

Applying to be a legal aid provider

Selection Committee guidance

Ministry of Justice

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MINISTRY OF
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Tabu o te Ture

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Introduction

When an applicant applies to provide legal aid services, the Secretary for Justice (Secretary) considers their application to determine whether they meet the criteria for approval set out in the [Legal Services Act 2011 \(Act\)](#) and the [Legal Services \(Quality Assurance\) Regulations 2011 \(Regulations\)](#).

The purpose of this document is to provide guidelines for Selection Committee members about the Secretary’s interpretation of the Act and Regulations.

The Selection Committee

The purpose of the Selection Committee (the Committee) is to assess applications for approval to provide legal aid services or specified legal services and advise the Secretary of the suitability of those applicants.¹

Roles and responsibilities

Selection Committee member
A member of the legal profession who has been appointed by the Secretary because of their experience in a particular area of law. The members provide a recommendation to the Secretary about the applicant’s suitability for approval after considering the approval requirements in the Regulations and this guidance.



Chairperson
A Ministry employee who facilitates the Committee’s discussion of applications and ensures the recommendations of the Committee are aligned with the requirements in the Regulations and guidance.



Legal Aid Providers
An Advisor from the Legal Aid Providers team attends the Committee meeting to record the Committee’s recommendation. The Advisor does not contribute to the Committee’s recommendation but is available to answer questions about the approval requirements. An Administrator from the team collates the applications, organises the meeting, and communicates the Secretary’s decision to the applicant.



¹ Section 78 of the Act.

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Selection Committee meeting process



Meeting invitation

At least one month in advance the members receive an email invitation to a Committee.



Meeting scheduled

Members accept or decline the invitation. Legal Aid Providers finds replacements for declined members and confirms the meeting.



Before the meeting

Members are sent an updated email invitation outlining the applications for. Members advise Legal Aid Providers of any conflicts of interest within 24 hours of receiving the update. Members access and review the applications.



At the Committee meeting

Members attend the meeting on Microsoft Teams. They discuss each application and reach a decision about what the recommendation to the Secretary will be.



After the meeting

Members send an invoice to Transactional Services (accounts.payable@justice.govt.nz). Legal Aid Providers writes up the recommendation and sends it to the Chair for confirmation. Legal Aid Providers informs members if any follow-up work is required.

Relevant legislation



The Ministry expects members to be familiar with the [Legal Services Act 2011](#) and the [Legal Services \(Quality Assurance\) Regulations 2011](#).

The relevant provisions are identified below.

Legal Services Act 2011

Part 3

Administration of legal services system Subpart 2 – Quality assurance system for providers

Section 76: Application for approval to provide legal aid services or specific legal services

Section 77: Approval

Section 78: Selection committees

Section 80: Further provisions relating to committees in Schedule 3

Section 82: Review of decisions of Secretary regarding approvals

Section 83: Judicial review

Schedule 3: Part 2: Further provisions that apply to performance review committee or any selection committee

Legal Services (Quality Assurance) Regulations 2011

Part 1

Applications for approval to provide legal aid services

Reg 4:	Criteria for approval
Reg 5:	Professional entry requirements
Reg 6:	Experience and competent requirements
Reg 6A:	General Waiver of requirement for recent experience
Reg 6B:	Waiver of experience and competence requirements for specified purpose
Reg 7:	Where applicant applying for approval other than as lead provider
Reg 9:	Service delivery systems
Reg 9A:	Work samples
Reg 9B:	References
Reg 9C:	Applicant must be fit and proper person

Part 2 – Selection Committees

Part 4 – Review Authority

Schedule: Experience and competence requirements

Experience and competence criteria

The Secretary is responsible for assessing whether an applicant applying for approval to provide legal aid services or specified legal services is sufficiently experienced and competent to provide those services.² In deciding whether an applicant is sufficiently experienced and competent, the Secretary must:³

- apply the minimum experience requirements in the Schedule (summarised below)
- consider the applicant's experience as a lawyer, and
- be satisfied that the applicant has the appropriate level of knowledge and skill to provide the relevant services.

