



New Zealand Country Report

2007
International Legal Aid Group
Conference

Legal Services Agency,
Wellington, New Zealand

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The Legal Services Agency

1. This section provides a summary of the key features of the Legal Services Agency including its functions, organisation and accountability structures.
2. The Legal Services Agency (the “Agency”) is responsible for the administration of legal aid and related schemes. The Agency is a Crown entity established under section 91 of the Legal Services Act 2000. The Agency took over the granting of aid from the Legal Services Board (for civil and family legal aid) and Registrars of the courts (for criminal legal aid). The Agency is governed by a Board of six members appointed by the Minister of Justice. The Agency has a Chief Executive Officer, almost two hundred and fifty staff, twelve regional offices and two Public Defence Service pilot offices.
3. The Agency has responsibility for:
 - administering criminal and civil legal aid schemes
 - administering the Duty Solicitor and Police Detention Legal Assistance Schemes
 - piloting and running schemes for employing or contracting with legal aid providers
 - maintaining a list of approved legal aid providers
 - contracting with community law centres for the delivery of community legal services and
 - contracting for and delivering legal information and law related education projects
4. The Agency is required to comply with any written direction from the Minister. The Minister is required to table any direction in the House of Representatives and must publish the direction in the Government Gazette. The Minister is specifically prevented from giving the Agency a direction intended to bring about a result for one or more individuals.
5. The key accountability documents are the Memorandum of Understanding and the Statement of Intent agreed between the Minister and the Agency.
6. The Memorandum of Understanding is an annual purchase agreement that sets out the outputs that the Agency will deliver, defines performance measures, and presents financial information. It also sets out the Minister’s expectations in relation to the Agency and the reporting arrangements.
7. The Statement of Intent is a three-year document that reflects the Government’s ownership interest in the organisation and is tabled in parliament. It sets out the Government’s outcomes and the Agency’s priorities in relation to these outcomes and includes a mission and vision statement and key objectives for the period of the document.
8. The Agency also produces an Annual Report. A copy of the Annual Report can be found at <http://www.lsa.govt.nz>.

9. The Agency receives income from Government appropriation, interest, contributions and repayments from legally aided persons, and the interest off nominated solicitors' trust accounts (Special Fund). Detailed income figures may be found in Appendix Two. Legal aid is demand driven and the annual appropriation is based on forecast growth. The administration appropriation and legal aid appropriation are separated and cannot be used to offset the other.
10. The Agency has a Public Advisory Committee. The Committee is required to have members who represent the interests of women, Māori, Pacific Island people, young people, older people, people with disabilities, the legal profession and community law centres. The Public Advisory Committee provides advice to the Agency on a range of issues including unmet legal needs and the funding of community legal services. The Committee may not give advice on individual grants of aid.
11. The Ministry of Justice is responsible for policy development in relation to legal aid, work relating to criteria set in legislation and subordinate regulation and monitoring the performance of the Agency.
12. On 1 March 2007 the provisions of the Legal Services Amendment Act 2006 came into force. The Amendment Act made major changes to eligibility and debt establishment and repayment. This report provides information on the new regime, however data provided for previous years will relate to the old regime.¹

Legal Aid - Overview

13. This section provides an overview of the legal aid scheme. Under this scheme the Agency provides grants of aid to eligible people to fund legal services. The grant money is paid to an approved private practitioner for approved services. In Auckland some criminal services are also provided by in-house lawyers under a Public Defence Service (PDS) Pilot. PDS lawyers are also required to have appropriate approval to provide approved services.² In New Zealand community legal services are not part of the legal aid scheme. They are delivered by community law centres, which are separately funded by the Agency.

Services Provided

14. Legal aid may be provided when an applicant faces criminal charges or requires legal assistance with a civil dispute where the final resolution of the dispute could be through adjudicated proceedings. Legal aid includes legal advice and representation, and includes assistance:
 - with resolving disputes other than by legal proceedings
 - with taking steps preliminary or incidental to any proceedings and

¹ For information on the old regime see the 2005 ILAG New Zealand Country Report.

² For more information on PDS see <http://www.lsa.govt.nz> or the 2005 ILAG paper: *Piloting the mixed model in New Zealand*.

- in arriving at or giving effect to any out of court settlement that avoids or brings to an end any proceedings

Listed Legal Aid Providers

15. There are almost 3000 listed providers. With the exception of 18 PDS lawyers and 13 employed by community law centres, all listed legal aid providers are in private practice.
16. For civil legal aid a person chooses a listed provider who assists them to seek approval for a grant of legal aid. For criminal legal aid a person may choose a listed provider, or the Legal Services Agency may allocate them a lawyer if they have no preference.
17. The Agency has the power to audit listed providers and carries out random and selected audits.

