

# IMPROVING THE LEGAL AID SYSTEM

## *Feedback document*

If you wish to send us your views on the matters raised in the discussion paper then you can make a submission by either filling out this document, or writing to Dame Margaret Bazley, c/o the Ministry of Justice.

Submissions must be received by 5 p.m. on **9 October 2009**. Submissions can be made by:

Post	Dame Margaret Bazley, DNZM Legal Aid Review c/o Ministry of Justice PO Box 180 Wellington
Delivery	Dame Margaret Bazley, DNZM Legal Aid Review c/o Ministry of Justice Level 1 Vogel Centre 16 Kate Sheppard Place Wellington
Email	<a href="mailto:legalaidreview@justice.govt.nz">legalaidreview@justice.govt.nz</a>

The feedback document has been designed to assist you with responding to the matters raised in the discussion paper. You do not have to use this document to make a submission, nor do you have to answer all the questions.

The feedback document has room for you to type in your responses and you can increase or decrease the space as you choose. If you wish to increase the space, just type in the answer box and the space for typing will expand as required.

If you have any questions about how to make a submission, please email [legalaidreview@justice.govt.nz](mailto:legalaidreview@justice.govt.nz).

This Submission is from the New Zealand Federation of Business and Professional Women Inc.

Our interest in this review is because we are a women's group who are committed to ensure equality for all working women through advocacy, education and mentoring, In 2007 at our national conference we passed a remit into our policy as below.

**18.12 Increase in Legal Aid**

**URGES** the Ministry of Justice and Legal Aid Service Agency to increase the hourly rate currently paid to fund legal aid in any court of New Zealand where the legal aid covers legal costs pertaining to the protection of women and their families from violence and abuse.

**(2007)**

Rationale:

## YOUR PERSONAL INFORMATION

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Please note that your submission will become publicly available if a request for it is made under the Official Information Act 1982. For this reason, please indicate clearly if you consider that any part of your submission should not be disclosed. Any request for non-disclosure will be considered in terms of the Official Information Act and the Privacy Act 1993.

A link to the Ministry of Justice privacy statement can be found at:

<http://www.justice.govt.nz/privacystatement.html>

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<b>Official Information Act</b>	
I request that information supplied in this form be kept confidential.	<input type="checkbox"/> Yes
If yes, please specify which part/s of your submission you want to keep confidential and the reasons why.	

## QUESTIONS FOR DISCUSSION

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### WHAT AN EFFECTIVE LEGAL AID SYSTEM LOOKS LIKE



1. Do you agree with the components of an effective legal aid system identified in the picture above, namely

- ensuring the right people can access services
- providing the right mix of information, advice, and representation services
- providing high-quality legal aid services
- supporting an effective and efficient court system
- managing taxpayer funds effectively?

Yes

2. Do you consider any other elements need to be added to the components of an effective legal aid system?

## CAN THE RIGHT PEOPLE ACCESS SERVICES?

3. Do you consider that there are any areas of legal need in the community that are not being met to some extent by existing services?

Yes, mainly because of the quality and lack of “quantity” available to those needing legal aid because of the funding for legal aid.

4. Are services provided in ways that meet the particular needs of Mā ori and Pacific peoples, and certain vulnerable groups of people (e.g. victims or people with disabilities)?

In some cases people with disabilities have to rely on the caregiver to apply for legal aid and this can, in some cases, be the person that they are seeking to get aid to bring a legal charge against.

5. Are there any categories of people who should be able to receive legal aid but who cannot currently do so?

Some women are deemed to be not eligible for legal aid as they come from a “wealthy family”, in cases of domestic abuse, often it is the male who controls the finances and the women are not able to access the money required to get legal help when they most desperately need it.

