# Summary of submissions in response to *Improving the Legal Aid System: a public discussion paper*

**Legal Aid Review**
**November 2009**

## CONTENTS

Introduction……..……...……3
1. What an effective legal aid system looks like……..……...5
2. Ensure the right people can access services……....……7
3. Provide the right mix of information, advice and representation services……...20
4. Provide high quality legal aid services……..……29
5. Support an effective and efficient court system……38
6. Manage taxpayer funds effectively……..…44

## INTRODUCTION

*Background*

On 1 April 2009 the Minister of Justice, Hon Simon Power, announced a fundamental review of the legal aid system.

The purpose of the review is to take a first principles approach to reviewing New Zealand's legal aid system. The review must align with Government priorities and take into account the projected fiscal environment of future years. A key focus is on developing alternative approaches to manage or reduce costs.

Dame Margaret Bazley was appointed to chair the review and developed a discussion paper following meetings with a reference group of key stakeholders, and a preliminary information-gathering phase during which she met with many judges, lawyers, community-based advice services, and court staff from all over New Zealand.

The discussion paper was released to the public on 1 September 2009 seeking feedback on a wider range of issues relating to the design and operation of the legal aid system. It highlights three cross-cutting themes:

- The legal aid system needs to be refocused towards developing a systematic and strategic overview of New Zealanders' legal needs so services can be prioritised according to those needs and people are given appropriate access to appropriate services
- We need to create the right environment for lawyers to provide high-quality and efficient legal services
- We need to use legal aid expenditure more efficiently and effectively to support the court system and reduce wastage in the legal aid budget.

The submission period was from 1 September 2009 to 9 October 2009.

*Submissions received*

88 submissions have been received. The submissions range from brief, general emails to fully answered questionnaires. Many of the submissions provided feedback across the breadth of issues and questions raised in the discussion paper, while some focused their attention on particular parts of the paper.

Submissions have been received from:

- 38 lawyers and law firms
- 13 community law centres
- 8 public/general unnamed
- 1 Judge
- 1 citizens advice bureau
- The New Zealand Law Society
- 26 other interest groups and organisations

Due to the sensitive nature of some of the issues identified, submissions have been identified by their submission number, except for the New Zealand Law Society submission, which is already publicly available.

This summary of submissions intends to provide an overview of the responses to the questions raised by the discussion paper. While it was not practicable to include every response, or the full detail of some submissions, every submission was summarised, and formed the basis of this paper.

Abbreviations used in the paper:

Legal Services Agency = LSA
Community Law Centre = CLC
The New Zealand Law Society = The Law Society
Public Defence Service = PDS

## PART 1: WHAT AN EFFECTIVE LEGAL AID SYSTEM LOOKS LIKE

*Do you agree with the components of an effective legal aid system identified?*

1. The discussion paper identified five main components of an effective legal aid system. These were:

    - Ensure the right people can access services
    - Provide the right mix of information, advice, and representation services
    - Provide high-quality legal aid services
    - Support an effective and efficient court system
    - Manage taxpayer funds effectively

2. Submitters were asked whether they agreed with the components identified. Thirty submissions commented on the components of an effective legal aid system. Fifteen submissions agreed with the components, thirteen agreed while adding suggestions, one commented but neither agreed nor disagreed, and one submission disagreed with the components identified.

3. Submission 022 commented that "the diagram can be replaced with 'access to quality justice requires a transparent and accountable system for the provision of legal aid services'."

4. Several submissions considered there was too much focus on reducing expenditure. Submission 048 argued "there has been an undue focus on efficiency, speed and cost-effectiveness in the current debate about legal aid. The quickest, most economic route is not necessarily the best when it comes to the delivery of justice." Submission 040 stated that "given the drivers of criminal legal aid, i.e. more and more complex prosecutions, too much emphasis should not be on cutting the cost of legal aid."

5. Submission 047 stated "the other element left out is that Legal Aid must be used to reduce inequality in our society."

6. Two submissions had concerns with the term 'the right people'. Submission 066 argued that "the principle might be perhaps better expressed as ensuring that access to justice is available to people, including groups, who are in need of legal services and cannot fund the full cost of those services."

7. Submission 069 questioned the nature of the subject. "What is meant by an effective legal aid system? If it means 'cost-effective' then sustainability, transparency, and accountability also become relevant. If you mean an operational effective legal aid system then the rights systems, processes and checks and balances become relevant."

8. The Law Society provided an extensive response to what an effective legal system should look like. Suggestions included recognition of the need for access to justice, the role of the client, the importance of choice of counsel, the need for diversity in the law profession and proper funding of legal services.

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

9. Twenty five submissions considered other elements needed to be added to the components of an effective legal aid system.

10. Many submissions chose not to add on what they had suggested in their answer to what the components of an effective legal aid system should look like it. Other answers varied, with many elements identified.

11. Submission 004 suggested modelling New Zealand's legal aid system on the Arizona legal aid system, saying "Arizona is a state with similar attributes to NZ, in terms of size, population, demographic make up etc. Arizona has a good legal aid system that has been successful, and would be a good model for the review."

12. Three submissions considered the legal aid system needs to focus on the needs of victims.

13. Submission 028 proposed maintaining appropriate relationships with non-legal support agencies to ensure appropriate referral to other sources of assistance for non-legal needs.

14. Submissions 030 and 039 submitted that CLCs surround and support the components of an effective legal aid system and submission 036 recommended "a collaborative and functional model so that Legal Aid providers, Duty Solicitors, Public Defenders and CLCs can work together to ensure access to justice."

15. Submission 035 proposed a human rights approach, which "puts protection and realisation of human rights at the centre of legislative and policy processes. In particular, it provides a conceptual framework designed to ensure that all those who are directly affected by a policy or law are better able to enjoy the rights they are entitled to under international law."

16. Submission 046 submitted that "the Legal Aid System should fix as many drivers of unmet legal need as possible; should fix as many of the multiple unmet legal needs that a typical user of the system has; should not be structured in a way that exacerbates those drivers or those multiple legal needs."

17. Submission 060 proposed "a multi-departmental process whereby government departments need a check and balance on their policy decisions which will impact on the need for people to access the legal aid system."

18. Submission 073 considered effective legal representation as more than just "high quality legal services."

## PART 2: ENSURE THE RIGHT PEOPLE CAN ACCESS SERVICES

19. This section of the discussion paper considered what we know about unmet legal need, the extent of eligibility for legal aid, and whether any changes to the eligibility criteria are needed. It considered two specific issues related to eligibility for legal aid for representation:

    - Whether eligibility should be narrowed to reduce potential pressure on legal aid expenditure
    - Whether groups of people ought to be able to access legal aid

**Unmet legal needs**

20. The discussion paper described how the experience of legal problems is not evenly distributed. Approximately 1.2 million people are eligible for legal aid, including many of society's most vulnerable. Legal needs will change over time.

21. Submitters were asked whether there were unmet legal needs in the community and whether services were reaching vulnerable groups. Thirty eight submissions responded to whether there were unmet legal needs with answers identifying a range of legal needs that are not being met under existing services.

22. Four submissions commented people with disabilities and/or mental health had legal issues specifically related to disability law, but find it extremely hard to find a lawyer to assist with these complex areas of law. Three submissions commented on the difficulty immigrants and refugees had in accessing legal services and that legal aid lawyers frequently do not have sufficient skills and experience in this field.

23. Five submissions discussed the difficulty people in rural areas had accessing legal services.

24. Submission 035 said "in practice many New Zealanders have difficulties accessing the legal system. International treaty bodies have also raised concerns about this problem, noting that it denies some people access to justice."

25. Submission 043 commented that "existing services can meet all the community needs if adequately funded. For criminal legal aid, middle income persons may be denied legal aid, yet not be able to afford private representation."

26. Victims of domestic violence, particularly women and children, were discussed as having unmet legal need in seven answers to this question. Three submissions stated women experiencing abuse should automatically have entitlement to Legal Aid to apply for protection orders.

27. A number of submissions considered that youth have unmet legal needs.

*Are services provided for vulnerable groups (e.g. victims or people with disabilities)*

28. Submitters generally reiterated their positions concerning unmet legal needs from above, with many submitters naming people with disabilities, victims of domestic

violence, youth, Māori and Pacific Islanders and refugees as not being provided for by services.

29. Submission 018 cited "the Agency's restrictive approach to prospects of success means that the particular legal needs of Maori and Pacific peoples, victims and people with disabilities are not being adequately met."

30. A number of submissions said that while the legal aid system as a whole does not provide for disadvantaged groups, organisations such as CLCs fill the void.

31. Submission 028 stated that "Māori are the highest users of legal aid and we need to improve the service to ensure they are empowered and well aware of the issues they are facing. Lawyers need professional development in this area."

32. Submission 035 listed people with issues that need to be addressed, including women, refugees and asylum seekers, persons passing through New Zealand's borders, iwi and community groups, persons appearing in court as a consequence of removal orders and low income earners.

33. Submission 046 asserted "it is critical that legal services are provided to vulnerable groups in a manner that is appropriate to each groups particular experience of isolation. This may suggest a need for specialist providers or a more integrated provision to legal services."

**Eligibility**

34. The discussion paper commented that eligibility criteria are one cause of pressure on the legal aid budget. Pressure will continue to rise because of the recession – more people will meet the eligibility criteria, social and financial pressures will take a toll on relationships and may contribute to crime. Other drivers of the legal aid budget (especially administration costs) will remain even if eligibility is narrowed. Administrative and operational inefficiencies contribute to pressure on the legal aid budget.

35. Submitters were asked a variety of questions on eligibility, including who should and should not be eligible for legal aid, what barriers prevent eligible people from accessing legal aid, are there any specific barriers faced by Māori or Pacific peoples in accessing legal aid services and do people who use the legal aid system also use other social services.

*Categories of people who should be able to receive legal aid but currently cannot*

36. Thirty one submitters commented on categories of people who should be able to receive legal aid, but currently cannot do so. A wide range of categories were mentioned. Many of these categories repeated those that have been mentioned in unmet legal needs above.

37. Categories mentioned include:

- People in custody
- Immigration cases

- People who cannot afford to pay for services, but do not meet the current criteria
- Victims of domestic violence
- People with disabilities
- People who are asset rich but have no disposable income
- People whose partner's financial situation takes the client outside the eligibility criteria.
- Women
- Street people and alcoholics and minor drug offenders

38. Three submissions discussed human rights issues. Submission 024 stated that "as the legal system stands, such people are unable to receive grants of legal aid. This is a breach of the New Zealand Bill of Rights Act."

*Categories of people who should not receive legal aid*

39. Submissions were varied in their response to who should not receive legal aid. Two main categories that emerged were perpetrators of domestic violence and repeat offenders. Other categories that were mentioned include vexatious litigants, people who fail to turn up to court, people who commit fraud, people who have a good source of income and Treaty of Waitangi cases.

40. Five submissions considered there were no categories that should not receive legal aid. Submission 022 considered that "this determination should be made after conclusion of proceedings and affected by determining which part (if any) of aid must be reimbursed." Submission 054 said "means and merits tests should be applied to all potential claimants but I would resist excluding particular categories and wonder whether this might be unconstitutional."

*Barriers that prevent eligible people from accessing legal aid*

41. Thirty three submissions commented on barriers preventing eligible people accessing legal aid. The most common barrier mentioned was a lack of providers willing to provide legal aid services. Several submissions focused on the lack of providers in specialty areas, such as family law, human rights and refugee matters, which they said decreased access to justice.

42. Several submissions also noted that many individuals had difficulty due to language barriers, which impacted communication with both from lawyers and in the court.

43. Access to lawyers for people in remote areas was raised. Submission 021 described the problem: "in rural and small provincial areas it is increasingly difficult for a client eligible for legal aid to find a lawyer or law firm who does not have a conflict in the matter."

44. Submission 028 considered a barrier to be lack of information, saying "there was little promotion knowledge in community of community law centres and their role. Insufficient information provided to legal aid eligible people when matter first arises." Submission 061 added "many people are unaware that they may be eligible for legal aid, or how to go about applying for it."

45. Two submissions cited repayment as a barrier. Submission 039 said “it is noticeable that some people will not want to apply for legal aid if they have to repay it. Most people who are eligible for legal aid but who have a home do not want a charge over their home.”

46. Submission 078 criticised delays in the current eligibility process, stating “it is surely possible to determine appropriate criteria that will cover a minimum of 80% of applications, so that in essence both the applicant and the Agency can process the application on a straightforward basis and within a short time frame.”

*Barriers faced by Maori and Pacific Islanders in accessing legal aid*

47. Twenty two submissions responded to barriers Maori and Pacific Islanders faced in accessing legal aid. The most common barriers identified were, language and cultural barriers, a lack of lawyers who were Maori or Pacific Islander, mistrust of the system and a lack of knowledge about legal aid.