Grant Information

18. The following table shows the numbers of legal aid grants made in the period 1995/96 to 2005/06.

	1996 /97	1997 /98	1998 /99	1999 /00	2000 /01	2001 /02	2002 /03	2003 /04	2004 /05	2005 /06
Criminal	37,898	41,827	52,972	45,784	44,404	44,702	40,109	40,391	41,834	46,836
Civil	23,920	22,500								
Family			24,646	22,053	19,977	19,554	18,840	18,098	17,706	17,467
Civil – Other			3,141	2,863	2,290	2,443	1,829	1,658	1,789	1,446
Waitangi					43	62	37	65	63	72
Total	61,818	64,327	80,759	70,700	66,714	66,761	60,815	60,277	61,392	65,821

Source: Legal Services Board and Legal Services Agency

19. Prior to 1998/99, legal aid grant information was only reported under two categories - criminal and civil.
20. The average cost of a grant varies between proceedings types. The average costs of grants in 2005/2006 were:³
 - criminal - \$US 710
 - family - \$US 937
 - other civil (excluding Waitangi⁴) - \$US 2,024

³ All US figures calculated at 0.69 \$US.

⁴ The low volume of and the uniqueness of Waitangi cases means any averaging of costs is non-representative.

Average cost over time (average costs in \$NZ)

Average Cost	1996 /97	1997 /98	1998 /99	1999 /00	2000 /01	2001 /02	2002 /03	2003 /04	2004 /05	2005 /06
Criminal	\$754	N/A	\$798	\$669	\$689	\$747	\$843	\$932	\$995	\$1,029
Civil	\$1,732	N/A								
Family		N/A	\$1,487	\$1,259	\$1,315	\$1,450	\$1,445	\$1,268	\$1,370	\$1,358
Civil – Other		N/A	\$2,673	\$2,049	\$2,398	\$2,782	\$2,721	\$3,314	\$3,392	\$2,933

Source: Legal Services Board and Legal Services Agency

21. The variation in average cost of a grant reflects the relative complexity and amount of time involved in the proceedings types. The average cost of criminal cases has been increasing over time and reflects the growing number of serious and costly cases and changes in court practice.

Expenditure Information

22. Total expenditure for the year ended 30 June 2006 (including administration costs) comes to \$US 88.1m.² Expenditure on the legal aid portion of this was \$US 69.6m.
23. Legal aid expenditure comprised \$US 35.8m in criminal legal aid, \$US 16.6m in family legal aid \$US 4.9m general civil legal aid and \$US 7.2m in Waitangi Tribunal legal aid and \$US 5.0m for the PDLA and Duty solicitor schemes.⁵
24. In March 2006, New Zealand's population was 4.03 million.⁶ New Zealand therefore spends approximately \$US 21.86 per person on legal aid related services, \$US 17.27 per person of which is spent on legal aid (judicare).
25. There was 39% growth in expenditure on legal aid grants in the ten years from 1996/1997 to 2005/06.

Legal aid cash expenditure

\$NZ (000) GST exclusive, year ended 30 June

	1996 /97	1997 /98	1998 /99	1999 /00	2000 /01	2001 /02	2002 /03	2003 /04	2004 /05	2005 /06
Criminal	26,899	28,058	32,384	29,333	30,273	33,845	35,192	39,182	42,501	45,996
Civil (inc. family)	38,093	40,372								
Family			39,612	34,855	33,655	32,573	27,205	26,476	26,016	25,686
Civil			8,108	8,077	6,144	8,720	6,740	5,764	6,489	6,729
Duty Solicitor & PDLA	4,389	4,376	4,826	4,898	4,973	5,360	5,848	6,630	6,830	7,229
Waitangi Tribunal			1,513	3,066	4,206	5,581	7,298	6,901	11,059	10,406
Total	69,381	72,806	86,441	80,229	79,251	86,079	82,283	84,035	92,895	96,046

Source: Legal Services Board and Legal Services Agency

⁵ See sections below for descriptions of these schemes.

⁶ Source: Census 2006. Statistics New Zealand.

26. The amount of general civil litigation in New Zealand is small as there is limited personal injury litigation because of state based accident compensation insurance.
27. The main reasons for variations in expenditure on legal aid were:
 - changes in the volumes of grants of aid made, particularly decreases in the volumes of family and civil grants offset by a more recent increase in the number of grants of criminal legal aid
 - increases in the average grant paid particularly for criminal legal aid. The average cost of criminal legal aid has increased as a result of an increase in the number of serious cases, which are costly.
28. A full breakdown of all expenditure on legal aid and other services such as Community Law Centres may be found in Appendix One.

The Granting Process

29. Applicants for legal aid must pass a means test and the case must pass a merits test (for civil matters) or the “interests of justice” test (for criminal).
30. Grants staff in regional offices process legal aid applications. Staff may also seek the advice of Specialist Advisers, who are experienced lawyers, some employed and some contracted by the Agency.
31. When making a grant of legal aid, the Agency usually sets a maximum grant. This maximum can be expressed in any way such as a dollar amount, a number of hours, or a period of time. Should the legal aid provider have a need to exceed this maximum grant they must make an application to the Agency for an amendment.
32. When a grant of aid is initially approved Grants staff will also assess whether the applicant will be required to repay part or all of the legal aid cost.
33. The Agency has policy guidelines to support consistent granting, including “proceedings steps” for family, criminal and civil proceedings. These provide guidance to staff on how much legal aid to grant and are also available to practitioners.

Reconsiderations and Appeals

34. An applicant for legal aid has a right to a reconsideration of any decision made by the Agency. A granting officer other than the original decision-maker must do the reconsideration.