6. Are there any categories of eligible people who should not receive legal aid?

7. Are there any barriers that prevent eligible people from accessing legal aid services?

Women in particular find it difficult to go through the process of obtaining legal aid easily as they are often given advice that tells them they have to pay for advice on how to get legal aid. This prevents many women from approaching a lawyer, as they do not have the means to pay in the first place. The fact that the number of Lawyers who are available for free legal advice is dropping rapidly because of the low hourly rate currently paid, means that for some women there is no available legal aid in the area they live. This can be particularly bad in smaller towns and rural areas.

8. Are there any specific barriers faced by Mā ori or Pacific peoples in accessing

legal aid services?

9. Do people who use the legal aid system also use other social services (e.g. housing, budgeting services, Work & Income)?

10. Do you consider that the widened eligibility criteria have had a positive or negative effect on access to justice?

BPW NZ believes that a positive effect has been had on access to justice, limited only by the decreasing number of lawyers available to people who need them.

11. What are the likely consequences of limiting eligibility for legal aid?

12. Are there any groups of litigants that should be eligible for legal aid?

13. How could the merits test be strengthened to ensure civil/family legal aid is not available for unmeritorious cases, or cases that have slim prospects of success?

14. Should civil/family legal aid be refused on the basis that the matter is one that should be resolved by alternative dispute resolution?

15. Should civil/family legal aid be granted if parties fail to resolve the dispute through alternative dispute resolution?

16. Where there are other sources of funding (e.g. conditional fee agreements or Treaty of Waitangi claimant funding from the Office of Treaty Settlements or the Crown Forestry Rental Trust), should people be required to exhaust these possibilities before obtaining legal aid?

17. If an applicant cannot find a lawyer who will enter into a conditional fee agreement, should that be a relevant consideration in the merits test (e.g. in assessing the prospects of success)?

18. Should all State-funded legal assistance be administered by one agency?

Yes

19. If multiple agencies fund legal assistance, how can this be managed in a way that assures taxpayers that their funds are being used appropriately?

20. What reasons make it important for people to make some contribution towards their legal costs where they can afford to do so?

Most people want to feel they are not dependent on others for their survival, and this also pertains to legal aid.

21. Do you think that people who are in the low-income bracket (e.g. entitled to a Community Services Card) should have to repay legal aid?

No

22. Is there a risk that the repayment regime will create or exacerbate problems of indebtedness?

Yes

23. Is there a risk that the repayment regime will dissuade people from applying for legal aid?

Yes, if it is structured in such a way as to make it impossible for the person to pay it back. Most people who are in need of legal aid are requesting it because they have little or no income. The fact that they have to pay it back, must be structured in a way that they can easily cope with and in some cases be exempted from paying it back, depending on the reason they needed it. Women who have been abused are generally lacking in self confidence and may be overwhelmed by the worry that goes with thinking that they must pay back the legal aid.

24. Do you have any suggestions for managing the costs of administering the repayment regime?

### ARE WE PROVIDING THE RIGHT MIX OF SERVICES?

25. Does the legal aid system enable people's needs to be viewed in a holistic way, and is there room to do this better?

Yes

26. What advantages do you see from focusing on early advice and support?

Good advice right from the start can give more confidence in the legal system and means that women(people) who really need to ask for aid will do so.

27. Can you identify any particular legal advice and information services that could work more effectively if they were joined up or co-located with other services?

Citizens advice and Women's refuge already work well together.

28. Is the mix of community-based information and advice services appropriately targeted to needs in the community?

Some community based services need to have more training in what legal aid can be got and how and when it is funded and in particular who is eligible and who, if they receive aid will need to repay it.

29. What do community law centres (CLCs) contribute to the justice system that is unique to them?

30. Would there be advantages in standardising the services provided by CLCs on a national basis? Which services should be provided on a national basis?

31. If CLC services were to be standardised, how should they be made accountable for those services?

32. Would there be advantages in using CLCs to deliver more legal aid services (e.g. duty solicitor services)?

33. Do you see benefits in refocusing administration of the legal aid system towards developing a strategic overview of service needs and prioritising services according to identified needs in different communities?

