

Applying to be a legal aid provider

Step by step guide

Ministry of Justice

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MINISTRY OF
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Tabu o te Ture

New Zealand Government

Introduction

This guide will assist you in completing an application to become an approved provider of legal aid services or specified legal services under section 77 of the Legal Services Act 2011.

This guide also clarifies terms used in the forms and provides a checklist to help you ensure your application is complete.

You may not provide legal aid services or specified legal services unless you have first been approved (section 75 of the Legal Services Act 2011) *and* entered into an agreement with the Secretary to do so (section 69(b) of the Legal Services Act 2011).

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

When to use the application form:

Applying for the first time

whether as a lead provider, supervised provider, employment advocate, or provider of specified legal services.



Already an existing provider

and you are applying for approval in a higher category or in another area of law.



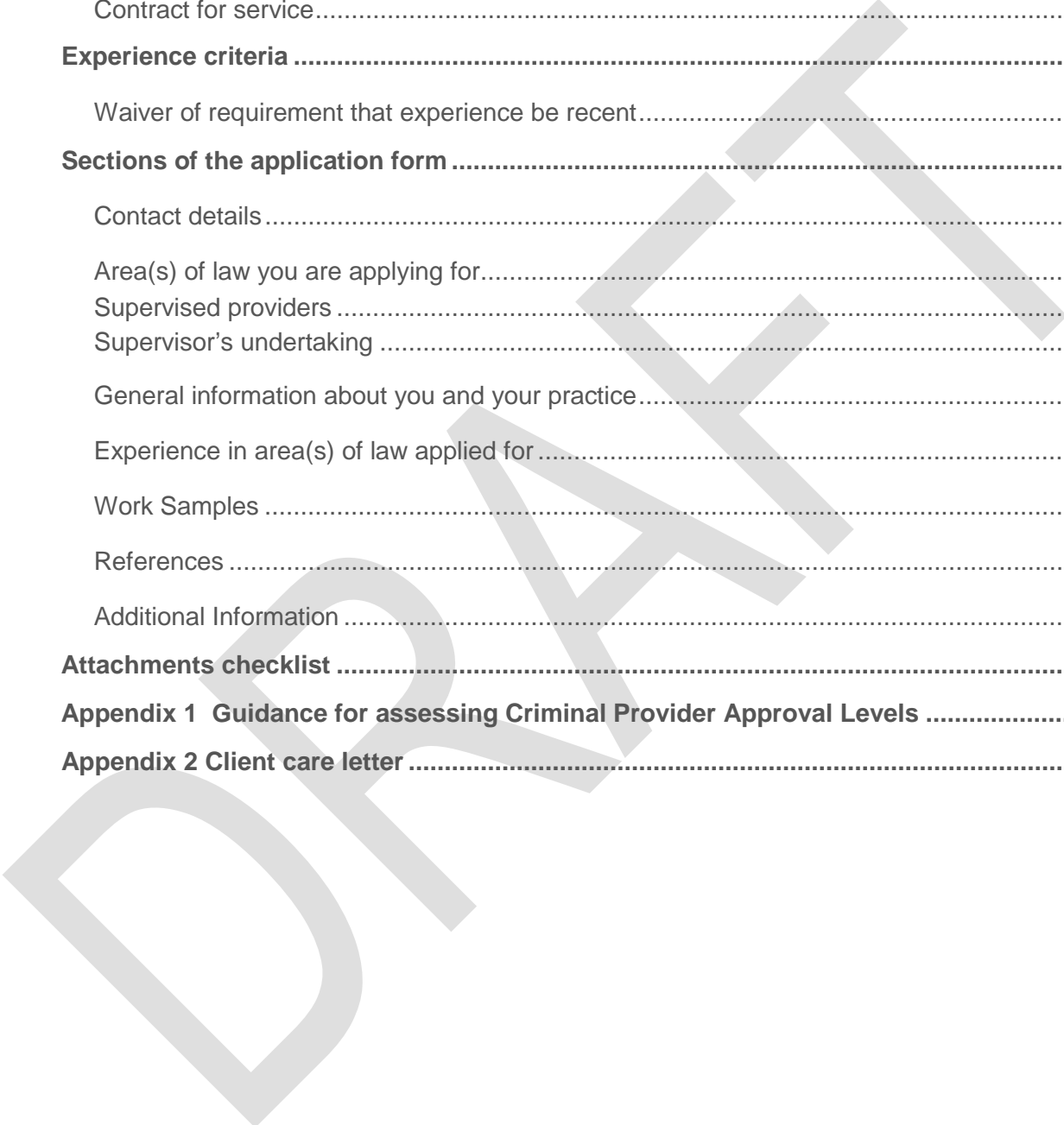
Relevant Legislation

[Legal Services Act 2011](#)

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

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The application form



Prescribed manner and application process

It is important that you have answered every question on the form. Your application will only be assessed if it is complete.

Supervised providers: you do not need to complete the experience, work samples, or references sections.

Queen's Counsel: you do not need to complete the experience, work samples, or references sections.

Limited approval: you need to complete the whole form (including the work samples 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 3.

We will only accept applications completed and sent electronically. Email the completed application to legalaidprovider@justice.govt.nz with your supporting documentation attached.

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 (e.g. Email 1 of 3).

Before submitting your application, make sure you have provided:

1. The completed application using the Ministry of Justice form
2. The required number of work samples with completed coversheets and indexes
3. The required number of reference declarations
4. Where relevant, your supervision arrangements and undertakings from the nominated supervisor
5. Any other documentary evidence requested on page 4 of the application form.