48. Submission 035 contended that all services must be provided equally before all groups. “It is therefore important that any resources and services developed are equally accessible to minority groups including but not limited to persons with a disability, Maori and migrants.”

49. Submission 041 went further, saying “there is evidence of institutional racism in the decisions, the high number of Maori who are convicted and incarcerated and the difficulties that Maori and Pacific people have with accessing the system and achieving justice. Lawyers will bring their own prejudices and values to their work – especially inexperienced young lawyers who are often used for Legal Aid work.”

*Do people who use the legal aid system also use other social services?*

50. All twenty five submissions who answered this question considered that people who used the legal aid system also use other social services.

51. Submission 036 summed up the reasoning stating “where there are legal problems there are usually problems associated with excessive debt, housing, wealth, wellbeing and employment.” Submission 050 added “receiving a benefit used to be, and probably still is, almost an automatic qualifier for criminal legal aid (and, in all likelihood, other form of legal aid as well).”

*Widened eligibility criteria*

52. Twenty three submissions commented on whether widened eligibility criteria had a positive or negative effect on access to justice. The overwhelming majority considered that it was a positive effect because more people had access to justice.

53. Submission 023 commented that “although most of my clients are Work and Income beneficiaries, there are also some wage/salary earners who would not previously have been eligible for legal aid and who would not readily be able to pay legal fees.”

54. Submission 030 included both negative and positive impacts. Positive affects listed included a reduction of the number of self-litigants. Negative affects included empty handed recipients of justified causes of action or responses, as all money collected goes to legal fees. Increased administration costs for debt collection, and supervision of terms and conditions.

55. The Law Society said the impact on access to justice was not known, but positive impacts are likely to be derogated from a combination of factors including shortages in providers, increase in the cost of litigation resulting from more complex legislation and court processes.

*Consequences of limiting eligibility for legal aid*

56. Thirty five submissions commented on the consequences of limiting eligibility for legal aid. The overwhelming majority of people contended limiting eligibility for legal aid would decrease access to justice for individuals.

57. Submission 021 described limiting eligibility as increasing "the possibility of injustice e.g. pleading guilty when not guilty and family court matters where a person may not defend or take a matter further because of non ability to repay Legal Aid." Submission 034 added "a denial of access to justice that leads to increasing social issues, insecurities and unrest. Access to Justice is an essential cornerstone of an equitable and democratic society."

58. A number of submissions also considered that this would increase the amount of self litigants and slow down court processes. Submission 048 put it as "instead of saving money, greater costs could be engendered through longer delays caused by defendants trying to represent themselves, and the need to hire more duty lawyers to give assistance to them."

59. Submission 052 indicated that limiting eligibility could harm vulnerable groups. "Great care needs to be taken to ensure that narrowing eligibility criteria does not disproportionately affect groups such as women, Maori and pacific people, and victims of personal violence as these groups already face significant barriers in accessing legal services and justice."

*Groups of litigants that should be eligible for legal aid*

60. Many submissions referred to groups that they had referred to in the 'Unmet legal needs' questions when answering this. For instance women, refugees and victims of domestic violence were put forward. Other groups referred to are mentioned below.

61. Submissions 018 and 032 considered historic abuse cases should be eligible.

62. Submission 022 said "funding groups should be possible, but only if these groups first create a required legal structure so that not only the funding, but also the actual litigation can be effectively conducted. An aspect of that structure must include responsibility and liability to repay legal aid if that is the outcome of the matter. There should be no parallel organizations for the provision of legal aid to groups."

63. Other groups mentioned by submitters included groups who wish to take an appeal to the Environment Court, groups challenging ACC practices and claims by groups representing the public interest.

**Merits Test**

64. The discussion paper said the current merits test for family legal aid does not seem to encourage resolution of matters outside of a formal court hearing (e.g. routine care of children matters). Twenty four submissions commented on the current state of the merits test. There was a variety of responses and comments. No real pattern emerged, although several submissions proposed a panel consisting of experienced lawyers could measure of the merits of a case.

65. Submission 026 proposed "a simple mechanism for legal aid to step in and re-assess the prospects of success...Legal aid should engage the services of an experienced (not just qualified) lawyer to consider all issues of merit."

66. Submission 030 considered that the LSA and Law Society should co-operate to assess merits. "NZLS also has a responsibility to ensure members of the profession are applying common sense and good professional judgement to cases. A monitoring system developed between these two entities could resolve this issue quickly. Opinions from Counsel appointed to assist the Court, or Counsel for Child to be given weight regarding merits of cases presented."

67. Four submissions commented that merits test should take into account issues surrounding domestic violence cases. Submission 033 said "we believe that the merits test should take into account protection issues, welfare of children and the welfare of the victim however, if domestic violence has been ascertained in the case then the abusive party should not be automatically assured Legal Aid but their application should be closely measured for misuse."

68. Submission 044 said the police could contribute to the merits assessment. "There may be documents that police can supply to the LSA about investigations that have been conducted into the matter and the outcomes of those investigations. Such information may assist the LSA in making an assessment about the merits of the case and in determining whether legal aid funding should be granted."

69. Submission 057 said "it is suggested that a panel of experienced practitioners be appointed, who can review the cases to determine the prospects of success and for those practitioners to be appointed on a contract basis so it is not the only work they do."

70. Several submitters did not perceive major issues with the merits test as it currently operates. The Law Society did not consider there to be any serious issues with the test, and proposed that any questions concerning its operation could be addressed by proper management of cases rather than changing the test.

**Alternative Dispute Resolution**

71. Submitters were asked whether civil/family legal aid should be refused on the basis that the matter is one that should be resolved by alternative dispute

resolution. The follow up question asked whether civil/family legal aid should be granted if parties fail to resolve the dispute through alternative dispute resolution.

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

72. Thirty five submissions commented on whether civil/family legal aid should be refused on the basis that the matter is one that should be resolved by alternative dispute resolution. Thirty three submitters opposed the proposal.

73. A number of submissions considered that while legal aid shouldn't be refused simply because alternative dispute resolution is available, it should be a factor in determining legal aid. Submission 015 answered no, but said "I think it's fair that the process can be ordered to go to that venue but the parties still need assistance if justice is to be obtained."

74. A number of submitters contended that individuals still require representation even if a matter is being resolved by alternate dispute resolution. Submitters also said if an individual has no lawyer at alternate dispute resolution, there could be a disparity of bargaining power.

75. Five submissions pinpointed risks for victims of domestic violence in dispute resolution. Three submissions commented that it is very dangerous to ask abused women to have counselling/mediation with the abusive partner.

76. A number of submissions identified risks with the proposal. Submission 018 said "While ADR should be the preferred approach in civil/family matters, it is often toothless without the 'threat' of litigation behind it. Some parties take a very hard-line approach to ADR and would take advantage of the knowledge that parties are not funded to litigate." Submission 026 supported this, saying "If legal aid were refused on this basis the preliminary steps to resolution may never take place. Effective participation in the alternative dispute resolution process requires clients to have a clear understanding of their legal rights and obligations prior to entering the processes."

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

77. Twenty eight submissions considered that civil/family legal aid should be granted if parties fail to resolve the dispute through alternative dispute resolution. None answered no, although submission 033 said that "domestic violence cases should never be pushed through a mediation channel. This is incredibly dangerous for the women and children involved." Submissions generally reiterated their position and reasoning from the previous question.

78. Submission 018 suggested "it may be more appropriate for ADR and litigation to be funded together, with the provider being required to take all reasonable steps to reach an appropriate resolution."

79. Submission 050 noted that on occasion it could be important. "Where ADR failed due to a lack of participation (meaningful or at all) by one party, for example, it may be appropriate to refuse legal aid in these circumstances."

80. Submission 061 said “it is often better to agree to provide well resourced legal aid at the start, where the needs of the client are fully met, even if they go onto a dispute resolution process later. Resourcing early on is very important around disability.”

81. Submission 064 commented that “this question presupposes that clients will not be granted legal aid to instruct a lawyer to assist them during the ADR process. Legal advice is particularly important in an ADR process, particularly where there is an imbalance of power and resources or a particularly vulnerable party.”

82. A number of considered it is dependent on why and how the dispute resolution failed.

**Conditional fee arrangements/other sources for legal aid**

83. The discussion paper asserted that legal aid is available in civil cases where lawyers could be charging conditional fees, putting unnecessary pressure on the budget. There are multiple sources of funding, potentially overlapping for Waitangi Tribunal cases and historical Treaty settlement negotiations.

84. Submitters were asked if 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? The follow up questions asked 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. Submitters were also asked about which agency should fund legal aid, and whether there could be multiple sources.

*Other sources of funding for legal aid*

85. Eighteen submissions commented on whether people should be required to exhaust other possibilities before obtaining legal aid. Answers varied, with submitters generally choosing to focus on either conditional fee arrangements or Waitangi Settlement funding.

86. Submission 022 suggested “the presence of alternative funding can be one of the parameters informing the decision about repayment of legal aid.”

87. Submission 028 considered legal aid applicants “should not be able to double dip so claimants should state other funds applied for and should also provide information of money received and costs covered to show no double dipping.”

88. Submission 050 suggested “an applicant should be required to state what other sources of funding they have attempted to obtain and why they were not successful in obtaining funding.”

89. Submission 058 commented that “OTS funding is also not the solution, as it is a contribution towards claimants expenses and while it could be applied to legal representation, it is only a limited amount, is only available for settlement phase and is required for purposes other than legal representation.” However, in

contrast submission 072 said “the amount of legal aid money that is provided in this area [Waitangi Tribunal cases] – affects the information the public receives about the burgeoning legal aid bill. All of these cases ought to be fully resourced through the Office of Treaty Settlements and the Crown Forestry Rental Trust so that the payments are not included in the Legal Service Agency’s accounts at all.” Submission 047 argued Treaty Settlement should not be funded by Legal Aid, the crown could pay these costs through the tribunal system.

90. Submission 064 considered “the removal of legal aid in favour of a conditional fee funding arrangement may encourage lawyers to take on only high value cases where success is judged to be virtually certain--thereby limiting access to justice for those whose claims are meritorious but of little value.”

91. The Law Society considered that people should be required to exhaust other possibilities before obtaining legal aid treaty of Waitangi claims should be funded separately. It also asserted that conditional fee arrangements should not be considered an alternative source of funding.

92. Twenty submissions commented on whether people should be required to exhaust these possibilities of alternative funding before obtaining legal aid. The majority of submissions on this question answered no, for a variety of reasons. Just five answered yes.

93. Submission 015 identified potential difficulties. “I think you are going into murky waters if you don’t look at the merits of the case on the information that’s before the Agency. For instance a lawyer will probably only enter into a conditional fee arrangement if the case is watertight. Is it only watertight cases that the party is entitled to aid on?”

94. Submission 018 argued against this. “In complex claims against the Crown, the availability or otherwise of conditional fee agreements should not be a relevant factors in determining a grant of legal aid...it is the State’s duty to provide funding for citizens to bring civil claims. That financial burden should not be shifted to private individuals.”

95. A number of submissions considered that it would be difficult to monitor. Submission 023 commented “many lawyers would not be in a position to wait until the end of the proceeding before being paid, even if the client has a strong case.” Several submissions added that lawyers may decline a case for a variety of reasons, not just based on the merits of a case.

96. Submission 058 commented “it is not possible to address this perceived difficulty with Treaty of Waitangi legal aid in a similar manner to civil claims where a conditional fee arrangement is available.”

97. The submissions that supported exhausting these possibilities generally answered with the proviso that it should not be a decisive consideration in a grant of legal aid.

*Should all funding be administered by one agency?*

98. Twenty three submissions answered yes and eight submissions answered no to whether all funding should be administered by one agency.

99. The majority of submissions identified less administration and bureaucracy as a benefit of funding from one agency. Submission 028 identified the advantages of one agency as "less administrative costs, consistent approach and prevention of double dipping."

100. Submission 034 considered funding by one agency was desirable, but sometimes one agency cannot solely fund/support legal assistance, and therefore extra government funding maybe required.

101. Three submissions considered that funding should come from the LSA.

102. Submissions that opposed funding from one agency did so for a variety of reasons.

103. Submission 021 considered "the Legal Service Act 2000 does not exclude other agencies from funding community legal services. The Act also does not specifically refer to sole LSA funding for all community legal services."

104. Submission 022 stated "legal aid should be available regardless of the possible availability of other sources of funding."

105. The Law Society considered the Agency should become a streamlined procurement agency for the more usual categories of legally aided services, but some other matters (treaty settlements) should be funded separately, with no overlap in funding streams.

