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A STEP IN THE RIGHT DIRECTION: CHANGES TO LEGAL AID FUNDING

A step in the right direction: changes to legal aid funding

23 JUNE 2022

4 MINUTE READ

Budget 2022 provided some welcome relief for legal aid lawyers in the struggling system. But how much of a difference will it make to New Zealanders who need access to justice?

After many years of advocacy from the New Zealand Law Society, the wider profession and community advocate groups, the Government delivered some welcome relief to the struggling legal aid system in Budget 2022.

A total of \$190m over four years is being invested to maintain and strengthen the legal aid system, including \$41.5 million over four years to cover the costs of existing demand for legal aid services, based on projections through until 2024/25. Budget 2022 also provides for a one-off 12 per cent increase to the hourly rates for legal aid lawyers. This 12 per cent increase will be available for grants made after 1 July 2022, and for work completed after this date on existing grants.

In addition to the increase in hourly rates, the investment will also allow the Ministry of Justice to implement changes to key policy settings. These changes include:

- Increasing eligibility thresholds by 15% on 1 January 2023 and increasing them by a further 1.9% per year (for three years) so that they keep pace with wage inflation, ensuring that a greater proportion of people will qualify for legal aid.
- Increasing the repayment thresholds by 16.5% on 1 January 2023 and likewise increasing them by a further 1.9% per year for three years thereafter, and no longer charging interest on legal aid debt. This will mean that more legal aid recipients will have a lesser repayment obligation.
- The removal of the \$50 user charge for civil and family legal aid.

Legal Aid Services' policies, including the grants handbook for providers, will be updated prior to these changes being made on 1 January 2023.

“Eligibility for the scheme has become outdated, while hourly rates for legal aid lawyers have remained static since 2008,” the then-Justice Minister Kris Faafoi said.

“Budget 2022 will update legal aid policy settings around eligibility, repayment, and legal aid lawyers' remuneration to improve access to justice, ensuring that the legal aid scheme is resilient into the future.

“It will also make repayments more equitable by reducing repayment requirements for low-income and vulnerable New Zealanders.”

Legal Services Commissioner Tracey Baguely said the investment in Budget 2022 is an “exciting and a huge step in the right direction for the legal aid scheme, one I hope will incentivise experienced legal aid lawyers to continue providing the service and also encourage new lawyers to come on board.

“The Government is investing an additional \$148.7 million over the next four years, which will see much needed changes made to legal aid settings regarding eligibility and repayments, and legal aid lawyer remuneration.”

A government-initiated review in 2018 of legal aid settings highlighted a number of barriers to accessing legal aid, including eligibility and repayment thresholds as well as issues with remuneration and the administrative burden legal aid places on lawyers. Many of these issues were reiterated in the Law Society's Access to Justice Survey report in October 2021.

The survey showed that 25 per cent of legal aid lawyers planned to do less legal aid work or stop altogether over the next 12 months – the primary reason being inadequate remuneration. Over 20,000 Kiwis had been turned away from legal aid representation in the last 12 months.

“Over 20,000 Kiwis could not access legal aid representation in 2021. This is an indictment on a system which is supposed to ensure representation for people, irrespective of their status, and is absolutely critical to maintaining the fairness New Zealanders should expect from their legal system,” Law Society President Jacque Lethbridge said.

“The injection of funding is a victory for the many New Zealanders who will now be able to access legal advice and quality representation irrespective of their circumstances, and something for us all to celebrate as a step in the right direction.

“A lot of legal aid work is funded by fixed fees, which has not received an increase from Budget 2022, so there is still more to be done to bring true equity in the justice system. The Law Society will continue to work with the Ministry of Justice to understand the true impact of these changes. The Law Society will also continue to advocate for further change if the dial has not shifted enough, because having enough lawyers available to undertake this work who are properly remunerated is central to ensuring access to justice for all New Zealanders”.

Tracey Baguely acknowledges that this investment will not fund any changes to the fixed fee schedules. “A key focus of this investment was on addressing the hourly rates which have not been increased in over 10 years. Significant changes have been made to the fixed fee schedules between 2014-2018 with the last revision in 2016-2018 for criminal fixed fees,” she said.

“Aotearoa New Zealand has a proud history of wanting a justice system that ensures people are legally represented when interfacing with the courts,” Ms Lethbridge said.

“An effective legal aid system ensures that every New Zealander has a fair shot when engaged with that justice system and the role of lawyers in representing them is essential to accessing justice. This boost in funding will contribute to promoting that goal.

“While there is always more to do – and the Law Society will keep advocating for better support and structural change for our legal aid system – this boost in funding will go some way to ensuring fairness and equity return to the legal system New Zealanders must have trust and confidence in.”

Table 1: hourly rates for criminal legal aid from 1 July 2022

Criminal Provider Approval Level (PAL)	Other (\$/hour)	Level of experience (\$/hour)		
		Level 1	Level 2	Level 3
PAL 1	-	103	108	119
PAL 2	-	108	134	139
PAL 3	-	130	139	150
PAL 4	-	146	161	178
Court of Appeal/Supreme Court	-	146	161	178
Supervised Providers	103	-	-	-

Table 2: hourly rates for civil and family legal aid from 1 July 2022

Proceedings category	Other (\$/hour)	Level of experience (\$/hour)		
		Level 1	Level 2	Level 3
FC1 (Other tribunal/judicial authority)	-	103	130	139

FC2 (Family Court, District Court, etc)	-	119	134	150
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FC3 (High Court)	-	134	150	167
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FC4 (Court of Appeal/Supreme Court)	-	146	161	178
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Supervised Providers	103	-	-	-
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