When your completed application is received, it will be tabled and assessed at the next applicable Selection Committee meeting. The schedule of Selection Committee dates can be found [here](#).

Additional information on how Selection Committees assess applications can also be found [here](#).

Contract for service

By signing the application form, you are agreeing to the terms and conditions in the provider contract prescribed by the Secretary for Justice. The contract is available on the Ministry's [website](#). Any changes that are made to the contract after your application is made will be communicated to you via the email address you provide.

Experience criteria



The Secretary for Justice 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.¹ In deciding whether an applicant is sufficiently experienced and competent, the Secretary must²:

- apply the relevant experience and competence requirements in the Schedule to the Legal Services (Quality Assurance) Regulations 2011 (summarised below)
- take into account the applicant's experience as a lawyer, and
- be satisfied that the applicant has the appropriate level of knowledge and skill to provide the relevant services.

The Secretary makes a decision after receiving a recommendation from a Selection Committee. Both the Selection Committee and the Secretary will take into account your work samples, general experience, and other information provided.

The following table summarises the experience and competence criteria in the Schedule to the Regulations for each area of law. However, it must be kept in mind that these are the minimum requirements. The Secretary must be satisfied an applicant is sufficiently experienced and competent to provide the relevant services. The more experience an applicant has, the more likely the Secretary will be satisfied that they are sufficiently experienced and competent.

The column titled Indicative number of cases or proceedings provides a general guide about the level the Secretary is likely to be satisfied an applicant has the necessary practical experience for. However, each application must be determined on its merits.

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 |
|-----------------------|---|---|--|--------------------|
| Criminal PAL 1 | At least 12 months in criminal law practice | Appeared as counsel with substantial and active involvement in at least 3 trials | Appeared as counsel with substantial and active involvement in 5 trials | - |
| Criminal PAL 2 | At least 24 months on Criminal PAL 1 proceedings | Appeared as counsel with substantial and active involvement in at least 3 trials that are Crown prosecutions | Appeared as counsel with substantial and active involvement in 5 trials that are Crown prosecutions | - |