*How can the system be managed in a way that assures taxpayers that their funds are being used appropriately if multiple agencies fund legal assistance.*

106. Eighteen submissions commented on ways the system be managed in a way that assures taxpayers that their funds are being used appropriately if multiple agencies fund legal assistance. There were a variety of suggestions proposed, with no major pattern emerging although several submissions proposed accounting, contractual and auditing requirements.

107. Submission 013 considered "it will require a separate clerical group to collate the payments for the various groups and measure these against the performance of the recipients."

108. Submission 030 said "transparent arrangements could be made for a budget proportion supplied by each government agency. The proportion could be calculated by the percentage of problems the public has with a particular department – indicated by means such as the 'Unmet legal needs survey 2006'. That would provide an incentive to decrease the problems!"

109. Submission 051 argued for "a model that requires for staff to share information on legal representatives being funded should be amended."

110. Submission 054 cited “the UK Legal Services Act 2007 which sets up the Legal Services Board as an oversight regulator.”

**Repayment**

111. The discussion paper found that the repayment scheme starts at relatively low levels of disposable income, for people who may already be struggling with indebtedness. Scheme has limited application and experiences relatively low repayment levels. Debt collection is resource intensive.

112. Submitters were asked what reasons make it important for people to make some contribution towards their legal costs, whether people who are in the low-income bracket should have to repay legal aid, risks involved with repayment and for any suggestions for managing the costs of administering the repayment regime.

*Contribution to legal costs*

113. Twenty eight submissions commented on reasons it is important for people to contribute to their legal costs.

114. Two main reasons arose in this question. Firstly, repaying legal costs provides people with self esteem and a sense of responsibility. Secondly, repaying legal costs discourages people from seeking legal aid for unnecessary proceedings, this ensures accountability.

115. Submission 085 summed up a number of opinions, saying “by making people contribute towards their grant of aid eliminates and discourages people from battling their matters out in the Court where it is not necessary, and makes people more responsible in decisions given they are repaying their legal aid.”

*People on low incomes repaying legal aid*

116. Thirteen submitters believed that people who are in the low-income bracket should have to repay legal aid, nineteen were opposed.

117. Of the submitters that believed that people who are in the low-income bracket should have to repay legal aid, most believed people should make some small contribution to their costs to prevent abuse of the system and to appreciate the service received. Submission 037 suggested “contribution would in many cases be modest, but to provide free legal aid lends itself to potential abuse and extended litigation. This point should be read in conjunction with ‘cost recovery mechanisms.” Submission 040 said “they could make at least a modest contribution to acknowledge the value of what is being provided but it would need to be tailored to the individual means.”

118. Other submissions argued that repayment should occur because legal aid was not a benefit and therefore recipients should be required to repay a portion of their legal costs.

119. Submissions who argued that people who are in the low-income bracket should not have to repay legal aid generally considered it would place those on low incomes under further pressure. Many did not provide reasoning.

120. Submission 030 argued "those that have a Community Services Card have already been assessed regarding their income and financial position and this eligibility should be enough to allow for a grant of legal aid that does not require repayment." Submission 048 added "if the original concept of legal aid is to retain any meaning at all, people in the lowest income brackets should not have to repay any legal aid. This category obviously includes beneficiaries."

121. Submission 066 said "not if it results in hardship, or undermines the principle of equalised access to justice."

*Risks of repayment*

122. Twenty nine submissions considered there was risk that the repayment regime will create or exacerbate problems of indebtedness, three disagreed. A large number of submissions did not provide reasoning for their positions.

123. Submission 013 considered "it will exacerbate the problem of indebtedness if the amount to be repaid is too much as it often is." Submission 048 said "there is usually little or no capacity to pay. Adding a legal aid debt to an existing mountain of debt, is simply a futile exercise in misery, and only increases the utter sense of hopelessness for these people.

124. Submission 022 suggested "the system is about legal assistance, not about income redistribution."

125. Two submissions considered there was a risk the repayment regime will create or exacerbate problems of indebtedness if the conditions or repayment were too onerous.

126. Twenty nine submissions found that there was a risk that the repayment regime will dissuade people from applying for legal aid. Four considered there was no risk. A number of submissions stated that the repayment regime already acted as a disincentive for people from applying for legal aid in many cases. Many submissions did not give a reason for their answer.

127. Submission 065 referred to the "Survey of Unmet Legal Need (p.79) which identified that over a quarter of people with problems had not sought legal assistance because of concerns over costs. Even if many of these people would be eligible for assistance in a targeted system the mere existence of such targeting would act as a barrier to them seeking assistance."

128. Submission 061 argued with regards to people with disabilities. "This is happening with some of the clients of Auckland Disability Law where they are unable to make the repayments and yet have relevant and pressing legal issues. The repayment regime will dissuade some people with disabilities from applying for legal aid."

129. Submission 052 added “it already does. Often. Women, victims of violence and Maori and Pacific already avoid the legal system due to the legal aid repayment system and this is a serious denial of their right to access justice.”

130. Submission 050 contended “I am personally aware of litigants being requested to repay more than was paid to their lawyer. Of course some of this is administration costs, however it is difficult to justify litigants having to pay to fund a system which they already contribute to through their taxes.”

131. Four considered there was no risk, with two considering it because individuals accept the repayment regime. Submission 026 said “we have found that where a client is in a position to repay legal aid, they are generally happy to do so. We have not had any clients who have decided not to proceed with matters because they will be required to repay legal aid.” Submission 070 added “I view this as being unlikely. It appears to be the case that recipients of legal aid will accept it regardless of whether they need to repay the grant or not. It is my view that it is the level of repayment that is the key to preventing hardship to the recipient of the grant of legal aid.”

*Suggestions for managing the costs of administering the repayment regime*

132. Seventeen submissions provided a response to this question. Suggestions varied, although several submissions proposed ideas involving liaising with other agencies, such as IRD and WINZ.

133. Submission 022 considered the role the IRD could play. “The LSA administers the matter until the case is completed, then makes/registers any required decisions on final debt and repayment system, and then transfers the debt owing and administration to the IRD.” Submission 028 commented that the system could “run it through/with WINZ or Court fines offices? Take repayment out like tax and client to apply to change to voluntary work or to get discretionary cancellation.” Submission 073 added that “better systems to provide for deductions from state benefits or wages. The decision and implementation of repayment regimes should be allowed for in the application for legal aid. Authority should be given at that time not after legal aid has been granted.”

134. Submission 013 asked “give the collection to the hands of a private collection company to report on the possibility of collecting the funds. Be generous in writing off debts which are clearly uncollectable.”

135. Submission 076 suggested that “perhaps what is required is a proper review of financial circumstances by an accountant, a proper investigation into the figures supplied, and/or a review of the previous 5 years financial situation.”

136. The Law Society argued that “repayments should not be imposed where the cost of administration exceeds the cost of recovery, provided that liability to a costs award is not linked to repayment and contributions.” The Society added that “existing government debt collection systems could be used, for example, the Ministry of Justice collections service.”

## PART 3: PROVIDE THE RIGHT MIX OF INFORMATION, ADVICE, AND REPRESENTATION SERVICES

137. This section of the discussion paper considers the legal aid system's focus on legal representation and asks whether a change of focus is needed. It asked whether there are opportunities to enhance the focus on early advice and information, to help people resolve their problems before they need legal representation in courts. It also asked whether there would be opportunities to focus on providing services in the way that people are likely to seek them.

### Holistic views

138. The discussion paper asserted that legal aid expenditure is overwhelmingly focused at the end of a dispute resolution process. Greater investment in early advice, information, and support could: prevent cases escalating and requiring expensive legal solutions, reduce knock-on effect on other public services, and prevent the creation of additional problems that increase costs further.

139. The paper asked whether the legal aid system enable people's needs to be viewed in a holistic way, what advantages there are from early advice and support, and thirdly, whether any particular legal advice and information services could work more effectively if they joined up or co-located with other services.

*Holistic approach*

140. The majority of submissions considered that the legal aid system does not take a holistic approach to people's needs. Many of these made suggestions for taking a wider approach. These ranged from focusing on early advice to lawyers working with other disciplines and organisations to using CLCs for more services. Benefits of a holistic approach included less reoffending and more faith in the system.

141. Submission 013 offered "the only way to do this holistically is to have a multi-disciplinary approach i.e. when considering if Legal Aid should be granted, have a panel including a lawyer and someone from WINZ."

142. Submission 022 said "generally speaking, legal assistance can never consist solely of legal representation; by definition it requires also information and advice. The question is one of degree and of defining a proper mix."

143. Submission 024 supported a holistic approach saying "it would prevent the young person coming back again through the system on breaches of the sentence and needing to be re-sentenced if the sentence is not suitable. If the young person was given more support during the sentence in the first place, those types of breaches may be able to be prevented."

144. A number of submissions pointed out the work of community law centres in providing an array of services to individuals, whilst in many cases acknowledging that the market cannot and will not support many of the issues raised. Submission 030 stated the gaps in the legal aid system "are currently addressed in the main by community law centres, through the provision of information and advice at the beginning of events that may lead to legal issues having to be resolved. Strong relationships with other community groups can lead to good

referral systems and an ability to address a multiplicity of issues concurrently." Submission 034 said that "as long as Community Law Centres remain part of the mix and their independence respected and protected, then this Centre would argue there is the ability to have people's needs viewed in a holistic way."

145. Submission 046 offered three ways to improve the holistic and preventative delivery of services: "By focusing on early advice and support; By putting resources towards improving the integration and co-operation of social service providers; By making it mandatory for legal service providers (including legal aid lawyers) to undertake an holistic assessment of a user's needs."

146. Submission 069 and the New Zealand Law Society considered that a holistic approach was not necessarily desirable. Submission 069 contended "the focus is on legal needs. Not the role of the legal aid system to delve into the social dynamics of relationships, families." The Law Society discussed the role of lawyers as providing representation and legal services, but pointed out CABs and CLCs are more suited to a holistic approach.

*Early advice and support*

147. The overwhelming majority of submissions considered that early advice and support assisted in resolving cases earlier, before individuals become involved in the court process. A number of submissions also considered that early advice could help reduce crime rates, and therefore the demand for criminal legal aid. In some instances early advice was attributed as having potential for economic savings within the legal system, due to less demand on the court process.

148. Submission 026 claimed "making an accurate assessment early on enables issues to be addressed appropriately, which often means the conflict is reduced rather than escalated. In the long term this saves time and money and most importantly, helps preserve relationships, which when children are involved, is of inestimable importance."

149. Submission 035 suggested "early advice, information and support are integral parts of the legal aid system. They not only prevent matters from escalating, but also give individuals the power and the capacity to make their own choices and decisions."

150. Submission 065 considered "that meeting people's needs as early as possible, and dealing with their problems at an early stage, is inevitably more cost effective than addressing problems once they become more serious and complex."

*Co-location of services*

151. The majority of submissions considered that legal advice and information services that could work more effectively if they were joined up or co-located with other services. Most of these considered that CLCs would be best served by having arrangements with services that their clients may require, such as WINZ, domestic violence assistance and counselling services.

152. Submission 013 suggested some services that could be co-located, including: "Psychologists, budgeting experts; reading and writing teachers; a collective pool

of interpreters, Forensic Experts, Mental Health experts, a medical Doctor etc." Submission 017 pointed out "the Salvation Army in Manukau City has many services co-located, Alcohol and Drug programme, Employment Programme, the usual Social Services and a WINZ worker. Maybe this is the type of centre that could have a lawyer to provide Legal Advice. This would need to be funded in a similar way to CLC's."

153. Submission 057 considered it would "be helpful for LSA to provide applicants with an information pack and referral package appropriately tailored for the needs of the particular applicant – this pack could contain information such as what other agencies offer in the way of assistance or should be referred to for particular reasons – e.g. Family Court, IRD, CYFS, WINZ, Citizens Advice Bureaux (CAB)."

154. However, several submissions considered co-location of services would compromise the independence of CLCs. Submission 032 described the potential conflict: "There is scope for cooperation with government agencies who may share common clients through the provision of legal information via brochure stands at their offices. However, co-location with such agencies or other social services would erode the necessary independence of CLC's, as well as the ability to develop a CLC 'brand'."

155. Submission 021 went further, stating the idea of one stop shops with government agencies would be completely unacceptable as this would compromise the client's independent advice especially where that agency is the other party. Legal Advisors should be independent and seen to be independent. Other disadvantages are that the Rural Communities would be disadvantaged due to the regionalisation of government Departments." Other submissions discussed the inherent distrust of government agencies many people have as a disincentive.

**Community based advice/community law centres**

156. The discussion paper noted there is a strong base of community-based information and advice services, including Citizens Advice Bureaux and CLCs, but enhancements could be made. It pointed out CLCs are fragmented, there are no national standards for the services provided and that there is scope to increase the range of services provided by CLCs and better integrate them into the legal aid system.