Legal Aid Review Panel

35. An applicant or legally aided person may apply to the Legal Aid Review Panel for a review of a decision by the Agency in relation to legal aid. The grounds for review are whether the decision is:

- manifestly unreasonable or
 - wrong in law
36. The review can be in relation to a broad range of decisions made by the Agency. This can include reviews of the decision to grant or not grant, any conditions imposed on the grant of aid to repay the grant, a maximum grant, decisions about charges on property etc.
37. A listed legal aid provider can also seek a review of a decision by the Agency in relation to the amount payable by the Agency to that provider.
38. The Legal Aid Review Panel is an independent panel appointed by the Attorney General and consists of a mix of lawyer and non-lawyer members. Decisions are made on the papers by teams of up to three people. Each team must have a lawyer member. The panel can confirm, modify or reverse a decision, or direct the Agency to reconsider.
39. In 2005/6 the Legal Aid Review Panel reviewed decisions on 0.31% of legal aid applications, amendments and claims received by the Agency. Of the applications reviewed, 42% of the original decisions were upheld, 3% of the decisions were modified, 22% of the decisions reversed, 23% of the decisions were sent to the Agency for reconsideration and 10% were not categorised.⁷

Appeals

40. The Agency or the applicant can appeal a decision of the Legal Aid Review Panel to the High Court or the Court of Appeal on a question of law. During 2005/6, the Agency was the respondent in one completed appeal to the High Court.

Civil Legal Aid

41. The civil legal aid scheme funds legal advice and representation for individuals (whether lawfully or unlawfully in New Zealand) for disputes that could be resolved in adjudicated proceedings in New Zealand. This section provides a summary of the key features of the civil legal aid scheme.
42. Legal aid for civil proceedings is not available to any body of persons, whether corporate or not, except where the applicant is one or the other of the following:
- (a) a trustee corporation (as defined in section 2 (1) of the Administration Act 1969) that applies for legal aid in connection with proceedings in which it is concerned in a representative, fiduciary, or official capacity or
 - (b) a Māori involved in proceedings before the Waitangi Tribunal, for the benefit of a group of Māori of which the applicant is a member
43. The government has also established a separate scheme to fund any non-profit group that has a recognised legal status seeking representation in the resource

⁷ Source: Legal Services Agency Annual Report, 2005/6.

management process. The Ministry for the Environment administers the scheme and it operates on a capped fee basis.

Eligibility for Civil Legal Aid

Merits test

44. Civil legal aid must be refused where:

- there are no reasonable grounds for taking or defending proceedings or being a party to the proceedings and/or

45. Civil legal aid may be refused if:

- in the case of civil and some family proceedings the applicant's prospects of success are not sufficient to justify a grant of aid
- in the case of family proceedings aid is not justified after taking into account factors such as previous proceedings, personal protection issues and the interests and welfare of other persons

46. Further, civil legal aid may be refused if:

- the maximum repayment amount prescribed by regulation is greater than the likely cost of proceedings
- having regard to the nature of the proceedings and the applicant's interest in them (financial or otherwise) in relation to the likely cost of proceedings, the grant of aid is not justified or
- for any other cause it appears unreasonable or undesirable that the applicant should receive aid in the particular circumstances of the case

47. In the case of an appeal, the test is whether in the opinion of the Legal Services Agency a grant of aid or further aid is justified.

48. The Legal Services Agency may withdraw civil legal aid after it has been granted if it:

- is satisfied that the aided person has conducted proceedings so as to incur an unjustifiable expense or has required unreasonably that proceedings be continued and/or
- becomes aware that there are no longer reasonable grounds for being involved in the proceedings or that it is unreasonable or undesirable in the particular circumstances for the person to continue to receive legal aid

Financial eligibility

49. The financial eligibility criteria for legal aid have two parts:

- the applicant's gross annual income and
- the applicant's disposable capital

50. An applicant's gross annual income or disposable capital⁸ must not exceed the financial threshold set by regulation unless the Agency is satisfied that there are special circumstances after taking into account the likely cost of proceedings or the applicant's ability to fund the proceedings if aid is not granted.
51. The financial thresholds vary depending on whether the applicant has a partner and/or financially dependent children:

Immediate Family	Maximum level of gross annual income	
	\$NZ	\$US ⁹
Is single	19,741	13,621
Has a spouse/partner, or is single with one dependent child	31,225	21,545
Has a spouse/partner and one dependent child, or is single with two dependent children	36,371	25,096
Has a spouse/partner and two dependent children, or is single with three dependent children	41,517	28,647
Has a partner/spouse and three dependent children, or four dependent children	46,665	32,199
Has a spouse/partner and four dependent children, or five dependent children	51,813	35,751
Has a spouse/partner and more than four dependent children, or more than five dependent children	51,813 plus 4,480 for each additional child	35,751 plus 3,091 for each additional child

52. In calculating gross annual income, the Agency considers a person's total income from all sources (before tax) during the 12 months immediately preceding the application for legal aid, or during such other period of 12 months that is deemed appropriate.
53. In calculating the disposable capital, the Agency deducts from its calculations:
- interest in a home up to \$80,000¹⁰ (\$US \$55,200)¹¹
 - the value of any vehicle used for domestic purposes
 - household furniture, appliances, personal clothing and tools of trade
 - any contingent liabilities that may mature in six months or less
 - unsecured debts
54. The calculation of applicant's financial resources is also used to assess the requirement to repay some or all of the costs of services paid for under the legal aid grant.