¹ Reg 6(1) Legal Services (Quality Assurance) Regulations 2011

² Reg 6(2) Legal Services (Quality Assurance) Regulations 2011

| | | | | |
|--|---|--|---|---|
| Criminal PAL 3 | At least 36 months on Criminal PAL 2 proceedings | Appeared as counsel with substantial and active involvement in at least 4 Criminal PAL 3 or 4 proceedings where at least 1 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 10 Criminal PAL 3 or 4 proceedings where at least 1 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 | - |
| Criminal PAL 4 | At least 24 months on Criminal PAL 3 proceedings | Appeared as counsel with substantial and active involvement in at least 4 Criminal PAL 3 or 4 proceedings where at least 1 one of those proceedings is PAL 4 | Appeared as counsel with substantial and active involvement in 15 Criminal PAL 3 or 4 , at least 3 of which are PAL 4 | - |
| Duty Lawyer | At least 6 months in criminal law practice | Appeared as counsel with substantial and active involvement in: <ul style="list-style-type: none"> - 1 pre-trial hearing; - 1 hearing at which an opposed bail application was made; - 1 trial conducted by or on behalf of Police before a Judge alone; and - 1 sentencing hearing at which a plea of mitigation was made | Appeared as counsel with substantial and active involvement in 10 trials | Successfully completed duty lawyer training course (unless waived by Secretary) |
| Police Detention Legal Assistance | At least 24 months working on Criminal PAL 1 proceedings | Appeared as counsel with substantial and active involvement in at least 3 trials that are Crown prosecutions | Appeared as counsel with substantial and active involvement in 5 trials that are Crown prosecutions | - |
| Family/ Family Legal Advice Service | At least 18 months working on family cases | Substantial and active involvement in at least 5 family cases of various types, including interlocutory hearings, mediation conferences, judicial conferences and proceedings where witnesses gave oral evidence | Substantial and active involvement in 10 family proceedings of various types | - |
| Civil | At least 18 months working on civil cases | Appeared as counsel with substantial and active involvement in at least 3 civil proceedings Assisted in the preparation of at least 2 other civil proceedings | Appeared as counsel with substantial and active involvement in at least 5 civil proceedings Assisted in the preparation of at least 4 other civil proceedings | - |
| Mental Health | At least 24 months working on family or criminal law cases | - | Substantial and active involvement in at least 15 family or criminal law cases | Observed at least 3 completed mental health cases |
| Court of Appeal and Supreme Court | At least 5 years in litigation work | Substantial and active involvement in 5 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 5 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 | - |

| | | | | |
|---|---|--|---|--|
| Refugee and Protected Persons | At least 18 months working on refugee and protected person cases | Substantial and active involvement in at least 5 cases at the Refugee Status Branch level Actively participated in at least 1 proceeding before the Immigration and Protection Tribunal, Deportation Review Tribunal, Refugee Status Appeals Authority, or Removal Review Authority | Substantial and active involvement in at least 10 cases at the Refugee Status Branch level Actively participated in 2 proceedings before the Immigration and Protection Tribunal, Deportation Review Tribunal, Refugee Status Appeals Authority, or Removal Review Authority | - |
| Waitangi Tribunal | At least 18 months working on Waitangi Tribunal cases | Substantial and active involvement in at least 3 substantial Waitangi Tribunal proceedings | Substantial and active involvement in 5 substantial Waitangi Tribunal proceedings | Have sound knowledge of the Treaty of Waitangi and Waitangi Tribunal jurisprudence Have an understanding of tikanga Māori and basic ability in te reo Māori |
| Māori Land Court and Māori Appellate Court | At least 18 months working on Maori Land Court cases | Substantial and active involvement in at least 3 substantial Maori Land Court proceedings | Substantial and active involvement in 5 substantial Maori Land Court proceedings | Have sound knowledge of the Treaty of 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

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.³

If your experience is not 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.

³ Reg 6A Legal Services (Quality Assurance) Regulations 2011

Sections of the application form

Contact details

In this section we ask you to provide your contact details, including your (or your firm/employer's) bank account and GST numbers if we do not already have them.

The contact details you provided will be used by Legal Aid Services to communicate with you. You will usually receive correspondence via email. Your contact details will also be provided to your legal aid clients in assignment letters, so do not provide contact details you wish to remain private.