157. The discussion paper asked whether the mix of community-based information and advice services appropriately targeted to needs in the community, what is unique about the contribution of CLCs, should CLCs be standardised and whether CLCs should provide some legal aid services (for instance duty solicitor).

*The mix of community-based information and advice services*

158. Fourteen submissions considered that the mix of community-based information and advice services did target the needs in the community. These submissions focused on the role CLCs play in communities and considered they serve a valuable role in providing the right mix of services.

159. Submission 039 commented that "community law centres provide a range of legal services and a good general mix of community legal services which compliment

the services provided by the legal profession. Community law centres should continue to be supported in the work that they carry out in the community."

160. Submission 060 believed CLCs provided a valuable service, but each community has its own legal needs. "Each community must decide this and each community is best able to decide it and every CLC is accountable to its community for it. This is something best addressed by local communities and not central government."

161. Submission 028 considered that there could be better promotion so the community serviced is aware of the services available.

162. Ten submissions considered that the needs of the community were not met by existing services. These submissions argued that CLCs were inadequate at supporting the communities they served for a variety of reasons.

163. Submission 015 was sceptical towards the actual benefits of CLCs. "I really don't know how useful the existing CLCs are…How useful an active legal education programme to the community is – I would have reservations. I suspect that one could throw a lot of money at this – if I may call it – politically correct type of activity but it has little or no affect on the wellbeing of Joe Citizen." Submission 026 considered that many people do not significantly advance or resolve their issues after accessing the services provided for by CLCs and CABs.

164. Submission 046 contended that existing "services and resources continue to be targeted at one-off events. Insufficient resources are targeted towards holistic care of client and preventative services."

165. Submission 052 described the community services as inefficient because "these services are overwhelmed with demand, under-resourced and may not be providing an appropriate quality of service, limits the current use of them."

166. Submission 050 stated "there are far too few such services covering far too wide a range in terms of geography, society and population."

*What is unique about the service CLCs provide?*

167. Thirty two submissions commented on this. A range of answers were provided, with some common ideas emerging:

- free for clients
- independent from the government due to their funding from the special fund
- a holistic approach, i.e. non legal issues
- meet unmet legal needs the market won't cover
- provide education services
- law reform work
- empowerment for individuals
- informal and approachable
- serve the unique needs of their community
- flexible approach
- national network
- link between community and legal profession

*Standardising CLCs*

168. The overwhelming majority of the thirty submissions that discussed this issue considered that CLCs should be standardised, so long as the focus on individual communities was not compromised.

169. Submission 034 encapsulated the arguments, commenting that "there may be advantages or gains to be made in centralising some services such as some Administration, staff training, and information production without losing the element of independence that makes the Law Centre relevant to their particular community."

170. Specific areas mentioned included information in relation to family disputes, employment law, debt collection and housing information. A number of submissions considered that quality standards could be standardised.

171. One submission considered that this would increase bureaucracy and costs.

172. Twenty submissions commented on methods of how to make CLCs accountable for standardised services. A number of these suggested a centralised service would be the best method for ensuring accountability.

173. Submission 022 "standardizing the services and by using a national infrastructure for administrative and logistical processes, a system will result that makes local centre's comparable and accountable."

174. Submission 028 "community law centres are accountable to their boards and stakeholders already. A report similar to that provided to boards could be provided to a national body of some sort."

175. The Law Society suggested "bulk funding with reporting requirements and performance reviews both at regular intervals and for cause."

176. Submission 030 proposed "a set of quality standards negotiated between the New Zealand Law Society and the LSA could be a measure of accountability of services provided." Submission 060 agreed the LSA and Law Society could ensure quality standards for CLCs.

177. Submission 055 recommended a national body could maintain standards and accountability, specifically: "conduct audits, assist in meeting quality standards, assess legal needs on a national basis, provide strategic coordination, duplication of information or education resources between CLCs is reduced, share operational knowledge, a cohesive voice for CLCs and be a properly empowered organisation to represent CLCs." Submission 057 proposed a similar model, with a "centralised complaints mechanism and processes for clients, inter-centre-based performance goals and outcomes geared to funding, inter-centre peer reviews, provision of and funding for specialised training and professional development programmes for CLC staff, development and publication of best practice protocols for managing particular cases/clients."

*Should CLCs deliver more legal aid services (e.g. duty solicitor services)*

178. Submissions were divided over whether CLCs should deliver more legal aid services, with fifteen submissions in support and fifteen submissions opposed or uncertain.

179. Submitters who supported an expansion considered CLCs and the public could benefit from an expansion of the current services, but expressed reservations regarding the resources and capacity of CLCs as they currently stand.

180. Submission 050 considered some sort of expansion "would likely be of mutual benefit to the CLC lawyers and their clients. The lawyers would gain a greater exposure to a variety of legal problems and clients; while the clients would gain from the experience brought by the CLC lawyer which would likely be different to that of other duty solicitors." Submission 054 suggested the benefits were that CLCs could develop expertise in areas often left untouched by private practice, e.g. social welfare law.

181. Submission 032 considered CLCs were able to deliver more services, but not at the expense of CLCs context of delivering community legal services to meet unmet legal needs. "CLCs are best placed to enhance current schemes e.g. undertaking duty solicitor tasks in status or JP hearings where Duty Solicitors are unavailable."

182. Submission 046 commented that there would need to be a massive redeployment of financial resources into CLCs if they were to provide additional legal services; "Changing the focus of CLCs to include greater provision of services to individuals could undermine this important aspect of the CLC mandate."

183. Submitters opposed expanding CLCs due to the perceived inability of CLCs to cope with the extra demand and expertise that would be required. Several submissions considered CLCs should continue to concentrate on unmet areas of legal need, rather than expand.

184. Submission 029 "the ideal solution is for the provision of legal aid through private practitioners and Public Defenders and to leave the community law centres to concentrate on the areas of unmet legal aid."

185. Submission 039 asserted that "community law centres were not set up to take on mass legal aid work. Community law centres may need to carry out a small amount of legal aid work if a particular case requires it however the focus is not legal aid work."

186. Submission 050 considered that the duty solicitor scheme works well. "It would be difficult to see it working appropriately (at all) with lawyers not specialising in criminal law, and away from Court."

187. The Law Society commented that CLCs were not equipped with the requisite expertise to provide such services.

188. Submission 060 said that although CLCs should be expanded, they could serve a valuable role supporting legal aid providers, such as duty solicitors. "The unmet

legal need in this category of the legal aid system is already vast and existing CLCs cannot realistically be expected to meet all of it....CLCs could well assist and enhance the Duty Solicitor scheme by providing services to pre- and post-Duty Solicitor appearances and may be able to offer assistance to unrepresented litigants in family and other courts where legal aid is not available...This question would need to be discussed in full consultation with NZLS and CLCs and the opportunity needs to be given to CLCs to further discuss this issue."

**Strategic refocus/new schemes**

189. The discussion paper considered that the legal aid system is reactive. It needs to be better at anticipating service gaps and developing solutions for emerging legal needs.

190. Submitters were asked whether there would be 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. The follow up question sought suggestions on how to do so. Twelve submissions considered there would be benefits in refocusing the administration of the legal aid system. Eight considered there would be no benefits.

191. Submission 069 believed "strategic overview of service needs would be relevant to the various communities. Focuses resources on the actual needs rather than some generic need."

192. Submission 028 was opposed saying "it is difficult to prioritise services and still provide a holistic service. Little point assisting a client with domestic violence and ignoring their separation issues."

*Suggestions for changes needed to refocus the system*

193. Thirteen submissions made suggestions for changes needed to refocus the system, with no overriding idea emerging.

194. Submission 013 suggested "the provision of a multi-disciplinary panel to identify the service needs and prioritise the identified needs of different communities which will differ from community to community."

195. The Law Society considered the question was complex, and required more time and information to answer. The Society did say that what was required was firstly a properly funded, administrated and accessible legal aid system. The Society also asserted that there was a lack of confidence in the LSA to fulfil this role.

196. Submission 022 described wholesale and fundamental change to the system that would be required. "Three different arms can potentially be recognized. One is the arm that defines and describes services and all associated issues, this could be termed the 'strategic' aspect. The second coordinates with other agencies and maintains the necessary information systems; this would be the infrastructure arm. The third is the operational arm, where the administration of the financial and logistical services takes place."

197. Submission 030 proposed "the formation of a strategic unit within LSA to collect the data from the grants, in addition to other sources of data to gain an ongoing overview rather than the 'snapshot' gained by a specific project." Submission 032 advocated for a restructure of the LSA and employing staff who understand community development principles and understanding of regional representations.

198. Submission 054 suggested "a comprehensive network of public legal services would need to be in place and local management committees and/or regional legal services committees set up to direct and prioritise legal services."

**Innovative Services**

199. The discussion paper commented that prescription in the Legal Services Act 2000 risks stifling innovation by adding significantly to the cost of trialling new methods of service provision. Submitters were asked for reasons that would justify continuing to limit the conditions under which new forms of legal services can be piloted, and whether legal services be treated any differently in this respect from other types of publicly funded services. Thirteen submissions responded to this section.

200. A number of submissions answered that there were no reasons that would justify continuing to limit the conditions under which new forms of legal services can be piloted. For instance submission 022 responded saying "None. The only reason for the inclusion of such matters is an unhealthy desire by parliament or ministerial departments to micro-manage the operation of the justice system."

201. Submission 040 considered "given the degree of direct state control, [our organisation] strongly opposes any relaxation of "pilot" schemes, particularly as such schemes are all too frequently put in place on a permanent basis."

202. Submission 050 said that "pilot services should be limited by the requirement to demonstrate a clear need, presently unmet and a positive cost-benefit analysis."

203. The Law Society answered that reasons that justify limiting conditions include the need to ensure that any pilot is appropriate and independent. "Pilots should be decided on by a body that includes a representative of the society and be independently administered and evaluated."

204. Submission 057 considered "piloting of new forms of legal services should be limited by what domestic experience or international practice suggests we don't need to investigate. Any new pilots should be funded from additional funds, not the existing pool and they should only be piloted if well researched."

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

205. Twelve submissions commented on whether legal services be treated any differently from other types of publicly funded services, with the majority pointing to aspects of law as an independent profession, as opposed to a public service.

206. Submission 022 answered yes, and said “it should arguable [sic] be placed as an attachment to the judicial branch, rather than the executive, albeit that the current constitutional constellation in New Zealand does not provide for such an attachment.”

207. Submission 023 described lawyers as having “a fundamental constitutional role of upholding the rule of law and, if necessary, helping others resist oppression and unlawful actions of government. For that reason, safeguards are necessary to ensure that there is no impediment to that role.”

208. Submission 040 said “the law is the state’s rules to which it insists all citizens conform. Accused persons should have easy access for their defence to lawyers who are not directly employed and controlled by the state.”

## PART 4: PROVIDE HIGH QUALITY LEGAL AID SERVICES

209. This section of the discussion paper discussed the issues related to the quality of legal services. It stated that the legal aid market is characterised by inefficiency and variable quality of legal services, legal aid remuneration rates are widely considered to be a problem, the approach to quality is reactive and contains few levers and there are issues around regulation and quality frameworks.

**Improve the quality of services available**

210. The discussion paper identified some serious issues in quality of legal aid services that are available. In some cases, publicly delivered services have been delivered more cheaply, more efficiently, and to a better quality standard.

211. Submitters were asked what could be done to improve the performance of legal aid lawyers in terms of efficiency and quality and secondly whether publicly provided services should be used to increase the standard of services where there are particular problems.

*Improving the quality and performance of legal aid lawyers*

212. Over half the submissions commented on improving the quality and performance of legal aid lawyers.

213. Eighteen submissions suggested that either training and/or performance monitoring should be used to increase the quality of the legal profession. The contention in these submissions was that lawyers should have to undergo regular training, both before they are put on the list of providers, and at intervals afterwards, to ensure their performance is up to scratch. The other aspect of these submissions was that legal aid lawyers should have their performance monitored by colleagues in the profession or judges (a number of submissions suggested 3 year intervals for retraining and monitoring).

214. Submission 002 commented that "before a lawyer is put on the duty solicitor roster or put on a category of legal aid providers, he/she should be required to undergo at least three years training under a senior experienced lawyer."

215. Submission 017 proposed that there could be review steps at least 2 years after they become a legal aid provider because a few think once they become a provider they will remain on that list even if their service is not up to the standard required.

216. Submission 034 recommended that "peer reviews, random audits, and consequences relating to performance could be used to address the issues that are caused by the drivers related above, but in fact are only practised by a minority of those who provide legal aid services...Perhaps it would be best to address the issues of the few rather than increase the compliances for all."

217. Eight submissions commented that the quality of lawyers who perform legal aid is directly related to the levels of remuneration available. Low levels of remuneration were a deterrent from doing legal aid work, and were not sufficient for the actual work done in an individual case.

