

ILAG 2001

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International Legal Aid Group

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A New Way for New Zealand:
He Ara Hou

Melbourne
Australia
13-16 July

Report to:

**International Legal Aid Group
Melbourne 13 –15 June 2001
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Legal Services Agency New Zealand**

A New Way for New Zealand: He Ara Hou

Introduction

In October 2000 a new Legal Services Act was passed. This was the culmination of developments over a number of years, crossing over an election dateline which saw a change of Government, and included many iterations of policy and legislative development – the latter indicated by the fact that the new Legal Services legislation had been introduced into Parliament a year earlier.

In looking at a new way for New Zealand it is useful to look at it in several ways. First what does the Act provide? Second what are the main differences from the past? Third what are the opportunities that the framework of the Act enables?

What the Act provides

It is not intended to detail all the many provisions, but the key elements are:

- A Crown agency, governed by a Board appointed by the Minister of Justice and managed by a Chief Executive appointed by the Board. As a Crown agency, the Legal Services Agency is not defined as a core public sector department and similar to many other jurisdictions is a "second tier entity". The Minister of Justice receives his advice from his Ministry of Justice through a Memorandum of Understanding with the Agency.
- The Agency administering schemes in a consistent, accountable, inexpensive and efficient manner. Those schemes are:
 - civil legal aid
 - criminal legal aid (from 1 Nov 2001)
 - the duty solicitor scheme
 - the police detention legal assistance scheme
 - any other scheme provided for in the Act

This is a major shift with the Agency taking responsibility from District Legal Services Committees (for legal aid for civil including family matters) and Court Registrars (for legal aid for criminal matters). As such the Agency now has the full responsibility for service delivery. This means all the accountability that goes with a fully operational entity dealing with applications, the imposition of contributions and charges; and the related requirements for human resource

capability, information technology and the raft of requirements that go into ensuring the long run capacity of an organisation.

- Funding, providing and supporting community legal services. In particular:
 - setting up, contracting with and funding community law centres
 - providing or funding law related education and legal information to the public
 - undertaking research into:
 - existing or proposed schemes and community legal services
 - the unmet legal needs of communities and how they may be met

- The important changes here are:
 - the capacity to contract with community law centres and thereby enter partnerships that enable clarity of service and specification
 - the funding of the centres, which currently comes from the interest from solicitors trust accounts, and can also be funded by appropriation
 - the funding for the administration of centres, research and law related education comes through appropriation

- The Agency has the capacity to:
 - set up salaried staff for public defender schemes
 - purchase from bulk providers
 - purchase specific services from specific providers

This is an area of particular strategic choice and is discussed further on.

- Listing providers according to criteria. Again this is a major shift. Previously the requirements were provided for various jurisdictions by the District Law Societies. The Agency, while obviously wanting to work alongside the NZLS is able to set:
 - listing criteria
 - acceptable standards of performance
 - suspension criteria and processes
 - examination and audits

While at this stage, the criteria in place on 1 February 2001 for criminal legal aid providers were carried through, we will be undertaking a major review of all jurisdictions. Agency policy requires that all providers must be on a contract. To date over 3000 of the countries 8500 lawyers have been listed.

- Specialist Advisers. These are not provided for in the Act. Rather, they are an administrative structure which recognises that because the Agency is now fully accountable for its decisions, there will be applications, particularly in the early stages, that are complex enough to warrant the technical expertise of lawyers who are familiar with the field of that application. We have set specific thresholds for when Agency staff must refer applications to specialist advisers. In addition, we have established a national specialist unit that deals with all civil and some family applications above a certain threshold, in our original forecasting this unit

was to have dealt with around 4% of volumes. Unfortunately it has been our major set up challenge, requiring an extensive use of specialist advisers.

- Receiving advice from the Public Advisory Committee on:
 - funding for individual community law centres and the centres in general
 - community concerns about and responses to schemes and community legal services
 - research, legal education programmes, information and forms

This Committee replaces in a sense, the requirements of the role of District Committees. While it is national, it is expected that members will have extensive networks throughout New Zealand communities. They do however, represent directly nine communities of interest. They are women, Maori, Pacific Island people, older people, young people, people with disabilities, consumers, the legal profession and community law centres.

This Committee will play an invaluable role. All organisations need mechanisms for external input so as to avoid becoming closed systems. Having a mechanism, required by statute, enables the interests of the community to be represented and a vehicle for conveying those views to the Agency. In turn it requires the Agency to be on its toes and responsive.

- Legal Aid Review Panel. This replaces a former Authority, and consists of a convenor being a lawyer and a number of panel members being both lawyers and non-lawyers. There are currently 15 lawyers and 5 non lawyers.

Reviews against a decision by the Agency (and that includes a decision relating to the size of the grant) must be on the grounds of:

- manifestly unreasonably, or
- wrong in law

These are high tests.