34. What changes would be needed to refocus the legal aid system in this way?

35. What reasons would justify continuing to limit the conditions under which new forms of legal services can be piloted?

36. Should legal services be treated any differently in this respect from other types of publicly funded services?

Yes, where domestic abuse is perpetrated because the funding is not adequate to cover the costs, the funding needs to be adequate to provide lawyers who agree to provide legal aid necessary to families and women who require it.

**THE QUALITY OF LEGAL AID SERVICES IS VARIABLE**

37. What could be done to improve the performance of legal aid lawyers in terms of efficiency and quality?

Lawyers who are more experienced would be more likely to make themselves available if the funding was increased, which would mean the performance would also increase.

38. Should publicly provided services (e.g. the Public Defence Service) be used to increase the standard of legal aid services where there are particular problems?

This is one option that could be of benefit.

39. Could a different approach to legal aid remuneration encourage firms and practitioners to participate in legal aid work?

Definitely.

40. Can you identify any issues other than remuneration that are discouraging lawyers from providing legal aid services?

41. Do you have any suggestions for ways of reducing compliance costs for legal aid lawyers?

42. Do you see advantages in making performance monitoring and quality standards an express part of the legal aid system?

43. What would be the most effective way of enabling practitioners to meet

quality standards?

44. Do you consider that any of the following levers may help to enhance the quality of legal aid services:

- time limits and panels for legal aid listings
- training, supervision, peer review requirements
- performance review
- specialisation in the lawyer banding system, such as for lawyers doing appellate work.

Yes

45. Can you suggest any additional levers to enhance the quality of legal aid services?

46. Do you consider that either the Legal Services Agency or the New Zealand Law Society should have primary responsibility for the quality of legal aid services, or is there a shared responsibility?

47. What do you see as the most effective ways of improving accountability in the legal aid system?

48. How should cases of poor service delivery be handled in a quality-focused framework for legal aid services?

49. Would more auditing create incentives on practitioners to improve the quality of their service and their professional development?

50. Are there any other forms of performance monitoring which might have the same effect?

51. Do you consider that the Legal Aid Review Panel would be better administered independently of the Legal Services Agency?

52. Do you have any suggestions for the matters which should be subject to review by Legal Aid Review Panel?

**LEGAL AID'S EFFECT ON THE COURT SYSTEM**

53. Do you consider that legal aid payment steps could help to improve the efficiency of court proceedings, as well as encourage the use of less costly means of progressing cases through the court system?

54. How could legal aid payment steps be structured to achieve these objectives?

55. Do you agree that the preferred lawyer policy is distorting the allocation of criminal legal aid cases?

56. Do you have any suggestions for changes to the preferred lawyer policy that could address the problems identified in this paper?

57. Do you have any suggestions for ways of enhancing the role of duty solicitors?

58. Do you have any suggestions for enhancements to the supervisory structure for duty solicitors?

**DOES THE SYSTEM MANAGE TAXPAYER FUNDS EFFECTIVELY?**

59. Would there be advantages in capping the legal aid budget?

60. Are there any categories of legal aid expenditure that might be more amenable to capping?

61. How could any disadvantages from capping the budget be avoided or mitigated?

62. Can you identify any ways of reducing demand for criminal legal aid?

63. What do you see as the main drivers of administrative inefficiency in the legal aid system?

64. Do you have any suggestions for streamlining administration of the legal aid system?

65. Do you have any comments on alternative funding models for purchasing legal aid services?

66. What are the benefits and challenges of public provision of legal aid services?

67. Do you consider the Public Defence Service should be extended into any other regions? If so, where and why?

68. Can you suggest for any ways to simplify and standardise the process for determining eligibility?

69. Can you suggest any ways to streamline piloting and consultation procedures in the Legal Services Act 2000 (the Act)?

70. Do you have any examples of unnecessary prescription that could be removed from the Act?

71. Can you identify any operational inefficiencies in the legal aid system?

72. Do you have any suggestions for how the expense involved with high cost cases could be managed down?