218. Submission 050 suggested that legal aid remuneration be aligned with Crown solicitor rates alongside more compliance requirements. “The solution is to increase legal aid rates so that they are on a par with Crown Solicitor rates. Submission 086 went further, proposing copying the successful Crown model. “The key to this success has been the support of junior lawyers by senior and able lawyers and a Crown Solicitor whose own reputation depends upon the competence of his employed lawyers. I do not think that any bureaucracy will be able to duplicate this success.”

219. Submission 079 encapsulated the central responses to performance issues, stating “the performance of legal aid lawyers is closely related to funding, in that there are limitations on the number of hours funded and set hourly rates. There are also issues relating to inexperienced lawyers and inadequate supervision and monitoring.”

220. Submission 084 had a more detailed response, which involved an “integrated approach incorporating a method of funding that encourages an aggregation of industry resources. The proposed solution requires the establishment of a number of barristers chambers devoted to providing all categories of legal aid services. Each chamber would be given a designated area and would handle all legal aid cases originating from that area. ....it is envisaged that the majority of lawyers would do so on a sub-contract basis, however it is also anticipated that some will be directly employed by the chambers.”

*Use of publicly provided services to increase the standard of services where there are particular problems*

221. Thirty submissions commented on whether publicly provided services such as the Public Defence Service could improve the standard of services. Twenty one of these submissions supported more use of publicly provided services and nine were opposed.

*Support*

222. The majority of the submissions that agreed with more use of publicly provided services pointed to the success of the PDS, both in terms of the quality of service and the low cost.

223. Submission 013 considered the quality of the PDS was far superior, commenting that “they do a great job as the Judges will tell you. I have seen them in Court and the difference between them and many of the practitioners at Manukau is embarrassing.”

224. Submission 047 added that the PDS was beneficial as “the private profession needs this type of competition.”

225. Submission 038 considered that while the PDS was beneficial, there were wider problems that need to be addressed. “Although, I think it may make sense to use the PDS or a publicly funded model where there a particular problem, it is important to look at the underlying structures and to find long term solutions as discussed… that may or may not include the PDS or a publicly funded model.”

*Against*

226. Submitters that opposed public provision of legal services generally considered the PDS did not enhance the quality of service provided to clients, and in some cases the expense was cited as a negative.

227. Submission 040 listed a number of issues it perceived with the PDS; "the PDS does not provide a better service to clients then the independent bar. This is proven by the continued preferential assignments; The PDS are simply more lawyers in the system and currently inexperienced lawyers given the number of more experienced lawyers leaving the PDS; Clients should be represented by whom they want and often the independent bar offers better service and more attention as they are able to control their work and time on each case."

228. Submission 015 considered that implementing the PDS would not fix quality issues, and would deter some lawyers from working in legal aid. "If you restrict legal aid practitioners to those who work in public defence offices you are not going to encourage a lot of potentially good defence lawyers into the game....I think you address the problems you are referring to by educating and mentoring rather than wiping out areas of practice which are not of a high standard because of the approach that has been taken in the past."

229. Submission 043 asserted that the proposal to expand the PDS "presupposes that Public Defence Service has higher standards than the private bar and the resources to operate at the same capacity at all levels (and across all areas of law) and in all geographical areas as the private bar."

**Attract more lawyers**

230. The discussion paper considered factors that attracted and discouraged lawyers from performing legal aid work. Both financial and non-financial factors were discussed.

*Remuneration*

231. Thirty two out of the thirty seven submissions considered that a different approach to remuneration for legal aid work could attract more lawyers.

232. The overwhelming opinion was that higher rates of remuneration would attract experienced and skilled lawyers to legal aid work in addition to keeping lawyers currently doing legal aid in the system.

233. A number of submissions pointed the rates of pay Crown solicitors receive, and suggested that lawyers working legal aid cases should receive similar rates. Submission 014 was "mystified at the differential payment rates to Crown practitioners who enjoy unlimited support at no cost from prosecuting agencies" and submission 027 added "what is also unfair is that Crown Solicitors receive not just more, but get paid by the half day, not by the hour excluding waiting time: there should be equality."

234. Several submissions also commented that legal aid rates do not compensate for time spent dealing with administration for cases. Submission 043 identified "being prayed for the actual time spent on matters that would encourage more participation. The standard fees are usually grossly inadequate. To perform tasks within the time limits set must invariably lead to a lowering of quality."

235. Nine submissions discussed bulk funding as a remuneration option. Five were opposed to bulk funding. Submission 047 disagreed that the bulk funding system would work as there would always be poor performing lawyers, "whereas those practitioners who value their reputation will always provide good service. The smaller practitioner who mainly provide a good service, will not be able to compete on a bulk funding level." Submission 069 said "Bulk funding is not in the best interest of persons that rely on 'fair representation' and 'access to justice".

236. The submissions that supported bulk funding believed that it would ensure a supply of quality lawyers that could fill the void in some areas of unmet legal need. Submission 050 supported bulk funding, saying it "has the potential to result in the provision of cost effective and efficient services."

*Issues other than remuneration that prevent lawyers doing legal aid*

237. Twenty four submissions cited the administrative burden associated with legal aid as dissuading lawyers from working in legal aid. Complaints with the system included onerous form filling, delays in grants, reporting criteria such as excessive documentation requirements and difficulty dealing with the LSA. For instance submission 024 stated "legal aid rates are not sufficient to include the considerable time spent liaising with the Legal Services Agencies regarding legal aid." Submission 043 summed up, stating "the stress of having to deal with an administrative system that undervalues the service of lawyers and the ethos of which, at times, seems to be directed at raising artificial barriers to access to legal services."

238. Six submissions commented that the status of legal aid work put off many lawyers. Submission 016 stated that legal aid is "seen as low status work. The importance of this work needs to be enhanced – this would include recognition of the skills that are required to do it well." Submission 013 said "I don't think that the private Bar is held in much esteem and firms do not want to be identified with criminal legal aid lawyers."

**Levers to enhance the profession**

239. The discussion paper raised a number of levers aimed at enhancing quality in the system. These included; time limits and panels for legal aid listings, training, supervision, peer review requirements, performance review and specialisation in the lawyer banding system, such as for lawyers doing appellate work. Submitters were asked whether these levers or any other levers could enhance quality of the profession.

240. Most submissions considered that the levers identified would have a positive effect on the quality of legal services.

241. Two submissions opposed the specialisation lever and one submission opposed time limits as a lever. Submission 070 opposed specialisation in smaller areas as it would have a negative effect on access to justice, and submission 043 suggested that specialisation is already a problem with lawyers.

242. Submission 071 was against time limits, stating "time limits do not recognize the reality that cases vary hugely and cannot be addressed by applying a rigid formula. Lawyers are also bound by the reliability of their clients. Many defendants are transient and difficult to obtain instructions from, requiring lawyers to ensure that all potential options remain open until instructions can be confirmed."

243. Suggestions for additional levers were varied.

244. Five submissions asserted that increased remuneration would attract and maintain quality lawyers. Submission 056 simply put it as "more pay = more experienced lawyers doing legal aid work."

245. A number of submissions suggested levers involving training and performance monitoring, which was a lever mentioned by the discussion paper. Several of these submissions considered that client feedback was an important mechanism for monitoring performance.

246. Submission 022 proposed an array of levers: "relative success rate, efficiency, customer satisfaction, judicial comment, evaluation by registry staff, publications, dossier and file management, compliance with administrative standards, completion of courses in the use of the new IT systems or on legal issues, acting as senior or mentor for new practitioners, participating in professional events, pro-bono work."

247. Many submissions did not suggest additional levers, but rather focused on suggestions aimed at improving quality and processes at court. For instance submission 043 commented that "more efficiently run courts would improve throughput. Judges arriving on time, keeping to sitting hours and disposing of work efficiently and must surely reduce costs and decrease the economic cost to the community of people having to appear before the courts as witnesses, complainants and accused / defendants."

**Responsibility for the quality of legal aid services**

248. The discussion paper asserted that the Law Society and LSA both have an interest in quality standards for lawyers, but neither has so far taken primary responsibility for operating an ongoing quality system for legal aid lawyers.

249. Submitters were asked whether the Legal Services Agency or the New Zealand Law Society should have primary responsibility for the quality of legal aid services, or was a shared responsibility.

250. Eleven submissions considered that the responsibility was shared, five submissions believed the Law Society should have primary responsibility and five submissions commented on the system, rather than make an assertion whether way.

*Shared Responsibility*

251. The submissions that encouraged shared responsibility considered that the LSA and the Law Society had independent, but related roles, that both have a role to play in ensuring quality of legal services.

252. Submission 002 put the relationship as the "law society should oversee the ethics and efficiency and the LSA should oversee fairness of granting legal aid work and duty solicitor work."

253. Submission 057 stated emphasised the importance of cooperation. "Quality of the work should primarily be in the hands of the Law Society. LSA (whose role is the funding of the service) is in a contractual relationship with the providers so there is a level of responsibility there also. Collaboration between the Law Society and LSA is important."

*The Law Society*

254. Submissions generally supported the Law Society because it was experienced in ensuring quality of the legal profession.

255. Submission 061 commented that the "NZLS is already responsible for the quality of legal services under the lawyer's legislation. There is no need to share that responsibility as that may lead to a drop in any quality of legal services."

256. Submission 043 stated "all lawyers should practice to the same high standard. Lawyer's professional body, the New Zealand Law Society, should have primary responsibility for the quality of legal aid services."

*Other*

257. Several submissions commented on how quality should be achieved, and a few criticised the relationship between the Law Society and LSA.

258. Submission 028 said that "whoever is responsible should ensure sanctions for non-performance and non-accountability. Little point requiring reporting if no action taken as a result of."

259. Submission 017 complained about the current relationship saying "if it was to be combined they would need to decide together on steps to be taken. At the present time neither seem to be keen to take a stand on obvious wrongdoing."

**Accountability and sanctions**

260. The discussion paper commented that a lawyer's legal aid listing can be suspended or cancelled but there are no lesser sanctions for performance failures.

261. Submitters were asked for effective ways of improving accountability in the legal aid system, how cases of poor service delivery should be handled in a quality-

focused framework and whether more auditing or other monitoring would create incentives to improve the quality of service.

*Effective ways of improving accountability in the legal aid system*

262. The majority of submissions that answered this question reiterated their earlier points from 'Improving the quality and performance of legal aid lawyers.' Performance monitoring and incentives for high quality work was suggested by these submissions. Submission 043 encapsulated these submissions saying the approach should be "first, identifying the problem then providing a supportive framework for an objective assessment and assistance in addressing deficiencies."

263. Three submissions considered auditing would improve accountability. Submission 077 called for "greater transparency and public access to reports on legal aid work. It is important that the LSA has appropriate auditing processes....there was a strong call for more judge led direction and mediation, with sufficient time to hear a case properly."

264. The Law Society commented that there are already statutory mechanisms for accountability, but the problem was the LSA has not used them meaningfully or effectively. Accountability could be improved by the LSA acting on concerns that are expressed to the society about the quality of counsel, and mandatory legal education could improve accountability.

*Handling cases of poor service delivery*

265. Five submissions proposed that the Law Society was best placed to handle complaints about poor service delivery from counsel. Two of these considered that the LSA and Law Society should liaise to process complaints. Submission 038 stated the "LSA is likely to be more immediately aware of a problem that the NZLS. It may be that the LSA take initial steps with the practitioner directly. If that is not successful or the matter is more serious, sanctions may be required such as termination of the contract for services, or instigating the disciplinary powers of the NZLS."

266. The Law Society proposed education opportunities, or, if circumstances require, suspension or removal from the legal aid list. The Law Society considered the mechanisms available through the LSA should be used to enforce a quality based framework.

267. Several submissions concentrated on identifying the lawyers who were performing poorly, and suggested processes to achieve this.

268. Submission 040 said "identify those counsel whose performance is not of proper quality. The CBA considers that the Judiciary should be the main arbiters, and could refer such persons to Peer Review Panels of senior practitioners of undoubted quality."

269. Submission 070 suggested a standards type committee composed of senior practitioners in each main centre. Such a committee could easily play a role in

ensuring that any concerns about the performance of a practitioner and deal with it in an appropriate way.

*Auditing*

270. Ten submissions did not think that more auditing would create incentives on practitioners to improve the quality of their service and their professional development. These submissions contended that it would act as more of a disincentive on lawyers performing legal aid work, and other mechanisms, such as those already mentioned, would be more successful. Submission 071 said "more auditing would further increase the burden on lawyers who are already short of time."

271. Six submissions considered that an increase auditing would create incentives for improved performance. However, the majority of these were hesitant due to perceived issues involved, such as increased bureaucracy. One submission also mentioned it could work, but the motives behind it must be proper.