The Secretary usually makes their decision after receiving a recommendation from the Committee. Both the Committee and the Secretary will consider the applicant's case examples, references and any other information provided.

The table on pages 6-8 sets out the experience and competence criteria.

The table is split into four columns, which show:

- the minimum period of recent experience
- the minimum number of cases or proceedings
- the indicative number of cases or proceedings
- any other specific approval requirements.

Minimum requirements for approval

The first, second and fourth columns outline the requirements listed in the Schedule to the Regulations for each area of law.

Please note that those columns outline the **minimum** requirements for approval.⁴ They are largely quantitative requirements. After the Secretary is satisfied that the minimum requirements are met, they must separately undertake a qualitative assessment of the applicant's knowledge and skill and be satisfied that, overall, the applicant is experienced and competent to provide the relevant services.

Minimum period of recent experience

The first column of the table lists the minimum period of experience that the applicant must have to be approved in each area of law. That experience must be from the previous five years unless the recency requirement is waived (see page 9).

² Reg 6(1) Regulations

³ Reg 6(2) Regulations

⁴ *Z v Secretary for Justice* [2022] NZRA 004 at [53].

The applicant must have gained the relevant experience while working as a lawyer or a Police prosecutor.⁵ Experience as a law clerk and other non-lawyer roles cannot be used to meet the minimum experience requirement.⁶

The applicant's experience must be in the area of law they are applying for. Experience in a different area of law cannot be used to meet the minimum experience requirement.

Criminal approvals differ from other approvals in that there are four approval levels (PAL 1-4), and each level requires a period of experience at the preceding level.⁷ For example, an applicant for criminal PAL 2 must have spent at least 24 months working on criminal PAL1 proceedings. In that case, the applicant does not need to have held PAL1 approval for that period. The applicant only has to have worked on criminal cases of that level for the required period, whether that was in a supervised, lead or private capacity.

Substantial and active involvement

For most approvals, the Schedule to the Regulations require the applicant to show 'substantial and active involvement' in a minimum number of cases, proceedings, trials, or hearings.

Substantial and active involvement means making a significant contribution to most or all key parts of the proceeding.

Where the Regulations require substantial and active involvement in 'hearings' or 'trials', the relevant case examples must specifically demonstrate the applicant's involvement in hearings or trials. Where involvement in a number of 'cases' or 'proceedings' is required, the applicant's case examples do not necessarily need to have proceeded to trial or a defended hearing.⁸ For example, an applicant for criminal PAL3 approval could have been involved in a criminal proceeding that resolved by guilty plea before trial, but where their involvement in pre-trial matters was such that it could be described as substantial and active.

The substantial and active involvement requirement is largely a quantitative assessment. The requirement is satisfied if the applicant can show their substantial and active involvement in the required number of proceedings, trials, or hearings. Whether the applicant's case examples and references show that, overall, they have sufficient knowledge and skill to be approved, is a separate question.

Appropriate level of knowledge and skill

If an applicant meets the minimum approval requirements, the Secretary must then undertake a qualitative assessment of whether they have the appropriate level of knowledge and skill to provide the relevant services.

Based on all of the information provided, the Secretary must be satisfied that the applicant is ready to undertake legal aid work in the relevant area of law, and that they can competently run a case from start to finish by themselves.⁹

⁵ Many police prosecutors have not been admitted to the bar and/or do not have a practising certificate. However, their experience is equivalent to that of a practising criminal lawyer.

⁶ See *W v Secretary for Justice* [2023] NZRA 003, which held that experience as a law clerk did not count as relevant experience.

⁷ For more information about the criminal PAL levels please refer to Appendix 1 on page 20.

