery systems

All applicants applying for approval must have satisfactory service delivery systems that enable them to carry out quality legal services and account for their legal aid work effectively, efficiently and ethically.<sup>11</sup> We assess this by ensuring you have processes and systems in place to:

- manage client service requirements and expectations
- manage scheduling conflicts
- manage complaints
- manage conflicts of interest
- invoice your time accurately
- maintain accurate client files.

## Client care letter

The client care letter/letter of engagement must meet the requirements of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

Client care letters/letters of engagement **must** include reference to Legal Aid and current legislation. Letters must correctly refer to the Ministry of Justice, not the Legal Services Agency, and to the Legal Services Act 2011, not the Legal Services Act 2000.

The following information, in respect of legal aid, should be provided to ensure legal aid clients are aware of their obligations:

- that the client must tell the Ministry of Justice if their contact details, financial details, employment status or family circumstances change
- that the client should be aware legal aid is not always free and if they receive any payment resulting from this case, they may be required to make a lump sum repayment at the end of the case

<sup>11</sup> Reg 9 of the Regulations

- that invoices will be sent directly to the Ministry of Justice for payment. A copy of the invoice will be sent to the client, but they don't need to make any payment directly to you
- that for more information regarding legal aid they can contact the Ministry of Justice [www.justice.govt.nz](http://www.justice.govt.nz)

Examples of client care letters are available on the [Ministry of Justice website](#). You may copy and use these examples as you wish.

## Firm undertaking

If you are an employee, partner or director of a law firm or incorporated law firm you must also submit an [undertaking](#) from your firm. This undertaking becomes the Schedule 3 undertaking in the provider contract for services. The contract is available on the [Ministry of Justice website](#).

## What happens next...

If you're applying for lead provider or limited approval, when your completed application is received it will be tabled and assessed at the next applicable Selection Committee meeting. We'll advise you of the outcome within 15 working days from the date we receive your application.

Selection Committees assess applications and advise the Secretary of the suitability of those applicants for approval.<sup>12</sup> [See Schedule of Selection Committee dates](#).

[Read more information on how Selection Committees assess applications](#).

If you're applying for supervised provider approval, the Secretary will assess your application without referring it to a Selection Committee. We'll advise you of the outcome within five working days from the date we receive your application.

<sup>12</sup> s 78 of the Act

# Attachments checklist



Attach the following documents to your application:

☐ **your Legal Aid Provider Certificate of Standing issued by the New Zealand Law Society**

- You can provide a certified copy or the original.
- If you're an existing legal aid provider, you don't have to provide this unless you've been notified otherwise in writing.

**Please note:** A Legal Aid Provider Certificate of Standing is generally only valid for three months and must be valid when we receive your application. Further information on how to apply for a Legal Aid Provider Certificate of Standing is available on the NZLS website: [www.lawsociety.org.nz/home/for\\_lawyers/regulatory/legal\\_aid\\_provider\\_certificate\\_of\\_standing](http://www.lawsociety.org.nz/home/for_lawyers/regulatory/legal_aid_provider_certificate_of_standing)

☐ **a copy of your (or your practice's) bank deposit slip or similar proof of bank account if we don't already have these details**

- This must include the bank logo, account name and account number.
- If you're not sure whether we have these details, please provide them.

☐ **any complaints decision(s) (if applicable)**

- If you answered 'yes' to the complaints question in *Information about you and your practice*, please provide a copy of any complaints decision(s) by any body external to the Ministry. You can also include any additional information relating to the complaint(s) that you want us to consider.

☐ **the required number of case examples, including completed coversheets and indexes of supporting documents**

- Case examples should be your most relevant examples and should be reasonably recent.
- Please don't send original documents as they won't be returned to you. Working documents/notes (for example, notes taken for cross-examination) don't need to be typed.
- You may provide a judgment to demonstrate your involvement, but please note on the cover sheet the specific pages or paragraph numbers that are relevant.

☐ **the required number of referee declarations**

☐ **your employer/supervisor(s) undertaking (if you're applying for supervised approval)**

- Your supervisor(s) must be approved in the area(s) of law applied for.

☐ **a firm undertaking if you are an employee, partner or director of a law firm or incorporated law firm**

# Appendix 1

## Guidance for assessing Criminal PALs

The table below sets out the minimum PAL required for proceedings by reference to the case type and maximum penalty, whether the matters are Crown or Police prosecutions, the offence categories in s 6 of the Criminal Procedure Act 2011 and the Legal Aid fixed fee schedules.

Case type and maximum penalty	Crown / Police prosecutions	CPA offence category	Legal Aid fee schedule	Minimum required PAL
Judge alone, non-imprisonment	Police	OC1	A	PAL1
Judge alone, less than 2 years' imprisonment	Police	OC2	A	PAL1
Judge alone, 2-10 years' imprisonment	Police	OC3	B-C	PAL1
Judge alone or jury trial elected, 2-10 years' imprisonment	Crown	OC3	D	PAL2
Judge alone or jury trial, all cases 10+ years' imprisonment except schedule F	Crown	OC3	E	PAL3
Judge alone or jury trial, life/liable for preventive detention	Crown	OC3	F	PAL4
Judge alone or jury trial, life/Sch. 1 Criminal Procedure Act	Crown	OC4	F	PAL4
High Court appeals for sentence and conviction	N/A	N/A	G	Same as substantive matter
Appeals to the Court of Appeal	N/A	N/A	H	N/A
Appeals to the Supreme Court	N/A	N/A	I	N/A
Parole matters	N/A	N/A	J	PAL2

# Appendix 2

## Glossary



**Act** means the Legal Services Act 2011.

**Lead provider** means a lawyer or employment advocate approved by the Secretary to provide legal aid services or specified legal services in one or more areas of law.

**Limited approval** means a lawyer approved by the Secretary as a lead provider for:

- a proceeding to provide continuity of services
- a proceeding or type of proceeding because of their specialist skills or experience, or a shortage of existing providers with the necessary skills and experience.

**Ministry** means Ministry of Justice.

**PAL** means Provider Approval Level (for Criminal approvals). These are the approval levels for criminal proceedings in cl 1 of the Schedule to the Regulations.

**Regulations** means the Legal Services (Quality Assurance) Regulations 2011.

**Secretary** means the Secretary for Justice.

**Supervised provider** means a lawyer approved by the Secretary to provide legal aid services in one or more areas of law under the supervision of a lead provider.

**Ministry of Justice**  
**Tāhū o te Ture**

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