272. Submission 038 stated "it is beneficial to create a culture of expectation that counsel to perform and maintain knowledge at a level that they can be proud of." Submission 044 said "this would act as an incentive for practitioners to improve the quality of their service and to continue their professional development. The incentive would have to involve some financial reward."

**Legal Aid Review Panel (LARP)**

273. The discussion paper found that LARP's effectiveness is compromised by its location within the LSA, and the LSA's control of its funding. In response submissions were asked whether LARP would be better administered independently of the LSA, and for suggestions of matters that should be subject to review by LARP.

274. Seventeen submissions considered that LARP would be better administered independently from the LSA.

275. Submission 017 said that LARP "needs to be fully independent as LSA is very much a part of reviews, as they provide the assignments to the lawyers, and this could often be a part of a review." Submission 050 considered that independence was essential "if practitioners and clients are to have confidence and trust in it as a (quasi) judicial body."

276. Submission 063 addressed this issue in great detail, stating that "for philosophical reasons, for real and apparent independence, the Panel's administration must be removed from the Agency. The Panel is an important administrative tribunal. It makes complete sense to make responsible for the Panel's administration the Tribunal's Division of the Ministry of Justice, a specialist division of the Ministry of Justice whose raison d'être is the administration of administrative tribunals." The Law Society shared this opinion, saying that LARP "ought to be administered and funded independently by the Tribunals Division of the Ministry of Justice."

277. Five submissions argued that LARP does not require independence from the LSA to be effective.

278. Submission 015 considered independence of LARP as irrelevant. “The Legal Aid Review Panel should be set up in the cheapest way possible. Whether it is administered independently shouldn’t affect its independence in its decisions.”

279. Submission 023 was pleased with the current performance of LARP. “I have had several matters reviewed by LARP. Sometimes the decision has gone my way; sometimes it has not. The administration has always been scrupulously fair in both directions, as has the adjudication. In the cases where the adjudication did not go my way, I understood the reasoning.”

*Matters LARP should consider*

280. Submission 002 contended “the panel should review all matters declined by the LSA.”

281. Submission 017 “lawyers who receive large numbers of ‘Preferred Lawyer’ assignments, especially while working as a Duty Solicitor. (This would only be in large courts).”

282. Submission 057 considered that “LARP should only deal with review of grant quantum issues rather than practitioners – it should not be a complaints body.”

283. The Law Society said that all decisions of the LSA that affect the rights or interests of an aided person or the party to litigation should be susceptible to review, which will be likely to improve the quality of the LSA’s decision making and performance.

284. Submission 063 stated “the Panel must have, in statute, powers to give enforceable directions to all parties including the Agency. In respect of the Agency there must be a sanction. That could be costs. In the alternative, some review processes automatically overturn a decision if the agency or department whose decision is being reviewed does not co-operate with the review process in a specified time.”

## PART 5: LEGAL AID'S EFFECT ON THE COURT SYSTEM

285. The discussion paper discussed three issues that can have a real effect on the court system: legal aid payment structures, the preferred lawyer policy, and the role of duty solicitors.

**Legal aid payment structures**

286. The discussion paper asked whether 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. The follow up question sought suggestions as to how legal aid payment steps be structured to achieve these objectives.

287. Twenty five submissions commented on whether legal aid steps could improve efficiency in the court and nine submissions made suggestions on how to structure these steps.

288. The Law Society considered that legal aid payments should have a neutral effect on court processes. The Society asserts that it is for the court itself to determine its processes, and that these processes are affected by decisions made by clients who instruct counsel. This view was supported by submissions 038 and 049.

289. Two submissions considered that the police had more impact on efficiency of court proceedings as opposed to legal aid payment steps. Submission 040 believed that "the vast majority of unnecessary Court appearances are caused by slow or inadequate police disclosure; missing Court files and missing police files." Submission 070 indicated that legal aid payments could not improve court efficiency in criminal matters because they are initiated and moved forward by the police.

290. Two submissions disagreed with the assertion that current legal aid payment steps are encouraging lawyers to delay cases for more remuneration. One lawyer who commented (073) said "it is a nonsense to suggest that lawyers continually delay cases just to get more remuneration, which is what this question suggests."

291. Four submissions commented that the current payment steps are insufficient, particularly for preparation of cases and this can have an adverse affect on court processes as well as discourage lawyers from doing legal aid. Submission 057 said that "current implementation of steps discourages lawyers from doing legal aid work due to the amount of unpaid time involved in administration of that process."

292. Suggestions for removing the insufficient payment identified above included a greater emphasis on preparation, and that legal aid payment steps could be structured to be more user friendly than they currently are. Submission 043 stated "if there were to be an emphasis on more being achieved out of court there would need to be greater acknowledgment of the effort required and remuneration for that effort. The fee structure would need to have more built-in to the front end rather than the actual hearing."

293. Submissions 016, 033, 041 and 059 discussed court proceedings with regards to women and victims of domestic violence. Submissions 016, 041 and 059 suggested that the court system should address all of women's needs for safety and representation as one package, and that legal aid should have specialised lawyers who understand the complexities of these areas of law. Submission 033 commented legal aid payment steps have an impact on victims of domestic violence in that "lawyers encourage their clients to continue to plead not guilty to domestic violence charges and stall finalisation of matters until the defended hearing stage."

294. Submission 084 suggested that inefficiencies in the court system were a result of the actions by both parties to a case, commenting that "the efficiency of court proceedings could improve if both sides have similar reasons for concluding matters expeditiously."

295. Two submissions made suggestions aimed at increasing efficiency in the Family Court. The Law Society commented that initial grants for family matters could include an amount of aid in respect of steps that a family matter is likely to go through, rather than being highly circumscribed, as they are in some circumstances. Submission 023 included a checklist for parenting proceedings, where the provider would be required to summarise (a) the crucial issues between the parties, (b) what substantive options the client suggests in order to meet the needs of the child and the parties; (c) whether mediation is appropriate (d) whether external expert advice would assist the parties to resolve the issues (and how much it would cost).

296. Submission 076 suggested a 3 stage approach to speed up cases developed by the Law Commission would reduce legal aid costs and streamline court processes. The Law Commission process involves a) an initial hearing before a registrar b) a six-week adjournment to allow time for prosecution and talks on pleas and charges and c) a pre-trial hearing before a registrar and a judge(if the matter involves a guilty pleas, judicial issues, or an indication of sentencing).

297. Submission 022 stated "the solution to the problem is extremely simple from a process management perspective, particularly in a system that already has an inbuilt system of authoritative decision making...An ICT system that includes the entire administrative and logistical operation for the court system in New Zealand is a very small system by global standards."

298. Submission 008 suggested that there should be an indication that court appearances are the actual time spent in argument, with a common-sense minimum of 18 minutes per appearance, and that the estimate and step system should be got rid of.

**Preferred lawyer policy**

299. The Discussion paper identified a number of issues that arose with the preferred lawyer policy. The paper asked whether the preferred lawyer policy is distorting the allocation of criminal legal aid cases. The follow up question sought suggestions for changes to the preferred lawyer policy that could address the problems identified in the paper.

300. Ten submissions agreed with the statement that the preferred lawyer policy is distorting the allocation of criminal legal aid cases, and nine disagreed.

*Agree*

301. The preferred lawyer system was agreed to be distorting the allocation of criminal legal aid cases for a variety of reasons.

302. Some lawyers were described as distorting the system by taking on too much preferred lawyer work. Submission 044 cited anecdotal evidence as suggesting that legal aid lawyers use the option on the legal aid application form to accumulate clients, when the client may not have a preference for a particular lawyer. This often leads to a lawyer having too many clients at once, which reduces the service provided to clients and can result in delays on the court process. Submission 013 commentated that that some lawyers in the Manukau Court are generating preferred lawyer work on a daily basis and this is distorting the allocation of cases.

303. Submission 038 said preferred lawyer nominations are potentially susceptible to abuse, and decisions are often based on poor information. This was supported by two other submissions, including submission 033, which commented about victims of domestic violence, stating that "mostly women don't know anything about the lawyers they get unless our agency recommends lawyers who we know are familiar with the dynamics and complexities, and are legal aid lawyers."

304. Submission 082 stated that the preferred lawyer system can lead to certain providers receiving the majority of legal aid work in a specialised area, in this case refugee work. "That lawyer becomes the lawyer of choice, leading to overwork and the inability of the refugee status determination to process the refugee claims as expeditiously as would be possible were the work spread more evenly."

*Disagree*

305. The submissions that disagreed the preferred lawyer policy is distorting the allocation of legal aid cases were unanimous in the view that it is crucial for clients to have a choice of lawyer, and that this choice provides incentives for good service delivery from lawyers.

306. The Law Society commented that the "philosophy behind the preferred lawyer system is to reflect that a citizen should have a genuine choice in deciding who will represent him or her."

307. Submission 017 said "most preferred lawyer cases go to lawyers who have already served a client well. I would not to see this taken off, but there does need to be a check to see if the client really did ask for this lawyer. Some clients do not want the same lawyer."

308. Submission 047 said that "people should retain the right to choose their lawyer. This is one of the signs that the lawyer has a good reputation." Submission 050 reinforced this, saying "it is important that clients have a lawyer with whom they feel comfortable and have confidence in."

309. Submission 070 commented “It should be the right of every person to use the lawyer of their choice, for whatever reason. The preferred lawyer system allows a lawyer to have an ongoing professional relationship with their client as needed and allows for knowledge of that person to be concentrated in the one professional. If anything, it benefits the LSA.”

310. In contrast to submission 082 from paragraph 20 above, submission 031 stated that the preferred lawyer system was beneficial where there were lawyers who had an interest an understanding of the difficulties faced by people in a specialised area, in this case people with intellectual difficulties. These lawyers could be requested to help in this demanding area of law, where many other lawyers choose not to operate.

311. Submission 040 said the preferred lawyer system works well when the Legal Services Agency fills out applications.

*Suggestions for changes to preferred lawyer policy*

312. Seven submissions suggested that the either the LSA or Duty Solicitors could assist with filling our preferred lawyer applications to avoid the problems identified. This would also provide information to individuals.

313. Submission 033 said it would be helpful for the body that oversees Legal Aid to have client feedback on the lawyers who represent them, and for this survey data to be available to the public when they are trying to choose a lawyer.

314. Submission 038 said “wherever possible an LSA form filler should assist with legal aid applications, abuse of the preferred counsel option should have serious consequences.” Submissions 030, 040, 069, 073 and 085 also considered the LSA should assist with assigning counsel and assisting in filling out forms.

315. Several submissions considered the policy should be limited, and in some cases, abolished. Submission 002 stated “it must be made absolutely clear that a preferred lawyer will only be granted in a genuine case where the client wants the lawyer only (and must be an exception, not the rule).” Submissions 013 and 044 considered that the option of preferred lawyer should be removed, or at least limit the option to only very serious charges.

316. Submission 017 “firstly if someone already has a lawyer on active matters then that lawyer should also take the new charges so that they can be dealt with in an efficient manner. Secondly, preferred Legal Aid applications need to be independently checked and if there is doubt check with the client.”

317. Two submissions made suggestions designed to ensure that preferred lawyers were accountable and could not take on too many clients. Submission 037 commented that the preferred lawyer scheme should have performance monitoring for those on the list. Submission 047 stated an overall cap on assignments would limit the distortion that occurred from lawyers taking on too many clients.

## The role of Duty Solicitors

318. The discussion paper asked for comments suggestions ways enhance the role of duty solicitors and for enhancements to the supervisory structure for duty solicitors.

*Enhance the role of duty solicitors*

319. Twenty four submissions made comments on how to enhance the role of duty solicitors.

320. A number of submissions suggested the duty solicitors be trained in the area of specialised groups. Submissions 016, 033, 041, 059 and 077 suggested training for duty solicitors in the domestic and sexual violence. Submissions 016, 041 and 059 commented that this was necessary "so that duty solicitors can recognise the games that abusers play and not be manipulated into processes that are designed to re-abuse women via the court process." Submission 061 suggested duty solicitors should receive "training about the needs of clients with disabilities and providing the clients with accessible resources and information as to what non legal supports are available to support them through a process.

321. Submission 057 proposed a more holistic view for family law cases. "Practitioners could be employed directly to operate the national information, advisory, and referral hotline earlier discussed. Such persons could be rostered to CABs, WINZ agencies, CYFS' offices and paid by LSA."

322. A number of submissions sought clarification of the role of the duty solicitor. The Law Society commented that duty solicitors should be relieved of filling out applications and the role of the duty solicitor should be clarified, with a consistent national role assigned. Submission 002 suggested "effective powers in writing to oversee the work of the duty solicitor and ensure the smooth working of the court system." Submission 043 also suggested clarifying the role, as it is currently misunderstood whilst submission 069 proposed a standardisation of procedure.