Area(s) of law you are applying for

In this section you tell us which approvals you are seeking. You need to specify which area(s) of law you are applying for approval in, and whether you are seeking approval as a lead provider, supervised provider, or specified legal service provider.

Lead providers

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

Supervised providers

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

Specified legal service providers

Lawyers who have been approved to provide one or more specified legal services (e.g. Police Detention Legal Assistance (PDLA) or Family Legal Advice Service).

If you are applying for approval as a Criminal provider, you need to specify which approval level (1 to 4) you are seeking, and which court clusters you would cover. If you are unsure about the approval level to apply for please refer to Appendix 1 – Guidance for assessing Criminal PALs.

If you are seeking PDLA approval, you need to specify which police stations you would cover.

Supervised providers

Supervised providers are lawyers who do not meet the required experience or competence to be approved as a lead provider, but otherwise meet the criteria for approval in the Legal Services (Quality Assurance) Regulations 2011.

Approval as a supervised provider is subject to the requirement that the supervised provider is supervised by, and responsible to, an approved lead provider. Legal aid cases cannot be assigned to a supervised 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 and
- 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 supervised provider work including:

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

Lead providers may ask supervised providers to self-assess their performance as a basis for on-going 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.

Further information on supervised providers, adequate supervision and substantive appearances can be found in the [Legal Aid Services Grants Handbook](#) on the Ministry's website.

Supervisor's undertaking

A supervisor's undertaking is required to be attached with the application. A template is provided below:

I (name of supervisor) of (name of firm/chambers) confirm that I will supervise (name of applicant) in the following areas/s of law (civil, criminal, family etc) or make arrangements for another suitable legal aid provider to do so.

General 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 and whether you have had any complaints upheld by regulatory bodies or the Ministry in the last 5 years.

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

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 are applying for approval.

First, we ask how many years you have practiced 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 the key tasks or activities listed in the table.

If you are applying for approval at Criminal provider approval level (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.

Work Samples

In this section, we ask you to provide the required number of work samples for the relevant area of law. The following table sets out the minimum number of work samples for each area of law. Each sample should show substantial and active involvement (discussed further below).

| Area of law | Minimum number of work samples showing substantial and active involvement |
|------------------------------------|--|
| Criminal PAL 1 | 3 trials |
| Criminal PAL 2 | 3 trials that are Crown prosecutions |
| Criminal PAL 3 | 4 PAL 3 or 4 proceedings where at least 1 charge carried a maximum penalty of 10 years imprisonment or more or the defendant was likely to face cumulative sentences of more than 10 years' imprisonment |
| 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 |
| Mental Health | 3 (samples can be family or criminal) |
| Court of Appeal and Supreme Court | 5, with at least 2 being Court of Appeal or Supreme Court |

| | |
|--|---|
| Refugee and Protected Persons | 5 , with at least 1 being for a proceeding before the 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 Maori Land Court Proceedings |

For each sample, you should fill out the cover sheet and index of documents provided. If you're applying for a limited approval, and cannot provide the required number of work samples, provide as many as you can.

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



Work samples are one of the most important parts of the application. They demonstrate your experience, knowledge and ability to provide the services for which you seek approval. Your work samples should show that you have recent experience in all (or at least most) key tasks and activities in the relevant area of law and can run a matter from start to finish by yourself.

The Regulations and the application form talk about 'substantial and active involvement' in cases or proceedings. 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 the opposing counsel, drafting submissions and court documents, and
2. **Court proceedings** - This includes trials, 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 examples where you had made a significant contribution to all key tasks and activities in a matter that has proceeded through all stages (e.g. a criminal matter that has proceeded to trial). However, we recognise that the realities of practice mean that might not be possible (e.g. 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 examples that, together, show your experience across all (or at least most) key tasks and activities in the relevant area of law.

You should provide copies of important documents demonstrating your experience (you do not need to provide your whole file). These should be listed in the index along with a brief description of your role in relation to the document.