⁸ See *Z v Secretary for Justice* [2022] NZRA 004 at [58], and [63] to [65].

⁹ *Z v Secretary for Justice* [2022] NZRA 004 at [54] and [76].

The Secretary may not need to see evidence of the applicant undertaking a particular task or proceeding to be satisfied that they are competent to undertake that work. Similarly, the applicant does not necessarily need to show involvement in every part of an area of law to be approved.

Indicative number of case or proceedings

The more relevant experience an applicant has, the more likely it is that the Secretary will be satisfied they have the appropriate level of knowledge and skill. The third column in the table below indicates the level at which the Secretary is very likely to be satisfied that an applicant has the necessary practical experience to be approved.

The indicative column is only a guide for those considering an application for approval. The applicant does not need to demonstrate involvement in the indicated number of cases to be approved.

The Committee must consider the approval requirements set out in the Regulations. The indicative number **should not** be used as part of the Committee’s assessment.

Experience and competence criteria

Area of law	Minimum period of recent experience	Minimum number of cases or proceedings	Indicative number of cases or proceedings	Other requirements
Criminal approval level (PAL) 1	At least 12 months in criminal law practice	Appeared as counsel with substantial and active involvement in at least 3 trials	Appeared as counsel with substantial and active involvement in 5 trials that have progressed to at least the close of the prosecution case	-
Criminal PAL 2	At least 24 months on Criminal PAL 1 proceedings	Appeared as counsel with substantial and active involvement in at least 3 trials that are Crown prosecutions	Appeared as counsel with substantial and active involvement in 5 Crown prosecution trials that have progressed to at least the close of the Crown case	-
Criminal PAL 3	At least 36 months on Criminal PAL 2 proceedings	Appeared as counsel with substantial and active involvement in at least 4 Criminal PAL 3 or 4 proceedings where at least 1 charge carried a maximum penalty of 10 years’ imprisonment or more or the defendant is likely to face cumulative sentences of more than 10 years’ imprisonment	Appeared as counsel with substantial and active involvement in 10 Criminal PAL 3 or 4 proceedings that have progressed to at least the close of the Crown case, including at least 3 proceedings where at least 1 charge was for a sexual offence carrying a maximum penalty of 14 years’ imprisonment or more	-
Criminal PAL 4	At least 24 months on Criminal PAL 3 proceedings	Appeared as counsel with substantial and active involvement in at least 4 Criminal PAL 3 or 4 proceedings where at least 1 of those proceedings is a PAL 4 proceeding	Appeared as counsel with substantial and active involvement in 10 Criminal PAL 3 or 4 proceedings that progressed to at least the close of the Crown case where at least: <ul style="list-style-type: none"> - 3 were Criminal PAL 4 proceedings, and 1 case involved a culpable homicide charge. 	-

Area of law	Minimum period of recent experience	Minimum number of cases or proceedings	Indicative number of cases or proceedings	Other requirements
Duty Lawyer	At least 6 months in criminal law practice	Appeared as counsel with substantial and active involvement in: <ul style="list-style-type: none"> - 1 pre-trial hearing; - 1 hearing at which an opposed bail application was made; - 1 trial conducted by or on behalf of Police before a Judge alone; and - 1 sentencing hearing at which a plea of mitigation was made 	Appeared as counsel with substantial and active involvement in 10 criminal proceedings	Successfully completed duty lawyer training course (unless waived by Secretary)
Police Detention Legal Assistance	At least 24 months working on Criminal PAL 1 proceedings	Appeared as counsel with substantial and active involvement in at least 3 trials that are Crown prosecutions	Appeared as counsel with substantial and active involvement in 5 Crown prosecution trials that have progressed to at least the close of the Crown case	-
Parole Board	N/A	N/A	At least 12 months experience at Criminal PAL 1 Appeared as counsel with substantial and active involvement in 10 criminal proceedings, including at least 3 sentencing hearings where a plea of mitigation was made	-
Family/ Family Legal Advice Service	At least 18 months working on family cases	Substantial and active involvement in at least 5 family cases of various types, including interlocutory hearings, mediation conferences, judicial conferences and proceedings where witnesses gave oral evidence	Substantial and active involvement in 10 family cases of various types	-
Civil	At least 18 months working on civil cases	Appeared as counsel with substantial and active involvement in at least 3 civil proceedings Assisted in the preparation of at least 2 other civil proceedings	Appeared as counsel with substantial and active involvement in at least 5 civil proceedings, including at least 2 where the applicant lead evidence from, or cross-examined, witnesses. These may be interlocutory, procedural or case management hearings as well as the substantive hearing Assisted in the preparation of at least 4 other civil proceedings.	-
Mental Health	At least 24 months working on family or criminal law cases	Observed at least 3 completed mental health cases	Substantial and active involvement in at least 15 family or criminal law cases and the observation of at least 3 completed mental health cases.	-