⁸ Social welfare benefits are generally counted as income (some payments related to special financial situations of need are specifically excluded). Where property is at issue between the parties, as it often is in Family Court cases, then that disputed property is ignored for the purposes of the capital calculation. The income or capital of the applicant's partner are treated as the applicants in these calculations unless the partner has a contrary interest.

⁹ Calculated at 0.69 \$US.

¹⁰ This amount is set the Legal Services Regulations 2006.

¹¹ Calculated at 0.69 \$US.

Scope of the civil legal aid scheme

Civil legal aid is available for all civil and family court proceedings and some tribunals. Full details are contained in Appendix 3.

Repayment from income or capital & repayments from proceeds of proceedings in civil legal aid

Repayments

55. Every applicant for civil legal aid must be assessed for the requirement to repay some or all of the cost of the legal services received. The maximum amount repaid is the lower of either the total cost of services or the prescribed repayment amount. The prescribed repayment amount is set by the Legal Services Regulations and is based on the applicant's gross annual income and capital¹² and varies depending on whether the applicant has a partner and/or financially dependent children.
56. The cost of services is defined in the Act and includes all legal aid lawyers' fees and charges plus any disbursements paid.
57. Some applicants are exempt from a repayment requirement. They are applicants in domestic violence cases, cases involving proceedings for compulsory assessment or care of mental health or intellectual disability clients and certain proceedings before the Waitangi Tribunal. Applicants involved in victims' claims proceedings may be exempt from a repayment.
58. The Agency may vary or waive the sum of the repayment where serious financial hardship would arise or where requiring payment would jeopardise reconciliation in family cases, or it would be just and equitable to write-off the debt.
59. The Agency may require the aided person to make interim repayments while the case is continuing and before the final repayment amount is calculated. These may be in instalments, or a lump sum (or both).
60. The Agency may withdraw aid in civil cases if the aided person defaults on the repayment conditions on a grant. The Agency may also charge interest on an unpaid legal aid debt.

Repayment from proceeds of proceedings

61. Every grant of civil legal aid is subject to the condition that the aided person will repay the Agency the cost of legal services out of the proceeds of proceedings (if any). This repayment is less any deductions, allowances or write-offs the Agency may have made.

¹² Capital is defined as the total value of assets less the total value of debts; there are no other deductions made as in the case of disposable capital.

Charges

62. Civil legal aid may be granted subject to a condition that the aided person registers a charge over any form of property owned by them as security for any unpaid repayment of the cost of providing legal services
63. Any proceeds of proceedings may also be subject to a charge in favour of the Agency for the amount of repayment payable under the grant.
64. *Bates v Legal Services Board* [1999] NZLR, 91 endorsed the view that the Board was entitled to the benefit of a charge that almost consumed the entire proceeds of the proceedings. In this case the proceeds of the proceedings included exemplary damages but the aided person was still deemed to have an obligation to reimburse most of the cost of legal services received under the grant of aid.

Waitangi Tribunal proceedings

65. The Waitangi Tribunal was established in 1975 by the Treaty of Waitangi Act 1975. The Tribunal is a permanent commission of inquiry charged with making recommendations on claims brought by Māori relating to actions or omissions of the Crown that breach the promises made in the Treaty of Waitangi. The availability of legal aid for Waitangi Tribunal proceedings is enshrined in legislation because it is fundamental to provide Māori with the means of pursuing their claims.
66. In terms of the administration of legal aid, a grant of aid for Waitangi Tribunal proceedings is not different to any grant of civil legal aid, however there is a key difference in respect of repayment. Where a claimant receives a grant made for proceedings in the Waitangi Tribunal, a charge may not be imposed on any settlement property, or any property acquired out of, or with, the settlement property, or on the proceeds of any disposition of the settlement property. This reflects the fact that the proceedings are primarily against the Crown in relation to past wrongs towards Māori, and it would therefore be inappropriate for the Crown to, for example, take a charge over land it had just returned to Māori.

Criminal Legal Aid

67. Criminal legal aid ensures that those facing serious criminal charges who cannot afford to pay a lawyer from their own resources are provided, in the interests of justice, with a suitably qualified lawyer. Full details of eligibility and scope of criminal legal aid are contained in Appendix 4.