References

You need to provide completed reference declaration forms from at least two references who have observed your work in the relevant area of law in the last 5 years.

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

- If you are seeking approval for criminal legal aid only, you must provide two references, both relating to your criminal experience
- If you are seeking approval for criminal and family legal aid, you must provide two references, one for criminal and one for family. The two references must be from different referees, although the same referee may comment on your competence and experience for both areas of law
- If you are seeking approval for criminal, family and civil legal aid, you must provide three references, one for each area. The references must be from at least two different referees although the same referee may comment on your competence and experience for more than one area of law

References do not need to be legal aid approved unless you are applying for supervised approval.

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.

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

When selecting your referees:



Please ensure that your referees:

- Are experienced in the area of law for which you are seeking approval.
- Have direct experience and recent knowledge of your skill in the area of law or category for which you are seeking approval.
- Do not have any potential conflicts of interest in providing a reference
- Are confident in your abilities in the following areas:
 - Knowledge and understanding of relevant legislation
 - Exercising independent and professional judgement
 - Court conduct
 - Communicating with clients
 - Understanding of cross cultural issues and/or issues facing socially and economically disadvantaged people.
- Where you are applying for a Criminal Provider Approval Level (PAL), have a higher PAL level than the PAL level you are applying for (or are a peer at PAL 4).
- If you are applying as a supervised provider, ensure your referee is the person who will be supervising you in that area of law. An additional reference (e.g. law lecturer, law tutor, professionals tutor) is also required.

Additional Information

This section allows you to provide any relevant additional information that you want the Selection Committee to consider. This section is not compulsory and will not be relevant for all applicants. **Some examples of information that may be considered relevant are:**

An explanation for why your case examples aren't from the *last five years*

Your total number of years of litigation experience

If your application should be limited to any area/type

The reason why your limited approval should be granted

Further factors that demonstrate your experience

For example, for mental health approval, District Inspector of mental health experience

Proficiency in Te Reo Māori, understanding of tikanga Māori and Treaty Jurisprudence - *for Waitangi Tribunal, Māori Land Court and Māori Appellate Court only*

Why your application should waive the experience requirements

Courses completed, if applying for PAL 3/4

Examples of relevant courses are:

- Duty Lawyer training course
- NZLS litigation skills course
- NZLS How to Run a Jury Trial course
- NZBA Mastering Advocacy Cross Examination Workshop
- NZBA Mastering Appellate Advocacy Workshop

Attachments checklist



The following documents should be attached to your application:

your Certificate of Standing issued by the New Zealand Law Society

- You can provide a certified copy of your Certificate of Standing or the original
- If you are an existing legal aid provider, you are not required to provide this unless you have been notified otherwise in writing.

Please note: a 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 Certificate of Standing is available on the NZLS website:

www.lawsociety.org.nz/home/for-lawyers/regulatory/legal-aid-provider/certificate-of-standing

any complaints decision(s) (if applicable)

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

the required number of work samples, including completed coversheets and indexes

- Work samples should be your most relevant examples and should be reasonably recent
- Please do not send original documents as they will not be returned. Working documents/notes (e.g. notes taken for cross-examination) do not need to be typed.
- You may provide a judgment to demonstrate your involvement, but please note on the cover sheet the specific pages that are relevant.

your employer/supervisor undertaking (if you are applying for supervised approval)

Appendix 1

Guidance for assessing Criminal PALs

The table below sets out the Legal Aid fixed fee schedule name, the case type and penalty, their interface with the Offence Categories and whether the matters are Crown or Police prosecutions and the PAL level these cases are assigned to.

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

Appendix 2

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 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 may have a prescribed repayment amount payable to the Ministry of Justice and, if they receive any proceeds from proceedings, they may need to make a lump sum final repayment towards the cost of services.

That invoices for services related to their legal aid grant will be forwarded directly to the Ministry of Justice for payment and a copy will be provided to the client.

That for more information regarding legal aid they can contact the Ministry of Justice www.justice.govt.nz

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

Ministry of Justice
Tāhū o te Ture

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