323. Submissions 039, 047, 054 suggested more education and training should be provided to duty solicitors. Submission 038 recommended more remuneration, on a graded system.

324. Some submissions had more specific suggestions regarding the day to day role for duty solicitors. Submission 008 proposed duty solicitors to do more of counsel's remands and routine appearances with a password protected website for messages for the day's duty solicitor. Submission 030 recommended that duty solicitor's should "try to have preliminary matters dealt with or as much information in front of the Court at first call, to assist with the efficiency of the Court, and prevent matters for clients dragging out over a long period of time." Submission 017 said that a duty solicitor should not be able to do their own work while on duty, while submission 070 suggested an improvement in court facilities would be beneficial for duty solicitors.

*Enhancement of supervisory structure for duty solicitors*

325. Both the Law Society submission and submission 070 suggested the supervisory system was currently working well, and the role did not need to be enhanced.

326. Submission 002 proposed enhancing the role of supervising duty solicitors, stating "the supervising duty solicitor must be given powers, including the ability to make a strictly confidential report to the law society and/or LSA, who can then discreetly follow up the action by talking to the concerned duty solicitor."

327. Submission 017 suggested supervising duty solicitors need to increase planning, supervising and structure. "Supervisors need to have a plan so all court rooms that need them have a DS and that all the lawyers are working where required. There needs to be some supervision of the way each day works and if a particular day continually has problems then there should a system to review the supervisor and replace them if necessary."

328. Submission 022 stated the supervisory structure should not be seen as an 'overlay' of the system, but ought to be designed as an integral part in it. Submission 040 said supervising solicitors should be a part time role "as realistically, too much duty work will tend to grind lawyers down and not be sufficiently varied in regard to the challenges that will occur."

## PART 6: MANAGE TAXPAYER FUNDS EFFECTIVELY

329. The discussion paper addressed a number of issues concerned with better managing legal aid expenditure to ensure that taxpayer funds be managed effectively in the legal aid system.

**Capping the legal aid budget**

330. Ongoing expenditure on legal aid affects other Government spending priorities. The discussion paper considered capping part or all of budget would give some certainty over expenditure, but would not address the main drivers of rising costs (criminal grants and administration costs).

331. The discussion paper asked whether there would be any advantages in capping the legal aid budget, whether there were any categories of legal aid expenditure that might be more amenable to capping, and how could any disadvantages from capping the budget be avoided or mitigated.

*No advantages in capping*

332. Fourteen submissions said that there would be no advantages in capping the legal aid budget. A number of these submissions simply commented that capping the legal aid budget would deny people access to justice.

333. Several submissions commented that it was not desirable or even possible to cap the legal aid budget, as the demand for legal aid was impacted by factors outside the legal aid system's control. Submission 007 said "the legal aid budget is vulnerable to population change, crime fluctuation and police arrest rates. If police arrest rates increase then legal aid expenses will inevitably increase. The rates should not be capped." Submission 079 stated that "the legal aid scheme is a response to issues of access to justice and the independence of advice and representation provided as part of that response. The extent (and cost) of the response is largely determined by demand. Steps which may result in reduced demand or in the threshold for eligibility would be preferable to capping."

334. A number of submissions expressed concern that capping the legal aid budget affects the quality of counsel available. Submission 038 said "the concern is that if capping were too low, there could be real issues as to access to justice, due to the unavailability of competent, motivated counsel." Submission 043 said "reductions will simply lower standards or drive lawyers away altogether." Submission 040 went further, stating that "any absolute cap would cause massive distortions, have the potential for New Zealand to breach its international agreements to provide legal assistance for the indigent and lower the standard of legal services to the poor."

*Advantages in capping*

335. Five submissions supported capping the legal aid budget. Submission 013 considered that it should be done with caution, stating "obviously the Legal Aid budget should be capped but it must not be an unreasonable capping. People accused of criminal offences must be properly represented." Two submissions said that there would only be fiscal advantages in capping the budget.

Submission 069 said a cap provides certainty in decision making and members from submission 077's organisation supported a cap on the legal aid budget, which is currently determined by police and court efficiency in criminal matters.

*Categories more amenable to capping*

336. A number of submissions reiterated their position against capping the legal aid budget, stating there were no categories that would be more amenable to capping.

337. Four submissions suggested categories that would be more amenable to capping. Submission 038, 071 and 086 suggested that summary matters would be suitable.

338. Submission 054 stated "civil legal aid is an easier target for capping given that criminal legal aid is usually seen as more important, but access to civil justice still needs to be guaranteed."

339. Four submissions considered that that repeat offenders of domestic violence should have their Legal Aid funding capped.

340. Three submissions stated that there was too much legal aid expenditure in the field of Waitangi Tribunal cases. Submission 051 commented that Waitangi proceedings could be capped so long as there were discussions with other treaty sector funding agencies to ensure that across the three agencies claimants would still have access to legal advice and settle their Treaty grievances.

*Avoiding disadvantages from capping the budget*

341. Seven of the thirteen submissions that responded to this question said that disadvantages from capping the budget could not be avoided. Submission 050 commented that "creating or allowing exceptions on a pre-determined or ad hoc basis undermines the whole purpose of capping and simply returns to the current merits based test." Submission 022 stated that no level of capping is acceptable, "as it is ultimately based on the premise that access to justice can be balanced against fiscal modalities, which is a premise that cannot possibly be maintained in a just and free society, where every individual should as much as possible be able to make informed decisions on his or her own behalf."

342. Three submissions made suggestions to avoid disadvantages that may occur as a result of capping the budget. Submission 038 suggested that the system must ensure accuracy in capping and make disbursements exempt from capping. Submission 054 commented that greater use of legal expense insurance and conditional fee arrangements might mitigate (but would not avoid) the disadvantages of capping. Submission 086 proposed that category 3 and 4 cases should not be included in capping, as "there is a danger if complex matters are bulk funded that the pressure to simply get the work done in the quickest (but not the best) way will be immense."

**Reducing the demand for criminal legal aid**

343. The discussion paper considered how policy and operational decisions in the criminal justice system have a significant effect on demand for legal aid. Submitters were asked for suggestions on how to reduce the demand for criminal legal aid.

344. Over half the submissions that responded to this question focused on government and/or police policies as having a significant impact on the demand for criminal legal aid. These submissions tended to suggest that changing Crown policy was the only way to reduce the demand for criminal legal aid. Submission 040 encapsulated the theme of these submissions, stating that "when successive governments pass more and more legislation, employ more police, then more and more persons will be arrested and appear in Court."

*Government policy*

345. Submission 038 commented that "if government social policies successfully addressed the underlying factors that lead to crime, there would be less need for criminal legal aid."

346. Submission 047 said "parliament is passing more and more laws where the onus is on the accused to provide an explanation or excuse. Akin to strict liability for the poor and those unable to articulate themselves. Inevitably the demand for legal aid will follow the increase of those going through the courts."

*Police practice*

347. Submission 031 stated "police should be held accountable for bringing spurious matters to court. We are often involved in this sort of matter and it is a certainty that we see only a few of such cases."

348. Several submissions proposed that the police alter their charging practices, for instance reclassifying minor offences as infringement offences. Submissions 071 and 073 suggested that the police were irresponsible in charging and should be more selective in deciding who they want to charge. They added that minor offences do not need to go through court.

*Early intervention and education*

349. A number of submissions considered that early intervention and education would reduce criminal behaviour with one submission observing "that every day hundreds of new young people enter the system and they are often on their own or supported by other unknowledgeable people and they are left to the mercy of incompetent defence lawyers." This viewpoint can be summed up in submission 010, which stated "the inflated legal aid bill for the taxpayer is a reflection of the out of control welfare system in New Zealand and the failure to address the causes of crime at an early age by having early intervention and decent education opportunities for young people."

**Administration of legal aid**

350. The discussion paper asserted that the cost of administration per grant is increasing, economies of scale are not being achieved which requires the legal aid system to find efficiencies and cost savings.

351. The vast majority of responses to this question considered the administration of legal aid to be onerous. The LSA was identified by a number of submissions as being a main driver of administrative inefficiency in the legal aid system. Many submissions supplied specific examples of their own experiences with the LSA.

352. The forms, delay and communication with the LSA were all criticised as inefficient, and in many cases, the administration was a strong deterrent to performing legal aid. Submission 018 described its frustrations with the administration involved in legal aid: "In addition to the excessive delays in processing applications, amendments and invoices, a significant amount of this firm's time each day is spent repeating and resending information that has previously been provided to and discussed with the Agency." One submission added that "Legal Services Agency staff who have no understanding of the law can cause inefficiency."

353. Several submissions considered the eligibility requirements had a direct impact on legal aid administration. Submission 038 said "the low threshold for legal aid eligibility may result in assignment of legal aid in respect to cases that could appropriately be dealt with by duty solicitors…A better-structured system could result in a more streamlined system with less cost." Submission 022 commented that administrative inefficiencies were caused by "paperwork generally and the 'eligibility' system, which essentially double-guesses outcomes which is not necessary. The fact that some 80% of applications are granted demonstrate the administrative inefficiencies in the system, and the importance of removing the up-front eligibility test."

354. Submission 015 supported the LSA stating "apart from the need for simplicity in the rules which govern or guide the Agency my feeling is the Agency itself has become a pretty efficient outfit over the last five years or so."

355. Two submissions related insufficient remuneration for providers to inefficiencies in administration.

*Suggestions for improving administrative efficiency*

356. There was a variety of suggestions from submitters for improving administrative efficiency. No central theme emerged, although a few submissions indicated that the current forms and processes could be simplified.

357. Submission 008 proposed that the system "allow firms to do legal aid work cases with any lawyers allowed to work on the files without there having to be a reassignment of lead provider. The individual provider model of the LSA affects the efficiency of firms."

358. Three submissions suggested a system to assist women and victims of domestic violence. Enable "lawyers to apply for funding to address a range of issues at

once. For women requiring protection, this would mean protection orders, parenting orders, custody, housing and any other related problems – such as tenancy, criminal charges etc - that have been caused by living in an abusive relationship."

359. Submission 027 commented that "things would be much simpler if a process was adopted where a single Grants Officer makes an initial decision, which could be reconsidered by a single Specialist, and/or reviewed by a 3-person LARP. This would be much more efficient, and more in line with the statutory scheme."

360. Submission 049 stated "cost savings in what is necessarily a demand-driven system can come from reduced bureaucracy, and from increased trust. In other respects, increasing budget restraint and cost-recovery do not easily fit into what must inevitably be a demand-driven system."

361. Two submissions considered that increased use of technology would improve efficiency. Submission 050 argued that "greater use could also be made of technology such as electronic completion and filing of provider forms which would allow them to be automatically directed to the appropriate agency office and staff member."

362. Submission 054 said that the LSA should be based on the English Legal Services Commission.

363. Submission 057 considered other agencies could assist handle the administration of various administrative requirements, for instance the IRD to manage the debt/repayment scheme and WINZ to identify eligibility and failure to treat different categories of legal aid applicants differently. Conversely, submission 084 believed "reducing the number of suppliers the Legal Services Agency has to deal with on an administrative level will enable the Legal Services Agency to reduce operating costs and devote resources to maintaining performance standards in the industry, thereby ensuring a higher level of quality."

**Other funding models**

364. The discussion paper considered other funding models for purchasing legal services. Two funding models mentioned were a fee for services and bulk funding. A fee for services model may reward lawyers for extending cases. Bulk funding was regarded as an alternative that could give more certainty over price, quantity, and standard (quality). Advantages for lawyers could include streamlined administration and reporting, and reduced compliance costs.

365. A number of submissions discussed bulk funding in relation to potential funding models.

366. Six submissions considered that bulk funding would not be appropriate. Submission 071 stated "bulk funding is likely to reduce the quality of service and place too much emphasis on cost." Submission 070 asserted that bulk funding is not favoured due to the inherently unpredictable nature of what any particular case involves and there is a risk bulk funding would commercialise legal aid services. Submissions 017 stated that "bulk funding has not worked anywhere, latest example Labtests in Auckland, before that schools and health."

367. Five submission supported bulk funding in varying degrees. Submission 050 considered "bulk funding has the potential to result in the provision of cost effective and efficient services for all involved." Submission 022 stated "the system should also provide for bulk funding options on the basis of quotes for standard services." Submission 024 supported bulk funding for criminal legal aid matters. Submission 086 stated "bulk funding should be considered for all summary matters and minor indictable matters."

368. Submission 040 proposed a number of improvements: "a Crown Prosecution Service, to oversee criminal prosecutions, and to advise police and solicitors instructed by the police (i.e. Crown Solicitors) as to the correct charges… mentoring and training, peer review, a reduction in police delays and overcharging would bring a significant saving and improvement to representation to the criminal justice system as a whole and to legal aid in particular."