Eligibility for the criminal legal aid scheme

Merits test

68. In considering the merits of an application for legal aid under section 8 of the Act, the Agency may grant aid if:

- the offence to which the application relates is punishable by a maximum term of imprisonment of 6 months or more or
- it appears to the Agency that the interests of justice require legal aid to be granted

69. When considering the interests of justice the Agency must have regard to:

- whether the applicant has any previous convictions and
- whether the applicant is charged with or convicted of an offence punishable by imprisonment and
- whether there is a real likelihood that the applicant, if convicted, will be sentenced to imprisonment, and
- whether the proceedings involve a substantial question of law, and
- whether there are complex factual, legal or evidential matters that required the determination of the court, and
- whether the applicant is able to understand the proceedings or present his or her own case, whether orally or in writing, and
- in any proceeding to which section 6(c) of the Act applies (certain proceedings before the New Zealand Parole Board), the consequences for the applicant if legal aid is not granted, and
- in respect of an appeal, the grounds for the appeal

70. The Agency can also consider any other circumstances that, in its opinion, are relevant.

Financial eligibility

71. The financial test for criminal legal aid is based on whether “it appears to the Agency that the applicant does not have sufficient means to enable him or her to obtain legal assistance.”¹³ When determining whether or not an applicant has sufficient means to enable him or her to gain legal assistance, the Agency must have regard to the applicant’s annual gross income and disposable capital.

72. The assessment of the applicant’s income and capital are the same for criminal legal aid as for civil legal aid.

Repayments

73. Recipients of criminal legal aid may be required to repay all or part of the cost of legal services under the same conditions as civil legal aid recipients. However, aid may not be withdrawn in criminal legal aid if the aided person defaults on the conditions on the grant.

¹³ Section 8 (1)(b) Legal Services Act 2000.

Duty Solicitor & Police Detention Legal Assistance Schemes

Duty Solicitor

74. The Duty Solicitor scheme provides assistance on the hearing day to people without legal representation who face criminal charges at a District Court. The duty solicitor ensures the person charged is aware of basic court procedures and that the case is dealt with satisfactorily. This may include advice about legal aid and adjournments, and entering a plea in mitigation, when the defendant is pleading guilty. There are no eligibility requirements for this scheme.

Police Detention Legal Assistance Scheme

75. The Police Detention Legal Assistance Scheme ensures that a person being questioned or detained by the Police may obtain advice or assistance by telephone or in person from a rostered lawyer. This scheme gives practical effect to the intent of the New Zealand Bill of Rights Act 1990. There are no eligibility requirements for this scheme.

Expenditure on the Duty Solicitor and PDLA schemes

76. The total expenditure on these schemes in 2005/2006 was \$US 5.0m. This represents \$US 1.24 per capita on these schemes.¹⁴

Expenditure Item (\$NZ GST Excl.)	1996 /97 (\$000)	1997 /98 (\$000)	1998 /99 (\$000)	1999 /00 (\$000)	2000 /01 (\$000)	2001 /02 (\$000)	2002 /03 (\$000)	2003 /04 (\$000)	2004 /05 (\$000)	2005 /06 (\$000)
Duty Solicitor & Police Detention Scheme	4,389	4,376	4,847	4,885	5,060	5,360	5,849	6,630	6,830	7,229

Community Law Centres

77. Community law centres provide legal advice and representation, information and assistance with submissions. Most centres employ lawyers, but some work with volunteer lawyers and law students.
78. The Agency contracts with community law centres for services with money from the New Zealand Law Society Special Fund and a small amount of government appropriation. Income for the Special Fund is generated when banks collect the interest payable on lawyers' nominated trust accounts where it is impractical to pay that interest to the owners of those monies, either because it is held for a short period of time or consists of a small amount. 50% of this interest is returned to the banks and 50% goes to the Special Fund.

¹⁴ Figures calculated at 0.69 \$US

79. When deciding the funding each year for community law centres, the Agency is required to consult with its Public Advisory Committee and must have regard to the following criteria if there is more demand for funds than money currently available:
- (a) the level of unmet legal need in the community served by the community law centre, relative to that of other communities
 - (b) the capacity of the community to pay for legal services, relative to the capacity of other communities to pay for them
 - (c) the effectiveness, or likely effectiveness, of the community law centre in providing those services to the community
 - (d) the benefit of ensuring continuity in the delivery of services
 - (e) the need to provide reasonable access by communities to community law centres throughout the country and
 - (f) alternative providers of legal services that are (or will be) available in practice to the community

As a matter of good practice, however, these criteria are generally considered for all funding decisions.

80. In order to support this process, the Legal Services Agency works with local community law centres in formal reviews of needs and in consultation processes to assist them with identifying priorities of unmet legal need at a local level.

Expenditure on community law centres

81. This represents expenditure of \$US 5.6m expenditure in 2005/2006 on community law centres or \$US1.39 per person.¹⁵

Expenditure Item (GST Excl. (\$NZ))	1996 /97 (\$000)	1997 /98 (\$000)	1998 /99 (\$000)	1999 /00 (\$000)	2000 /01 (\$000)	2001 /02 (\$000)	2002 /03 (\$000)	2003 /04 (\$000)	2004 /05 (\$000)	2005 /06 (\$000)
Community law centres	3,611	3,895	3,981	4,389	4,976	5,379	6,222	6,339	6,871	8,187

Legal Information and Law Related Information and Education

82. The Agency funds legal information and law related education from a Research and Education Fund.
83. The Agency's long-term strategy for legal information and law related education, established in 2001, has the Agency as a central repository for education and information resources for all, but targeting those who are most at risk of experiencing significant unmet legal needs. This need is established by regional research. Development directions are also informed by a Consultation Group drawn from community law centres and other community agencies involved in the delivery of legal information and education. The 2006 National Survey (see Para 90) will be used to inform future developments.