When the convenor receives an application for review, a team of 1, 2, or 3 members must be assigned (and must include 1 lawyer). The team may receive and obtain any submission, statement, document, information or matter that assists with the review, it must do so on the papers, and with all reasonable speed.

The intention here is obvious; – keep out frivolous reviews and deal with substantive reviews quickly. There have only been 3 reviews since the start of the Agency.

This is a marked difference from the previous system with the Authority having to meet and sometimes hearing submissions.

The future

So, where to from here. The Act really provides the basis for two key basic approaches:

- The Agency taking responsibility for decision making puts an onus on us to do the basics well and ensure long run operational capacity
- Seize the opportunities for innovative service delivery based on robust analysis and design

With basic service delivery we intend demanding performance standards. While there are a number, a particular focus will be on reaching a very high level of accuracy within the legislation and the guidelines we have set for ourselves. But the one that has really sharpened our focus is our timeliness. From 1 July we are aiming for a transaction turnaround standard of:

80% within 5 days
20% within 10 days

When criminal legal aid is transferred to us on 1 November 2001 we are aiming at a decision and an assignment of counsel of 95% within 1 day.

It is our intention to benchmark our performance with overseas jurisdictions and I welcome any initiatives arising out this conference to advance and progress a structured benchmarking project.

With current service delivery operating in a highly satisfactory way, this will provide a solid foundation for us to develop our strategic way ahead and the way forward is based on an aim to put in place an integrated system of publicly funded legal services.

What does this mean? It means taking all the key elements and facets of what makes up legal services and developing them into an integrated model.

When we look at the elements of the model, very little of it is new – either because it is already in place, or there has been a raft of research on it overseas or in New Zealand or there are many models and examples of initiatives that the Act allows already in existence overseas.

What the integrated model is attempting to do is to structure the development and implementation in a systematic way so that all the key elements reinforce each other. This is how we can get even more added value and tailor them to unique cultural and socio-economic circumstances of New Zealand.

The key areas for development then are:

- Ensure that we have a clear definition of what factors constitute legal needs for diverse communities

Legal aid for legal representation in court is only one need. We believe that we need to put a stake in the ground and set out what the parameters or constraints

are for various communities of interest and somehow to determine just what the priorities are. This includes legal advice, assistance, information and law related education. The research then will have a firm basis on which to base the potential gaps so that we can size the needed service delivery. To do otherwise is likely to prolong wheel spinning and provide little traction for progress.

- Define and undertake cost benefit analysis on the different types of service that might best address those priority areas particularly in ways that are culturally appropriate, and that includes integrating law related education.

At this stage we have no stated preferences, indeed the starting point is defining and specifying the services we want. The options we will have are:

- Private sector (status quo legal aid)
- Public defender (or the like)
- Community law centres (status quo)
- Salaried community legal coordinators
- Bulk providers (possibly by tender)
- Specific service providers (possibly by tender but includes the option of contracting by preferred option with an iwi for service provision)
- Ensure that those who provide services funded from the Agency meet required criteria and acceptable standards

The key will be the ability to specify requirements for communities of interest, or geographic areas.

I note that some jurisdictions go for an accreditation sticker and I am interested in that.

- Reinforcing the quality requirements of both the services delivered and those delivering them through a fair and transparent contracting regime that rewards high quality performance

Contracting here is not about the front-end legal part of a document. It is about:

- a purchasing plan that has clear priorities
- clear descriptions of the services required
- clear performance standards
- clear rewards and incentive payments
- clear sanctions
- a monitoring regime

- Ensure that the strategic developments and ongoing service delivery are supported by robust management processes in the Agency

So here we have a new way, framed by a new Act, but incorporating the basics of the past and the potential for doing things differently. In some ways it will now bring us up to the starting point of other jurisdictions. The key will be to tailor the development to our requirements, but we are keen to emulate any advances you have already made and benchmark our progress with you. To that end I look forward to sharing information in experience with you at this conference – and beyond.

Legal Services

Previous	Existing
<p>Governance/Management</p> <p>Crown Agency</p> <p>Board</p> <p>Executive Director</p>	<p>Crown Agency</p> <p>Board</p> <p>Chief Executive</p>
<p>Legal Aid Decisions</p> <p>District Committees (lawyers)</p> <p>Court Registrars</p>	<p>Agency</p> <p>Agency</p>
<p>Reviews</p> <p>District Committee reconsiderations Legal Aid Review Authority</p> <ul style="list-style-type: none"> • full panel sitting • oral submission available 	<p>Agency reconsiderations</p> <p>Legal Aid Review Panel</p> <ul style="list-style-type: none"> • 1, 2, 3 members for each review • on papers
<p>Providers</p> <p>Law Society categories</p>	<p>Agency criteria</p> <p>Contracts for service</p> <p>Legal Services list</p> <p>Suspension processes</p>