369. Submission 038 commented that one possibility is to "consider bulk funding of certain defined geographical areas, such as Napier, or say the Auckland District Court. If funding is brought down to a local level, reasons for cost can be addressed." The submission also identified four potential funding models: a defence equivalent to the Crown solicitor, defence solicitor as the allocator of legal aid work, use of the PDS and a preferred supplier model.

370. Submission 008 suggested fixed fees for routine cases, for instance short defended summary cases and standard family cases.

371. Submission 077 proposed that Crown rates match legal aid rates, CLC capacity be extended, increase the use of judge led hearings and use drug and crime money to recover costs.

**Public Defence Service**

372. The discussion paper discussed the pilot of PDS as demonstrating, given the right conditions, that public service provision could result in more effective and efficient defence services. Cost savings were achieved with no difference in outcome for clients.

373. Submitters were asked what the benefits and challenges of the public provision of legal aid were and whether the PDS should be extended into other regions.

374. A number of submitters discussed both benefits and challenges of public provision of legal services, while a few focused solely on their negative experiences with the public provision.

*Benefits of public provision*

375. Submission 013 "The benefits are using our skills as professionals to help those who cannot afford to pay privately."

376. Submission 015 stated the "benefits are: access to justice by citizens no matter their financial position with ramifications in the wider society of that – training

ground for lawyers who would otherwise be restricted to private retainer work only."

377. Submission 017 commented that the "benefits are that if one PDS lawyer is not available they are able to pass the client on to another PDS lawyer."

378. Submission 050 described "the primary benefit is independent services provided on a not-for-profit model."

379. Three submissions commented public provision can reduce Government expenditure in other areas, stating that "having good legal aid services, that expertly represent women, will save vast amounts of money in downstream government costs."

380. Submission 072 considered the public provision of legal services could have far reaching benefits. "There is little point trying to meet the increasing costs of fees charged by barristers and solicitors and this is where a funded network of experienced salaried public defenders would standardise a high quality of defence. Such an approach would see the removal of the need for the Legal Services Agency and the Legal Aid Review Panel for criminal justice cases."

*Challenges of public provision*

381. Submission 009 noted that the very nature of the PDS being Crown owned was a challenge. "There is a glaring conflict of interest as a result of the Crown-owned-Entity status of PDS." This was supported by submission 070 which states "it is my opinion that a strong and independent defence bar is necessary in the administration of justice in any country...The appearance of the potential for improper influence is high when the state investigates alleged offences, prosecutes alleged offence and also defends the person accused of those offences."

382. Submission 057 considered that public provision of legal services could raise conflict of interest issues and was not beneficial for family matters. "Public provision of family and civil law is different to criminal law as there is the potential for conflicts to exist. If one body is handling a case for both sides there is a significant potential for conflicts to exist. Also, particularly with the emotive issues which can arise in family conflicts, it is not desirable for a person to not have choice about the practitioner they are assigned to."

383. Submission 047 opposed the wholesale public provision of legal aid saying "to totally replace the private bar with bulk funding or the PDS, or make the provision of services impossible because of administrative and payment problems, will be to seriously comprise our liberties."

384. Submission 040 regarded the private bar as having advantages that publicly provided legal services could not match. "The provision of legal aid services by private providers encourages a closer relationship between lawyers and their clients and leads to improved results through clearer instructions and improved communication channels." Submission 013 cited a further challenge as ensuring the quality of publicly provided counsel was as skilled as private providers.

385. Submission 022 considered that if the benefits of the PDS were shared across the system then the private bar would improve. “The only reason the PDS system can currently provide better services is that it integrates administrative and logistical services thus increasing the efficiency of lawyers’ workflows. This also creates the opportunity for supervision, mentoring and training of junior lawyers. If the entire system could be armoured with similar administrative and management systems it will start to operate on the same or better levels of efficiency.”

386. Several submissions cited funding public legal services as a challenge.

*PDS in other regions*

387. A number of submissions considered that if the current PDS was successful then there was no reason why it shouldn’t be expanded into other regions, most stating regions with a high case load. Submission 050 stated “I consider that it should be extended, particularly into areas where there is a shortage of providers and / or considerable demand for criminal legal aid services.”

388. Submission 013 supported expansion, commenting on the improved service it provides. “The lawyers in PDS have peer review; support staff; supervision; a team spirit; a sense of belonging to something very important and training. Roll it out across New Zealand. The comparison between PDS lawyers and the private bar on their feet in Court, is often embarrassing.”

389. Submission 034 supported expansion, but “only in areas that it can be conclusively shown that the private sector is not providing adequately and /or effectively.”

390. Submission 072 commented using the Public Defence Service as the hub of activity around criminal matters would build expertise within the defence and relationships with prosecutors that could enable oversight of the police diversion service, home detention and ultimately plea-bargaining to become an effective mechanism for ensuring an outcomes focus to our criminal justice system.

*Against expansion*

391. Submission 002 was against expansion, because “the system itself should first be fixed, after which market forces will determine where legal services can be more efficiently provided in a PDS model.” Submission 063 supported this, stating “instead of expanding the Public Defender Service at the expense of private practice, the review should examine funding private chambers, in the way it does group medical practices.”

392. Submission 006 considered that the PDS could not be introduced to Northland, for a number of reasons. “Given the administration base cost needed to service the 4 courts up here north of Whangarei, given the physical distances between each court, or whether the public defender service will come in with a bang, last for several years, reduce the incomes of lawyers to the extent that they leave the field of criminal law or law altogether, and having done this long term damage fade equally quickly into the sunset, it having killed off its competition, and leaving the clients without any real access to legal assistance here.”

393. Submission 040 was against expansion stating “the PDS is more expensive than the private bar, and if extended into smaller Courts (it currently is only in the 2 biggest in the country) will be significantly more expensive, as it will not be able to spread its fixed costs.”

394. Submission 070 raised concerns the PDS could drive out private practitioners. “An extension of the PDS also has the potential, in my view, to lead to the opinion within the profession that the Government will take over the provision of defence lawyers within the criminal justice system and there is therefore no need for any firms or barristers to also take part in the provision of defence services.”

395. Submission 079 has concerns the public defenders model is so overworked and arguably has insufficient funding.

**Complexity and prescription in the system**

396. The discussion paper examined the eligibility assessment process and the complexity around interests of justice and merits tests. It also considered prescriptive procedures for piloting innovative models of service delivery and for consultation.

397. Submitters were asked to suggest any for ways to simplify and standardise the process for determining eligibility, any ways to streamline piloting and consultation procedures in the Act and for any examples of unnecessary prescription that could be removed from the Act.

*Eligibility*

398. Several submitters suggest simplifying the process. Submission 038 commented “the complicated formulae for eligibility based on numbers of children, and the like, should be abolished in favour of formulae that don’t require a computer programme to decode.” Submission 040 proposed “the forms should be simplified, and aligned with the LSA computer inputs...The variety of charges and personal circumstances surrounding legal aid applicants makes a simplified process difficult.” Submission 050 supported this, suggesting that the system “determine eligibility in as few a number of questions as possible, while collecting only the minimum amount of personal information required to do this.”

399. Submission 056 added more detail, suggesting “a one page form setting out the client’s personal details, their valid community services card number and that they are facing a charge of 2 or more years imprisonment would streamline the system.”

400. Submission 022 considered that “all that needs to be done at the initial stage is information provision and any registration of caveats and charges. All of this must be made available online, so that a client (assisted by a practitioner or registrar if need be) can undertake this, and have funds allocated within a very short turn-around time, thereby removing much additional stress and uncertainty in the early phase of proceedings, where most efficiency gains can be made as well.”

*Streamline piloting and consultation procedures in the Act*

401. Only five submitters suggested ways to streamline piloting and consultation procedures in the Act.

402. Submission 022 considered that "the Act represents an unnecessary attempt at parliamentary and ministerial micro management of the justice system. Such restrictions must be removed and the ultimate responsibility should probably lie within the justice system, although that system does not currently have an appropriate anchor point for such activities."

403. Submission 038 suggested "legislation should be passed to remove the excessive restrictions on the LSA's ability to innovate appropriately."

404. Submission 040 stated "piloting and consultation needs to involve all stakeholders to a greater degree, particularly the large number of practitioners who provide legal aid services on behalf of the Agency."

405. Submission 050 considered "better and greater use of technology including e-mail or text message contact with practitioners and online response forms."

406. The Law Society did not agree that accountability measures and prescriptive requirements n respect of piloting methods of service delivery are unnecessary.

*Unnecessary prescription that could be removed from the Act.*

407. Five submissions commented on unnecessary prescription that could be removed from the Act. Submission 022 went further, saying the entire act should be reviewed as part of this process.

408. Submission 034 considered "there would be more merit and usefulness (not to mention cost effectiveness) in having direct representation on the Board of the LSA, much as there was several years ago when Law Centres had a representative to the old Legal Services Board."

409. Submission 043 commented that "the Agency policy that instructing solicitors must have a contract with the agency and that contract must be for the provision of services of the type they are instructing out. Given may solicitors will not do legal aid work the policy acts as a barrier to access to legal aid."

410. Submission 047 considered "parole cases should all be on the same form and not divided into civil and criminal as present, as all concern the liberty of the individual."

411. Submission 057 addressed "the requirement that an instructing solicitor is required to be an approved family legal aid provider – the reason for this requirement is not obvious, given the work is being briefed to a barrister."

**Operational inefficiencies and high cost cases**

412. The discussion paper identified inefficient practices will have a cumulative effect on legal aid expenditure, and a small number of cases use a significantly disproportionate amount of the legal aid budget.

413. Submitters were asked to identify operational inefficiencies in the Act and for suggestions for how the expense involved with high-cost cases could be managed down.

*Operational inefficiency*

414. The LSA was identified by a number of submissions as contributing to operational inefficiency.

415. Submission 023 commented about "conflicting decisions within LSA about what the assignment policy actually means, and a refusal to explore reasonable solutions on an interim basis. So the issues are going to LARP and/or the High Court; eventually they will be resolved; there will then be a great deal of backdated payments due."

416. Submission 027 stated "the Agency has created its own unnecessarily complex bureaucracy, with Grants Officers and Specialist Advisors. The latter have subsumed any real decision-making by the Grants Officer. This in my opinion causes significant additional costs, as well as causing the current slowness of the decision-making, in turn causing practitioners to consider twice whether to apply for legal aid, or effectively resign as providers."

417. Submission 040 added "the Legal Services Agency appears to operate a very top heavy administration system with a rapidly increasing number of administrative staff. An extremely large volume of written correspondence is sent by the Agency and copied to the aided person in every instance."

418. Submission 074 suggested that "the fact that car boot lawyers have arisen is a complete reflection on the incompetence of the Legal Services Agency and their advisers. There are no proper options being put up to encourage quality private firms to enter the legal services market."

419. Submission 078 sought to "ensure that the processes within the Agency are rectified at the outset. They need to be simple, straightforward, transparent and prompt. if the 'front end' of the entire Legal Aid system remains flawed, then the model will always be flawed, and no end of fine tuning will eliminate the defect."

420. Submission 082 outlined unrealistic listing criteria for legal aid lawyers specialising in refugee work; namely 12 month post admission legal experience in refugee matters; participation and completion of at least 5 cases at Refugee Status Branch Level; Representation of clients in at least three Refugee Status Appeals Authority proceedings.

*High cost cases*

421. There was a variety of options proposed to reduce the expenditure on high cost cases.

422. Submission 002 recommended "there should be capping of fees for high cost cases because it is these type of cases that increases the overall cost of legal aid and not the usual everyday cases."

423. Submission 017 identified "one of the main drawers on tax payer funding that is not being looked at in this document is the Crown Prosecutors. Maybe there needs to be a more equal and more affordable Crown service." Submission 050 expressed a similar view, suggesting "prosecuting agencies should be required to provide more information at the start of a case about its complexity...This would in turn allow practitioners to better estimate in advance the likely cost of a case and work to reduce the costs through more efficient preparation."

424. Submission 018, commenting on historic abuse cases, commented that "the only realistic way of managing the cost of the historic abuse cases downward, while still providing access to justice, would be for the Government to agree to deal with them out of court, as Cooper Legal has been suggesting for years. The Crown could also be encouraged to limit the legal and factual issues it disputes, so that we end up debating the legal issues and the more contentious facts only."

425. Submission 022 argued for "openness and transparency, better case management and administrative systems."

426. Submission 037 recommended "some discrete research involving these cases to identify the potential to reduce costs through more effective use of technology, legislative changes to the 'rules of evidence' and funding for forensic and other experts."

427. Submission 062 commented that high cost cases were unavoidable, and simply a reality of legal system.

428. Submission 072 proposed "recovery of legal aid following court proceedings for some high profile cases where the end results in the recipient receiving huge payments for writing books, giving news articles, etc."