¹⁵ Figures calculated at 0.69 \$US

Legal Information

84. The Agency produces information and education resources and facilitates access to resources produced by others. It works with other government and non-government agencies to coordinate legal information development and availability.
85. The Agency produces and publishes a comprehensive electronic index of legal information available in New Zealand, known as Law Access (available from the Agency's website <http://www.lsa.govt.nz>). Law Access is an electronic gateway to legal information from government agencies, community and educational organisations, and other agencies.

Law Related Education

86. The Agency develops law related education kits that are stand-alone education resources containing all key legal information and teaching resources on a particular topic. The initial delivery of these kits is frequently done by the Agency in "train the trainer" style. The kits can be modified for different audiences and situations, and are regularly evaluated and maintained.
87. The distribution and maintenance of the kits is handled by relevant community organisations. These relationships strengthen the Agency's links with the community and provide direct feedback on the use and relevance of the resources.
88. Kits already in use are on enduring power of attorney, domestic violence and harassment, accident compensation law, immigration law and legal aid and other legal assistance. A kit is being developed on the laws affecting people with mental health problems.
89. The Agency also has an audio visual resource and teaching guide about Waitangi Tribunal proceedings (grievances brought against the Government by Maori under the Treaty of Waitangi) which is primarily aimed at school students aged 13 to 18.

Research into Unmet Legal Needs

90. The Agency can undertake or fund research into the unmet legal needs of communities and how they may be met. In 2006 the Agency undertook its first national needs assessment.¹⁶
91. Working in partnership with CLCs, the Agency has also undertaken three local needs assessment exercises and a piece of work to attempt to develop legal needs scores across the country. Although these have now been largely superseded by the national survey.
92. The Agency's research reports can be found at <http://www.lsa.govt.nz>

¹⁶ See section in New Developments below.

New Developments

Legal Services Amendment Act 2006

93. In 2002 the Ministry of Justice reviewed the eligibility criteria for legal aid; the first review in almost 25 years. The general objectives of the review was that the eligibility regime:
- supports access to legal representation for people with genuine need
 - is understandable to users and the general public
 - discourages unnecessary litigation
 - enables fiscal responsibility and
 - enables efficient and timely administration of the legal aid scheme
94. The focus of reform was on:
- expanding the pool of financially eligible people
 - structuring the repayment of aid to encourage more repayment arrangements to be established
 - improving the management of debt repayment
 - clarifying the merits tests to support improvements in the administration of legal aid
95. The Legal Services Amendment Act 2006 was passed in April 2006 with the main provisions effective from 1 March 2007.
96. Implementing the Act has been a huge piece of work for the Agency over the last 18 months, with the proportion of the population eligible for legal aid having increased by 48%. It has also required the creation of a new debt function with an expectation that repayments will be established on 41% of legal aid grants.

2006 National Survey of Unmet Legal Needs and Access to Services

97. In 2006 the Agency undertook its first national legal needs survey. Its primary purpose was to improve public access to justice by allowing the Agency to take decisions on the desirable quantity, location and structure of legal services throughout New Zealand.
98. The methodology drew heavily from the English and Welsh Civil Law and Social Justice survey and employed a quantitative research method in the form of a national random telephone survey. 7,200 New Zealanders were interviewed, including booster samples of Māori and Pacific Island people: groups typically under-represented in survey research.
99. The sample size is statistically valid on a national, regional and (within Auckland) sub-regional basis and is large enough to provide detailed information and allow the examination of discrete communities of interest.

100. The sample was stratified by region and the sample frame also permits the identification and analysis of the results based on respondents' type of location (urban, rural or provincial town). The standard statistical practice of re-weighting was used to ensure that the sample accurately reflected the population on the basis of area, gender, age, ethnicity and income.
101. The questionnaire gathered comprehensive demographic information (aligned with Statistics New Zealand's data) on each respondent, whether or not they experienced a problem.

Initial Criminal Legal Services

102. In September 2005 the Agency undertook a Review of Initial Criminal Legal Services. As a result of the Review two projects are underway to progress its findings and recommendations.
103. The Duty Lawyer Administrative Changes project has initiated a national change programme to the Duty Solicitor scheme, which includes:
- introducing the status of 'duty lawyer'¹⁷ trainee and providing court-based induction programmes for trainees.
 - establishing duty lawyer supervisor positions with defined roles and responsibilities.
 - introducing changes to rostering practice, including rules around the optimum number and mix of providers on rosters and team-based rostering.
 - amending duty lawyer contracts and Agency instructions to provide greater clarity of the expectations of duty lawyers
104. The Police Detention Legal Assistance (PDLA) Scheme Improvement project is testing a restructuring of the PDLA rosters by type of legal matter in the Auckland region with a view to nationwide changes. Work is also underway to clearly document expectations of PDLA lawyers, to improve access to up-to-date rosters by Police and persons being detained or questioned, and to more actively manage the rosters.

Community legal services national funding policy

105. In 2006 the Agency implemented a National Funding Policy for community legal services. It's overarching framework for distribution of funding is a balance of:
- optimum access coverage
 - equitable access relative to the size and nature of unmet legal needs and the community
 - the monies available to fund CLCs
 - the adequacy of funding to individual CLCs to enable effectiveness
106. The Policy lays the foundation for rebalancing the funding on the basis of maximum coverage and equity of access (rather than equity of funding) to

¹⁷ As part of the project the Agency has adopted the term 'duty lawyer' rather than 'duty solicitor.'

community legal services by communities with insufficient means to pay. The rebalancing will be a gradual process and is expected to take a number of years to achieve.

Proposed future service developments

107. The Agency is currently in a consolidation phase and the ongoing integration of the changed granting and debt establishment and management procedures will form a significant piece of work for some time.

108. The Agency's draft strategic plan for 2007-2010 also includes a number of proposed developments. These include:

- a review of provider remuneration¹⁸
- the implementation of enhanced management of complex/high profile cases
- the development of streamlined/simplified processes – In 2006 the Agency began testing a “Global Granting” system for family where standard payments are made for standard activities
- rolling out the revised duty lawyer regime
- assessing payment options for criminal matters
- further developing equity of access to community legal services

¹⁸ The Legal Services Amendment Act 2006 places a new requirement on the Agency to review legal aid remuneration rates “from time to time”. The review does not include PDS lawyers.

Appendix One – Total Expenditure on Legal Aid and Other Services

Expenditure Item (\$NZ, GST Excl.)	1996/97 (\$000)	1997/98 (\$000)	1998/99 (\$000)	1999/00 (\$000)	2000/1 (\$000)	2001/2 (\$000)	2002/03 (\$000)	2003/04 (\$000)	2004/05 (\$000)	2005/06 (\$000)
Administration	3,855	3,875	4,323	4,733	7,372	10,004	10,111	10,709	11,080	13,412
Legal Aid - Criminal	33,944	31,445	32,666	30,518	34,636	33,304	37,430	39,880	39,128	51,892
Legal Aid - Family	48,483	38,929	41,799	36,332	25,245	31,365	27,471	25,789	22,656	24,127
Legal Aid - Civil	11,140	11,194	9,377	8,613	6,248	6,923	6,721	5,807	5,429	7,148
Duty Solicitor & Police Detention Scheme	4,389	4,376	4,847	4,885	5,060	5,360	5,849	6,630	6,830	7,229
Legal Aid - Waitangi	984	2,070	1,512	4,347	4,335	7,383	7,298	6,901	11,059	10,406
Provision for Debt/Debt write-off	82	(85)	1,782	889	80	723	2,947	2,700	8,219	2,957
Discounting of payables*						(4,014)	418	(779)	830	(548)
Community Law Centres	3,611	3,895	3,981	4,389	4,976	5,379	6,222	6,339	6,871	8,187
Research & Development	2,144	3,254	2,761	2,352	785	307	62	188	270	470
Total	108,632	98,953	103,048	97,058	88,737	81,044	104,529	105,082	114,221	127,741

Source: Legal Services Board and Legal Services Agency

* To recognise the period of time legal aid contracts are outstanding

Appendix Two – Legal Services Agency Income

\$NZ GST Exclusive	1996/97 (\$000)	1997/98 (\$000)	1998/99 (\$000)	1999/00 (\$000)	2000/1 (\$000)	2001/2 (\$000)	2002/03 (\$000)	2003/04 (\$000)	2004/05 (\$000)	2005/06 (\$000)
Annual Government Appropriation										
Administration	3,619	3,620	3,620	4,524	8,820	10,480	10,195	11,007	11,228	15,141
Legal Aid	62,001	66,065	80,381	72,458	78,162	78,151	77,128	73,106	82,156	89,552
Community Law Centres							267	267	267	267
Other Income										
Interest Received	2,230	1,609	1,081	1,071	1,422	1,235	2,736	2,761	2,713	3,644
Contributions Civil Legal Aid	917	1,167	1,736	1,525	604	2,635	5,157	4,287	3,954	3,411
Contributions Criminal Legal Aid	68	94	61	99	138	100	315	127	453	919
Charge Income Civil Legal Aid	4,127	4,679	6,032	9,457	9,532	5,569	7,165	6,347	6,353	6,391
Discounting of secured receivables					(9,222)	1,876	(2,248)	(1,853)	(1,151)	(1,102)
NZ Law Society Special Fund	6,194	5,164	4,950	4,485	5,050	5,669	6,500	6,700	7,000	8,000
Others				26	123		19	28	18	14
Total Income	79,156	82,398	97,861	93,645	94,629	105,715	107,234	102,777	112,991	126,237

Source: Legal Services Board and Legal Services Agency

Appendix Three - Scope of the Civil Legal Aid Scheme

Civil legal aid is available for all civil and family court proceedings and some tribunals. This includes:

- civil proceedings in a District Court or a Family Court
- civil proceedings in the High Court, the Court of Appeal or the Supreme Court
- appeals to the Judicial Committee of the Privy Council in civil proceedings in any case where -
 - (i) the applicant has succeeded in the Court of Appeal and is the respondent in the appeal to the Privy Council, if the grant of aid is approved by the Minister of Justice or
 - (ii) the Attorney-General certifies that a question of law of exceptional public importance is involved and that the grant of aid is desirable in the public interest
- proceedings commenced by way of application in a Youth Court under Part VII of the Children, Young Persons, and Their Families Act 1989 or in respect of any review of any determination of, or any order made in, a Youth Court in any such proceedings¹⁹
- in any case where the Agency considers that the case is one that requires legal representation (having regard to the nature of the proceedings and to the applicant's personal interest) and that the applicant would suffer substantial hardship if aid were not granted, for proceedings in -
 - (i) the Māori Land Court²⁰ or
 - (ii) the Māori Appellate Court or
 - (iii) the Employment Court or
 - (iv) the Employment Relations Authority or
 - (v) any administrative tribunal or judicial authority – not being a tribunal or an authority in respect of any decision from which an appeal lies to any of the following five bodies
- proceedings before the Waitangi Tribunal
- proceedings before the Social Security Appeal Authority
- proceedings before the Tenancy Tribunal
- proceedings before a body established under section 63(1)(a)(i) of the Housing Restructuring and Tenancy Matters Act 1992 to hear appeals under section 62 of that Act and
- proceedings before the Refugee Status Appeals Authority (whether as established by the government of New Zealand or as continued under section 129N of the Immigration Act 1987) in respect of any claim for refugee status made before 1 April 1999, or any other matter relating to refugee status that arose before that date

¹⁹ This may include, for example, legal representation of a parent or guardian in relation to an application by the state to continue to place a child in secure care.

²⁰ The primary role of the Māori Land Court is to facilitate and promote the retention, occupation, utilisation, development, and control of Māori Land by Māori owners, their whānau (family), their hapū (tribal group) and their descendants.

Legal aid may also be granted for:

- the processing, under Part VIA of the Immigration Act 1987, of any claim for refugee status first made on or after 1 April 1999 (including proceedings on any appeal in relation to such a claim), and the processing of any other matter arising under section 129L or section 129R of the Immigration Act 1987 that first arose on or after that date (including proceedings on any appeal in relation to such a matter)
- any judicial review proceedings (as defined in section 2 of the Immigration Act 1987) in respect of certain refugee claims
- any application under section 114I of the Immigration Act 1987 for a review by the Inspector-General of Intelligence and Security of a decision of the Director of Security to make a security risk certificate
- all applications, submissions, and appeals under the Resource Management Act 1991 or to the Environment Court under any other Act
- all applications, submissions, and appeals to any Council or body in any case where an appeal in relation to its decision lies to the Environment Court
- proceedings before an adjudicator under the Weathertight Homes Resolution Services Act 2002
- proceedings before a Tribunal under subpart 2 of Part 2 of the Prisoners' and Victims' Claims Act 2005 in respect of 1 or more victims claims under the subject

There are a small number of proceedings for which legal aid is expressly not available, or may only be available in certain circumstances. This includes proceedings relating to the status of marriage, unless the Legal Services Agency is of the opinion:

- that the unusual complexity of the case requires that the applicant be legally represented or
- that the applicant would suffer substantial hardship if aid were not granted

Legal aid is not available in any circumstances for:

- relator actions²¹
- election petitions under the Electoral Act 1993
- petitions for inquiry under the Local Electoral Act 2001
- proceedings incidental to any proceedings mentioned in any of the three preceding bullet points

Legal aid is generally not available for dissolution of marriage proceedings. Legal aid is, however, available for ancillary proceedings associated with dissolution of a marriage such as day-to-day care of and contact with children.

Legal aid is not available for any appeal, made under the Immigration Act 1987, to the Residence Appeal Board or the Removal Review Authority. The purpose of these exclusions is to prevent a person who does not comply with New Zealand's immigration laws and policies using legal aid to delay their removal.

²¹ The relator in an action is a person who is aggrieved in a matter of public interest and who satisfies the Attorney-General that the subject matter of the actions is such as to justify the use of the Attorney-General's name.

Where there is a possibility that removal from New Zealand would mean a return to a place of persecution or physical danger, that person may receive legal aid to make a claim for refugee status, including an appeal to the Refugee Status Appeals Authority. Since 1 April 1999, legal aid for refugee matters has been available at all stages, including the first instance determination by the Immigration Service.

Legal aid is also not available for proceeding before a Commission of Inquiry under the Commission Inquiry Act 1908.

Appendix Four – Scope of the Criminal Legal Aid Scheme

Criminal legal aid may be granted for:

- criminal proceedings in a District Court, a Youth Court, the High Court, the Court of Appeal or the Supreme Court
- appeals to the Judicial Committee of the Privy Council, where the Attorney-General certifies that a question of law of exceptional public importance is involved and that the grant of criminal legal aid is desirable in the public interest
- proceedings –
 - (i) before the New Zealand Parole Board under section 27, section 65, or section 107 of the Parole Act 2002 (which relate to postponement orders, recall orders, and orders under section 107 of that Act respectively)
 - (ii) in the High Court on an application under section 68 of the Parole Act 2002 (which relates to appeals against postponement orders, section 107 orders and final recall orders)