Area of law	Minimum period of recent experience	Minimum number of cases or proceedings	Indicative number of cases or proceedings	Other requirements
Employment Advocate	N/A	N/A	Had substantial and active involvement in 5 employment matters such as: <ul style="list-style-type: none"> - mediation - dispute resolution - HR issues 	-
Court of Appeal and Supreme Court	At least 5 years in litigation work	Substantial and active involvement in 5 appeal proceedings of various types (including, without limitation, pre-trial hearings, Solicitor-General's appeal, and appeal by way of case stated) in the High Court or another higher court	Substantial and active involvement in 5 appeal proceedings of various types in the High Court or another higher court, at least 3 of which have been heard in the Court of Appeal or Supreme Court	-
Refugees and Protected Persons	At least 18 months working on refugee and protected person cases	Substantial and active involvement in at least 5 cases at the Refugee Status Branch level Actively participated in at least 1 proceeding before the Immigration and Protection Tribunal, Deportation Review Tribunal, Refugee Status Appeals Authority, or Removal Review Authority	Substantial and active involvement in at least 10 cases at the Refugee Status Branch level Actively participated in 2 proceedings before any of the following tribunals/authorities: Immigration and Protection Tribunal, Deportation Review Tribunal, Refugee Status Appeals Authority, or Removal Review Authority	-
Waitangi Tribunal	At least 18 months working on Waitangi Tribunal cases	Substantial and active involvement in at least 3 substantial Waitangi Tribunal proceedings	Substantial and active involvement in 5 substantial Waitangi Tribunal proceedings	Have sound knowledge of te Tiriti o Waitangi and Waitangi Tribunal jurisprudence Have an understanding of tikanga Māori and basic ability in te reo Māori
Māori Land Court and Māori Appellate Court	At least 18 months working on Māori Land Court cases	Substantial and active involvement in at least 3 substantial Māori Land Court proceedings	Substantial and active involvement in 5 substantial Māori Land Court proceedings	Have sound knowledge of Te Tiriti o Waitangi and Māori land law Have an understanding of tikanga Māori and basic ability in te reo Māori

Waiver of requirement that experience be recent

Column one above sets out the minimum period of recent experience for each approval. “Recent experience” is defined in the Regulations as experience gained in the last five years.¹⁰

The Secretary can consider experience that is more than five years old if they are satisfied that the applicant meets the experience and competence requirements in all other respects.¹¹

If the applicant’s experience is not recent, they should set out their previous experience and any other relevant information (such as recent courses completed) in the *Additional information* section of the form.

Please note that the last-five-years requirement only applies to the minimum period of experience for each approval. It does not apply to any other requirements, such as demonstrating substantial and active involvement in cases. This means that the applicant’s case examples and supporting documents can be more than five years old (although recent examples are preferred).

When a waiver is requested, the Committee’s recommendation needs to explain why they have recommended to waive/not waive the recency requirement.

Limited approval

If an applicant wants to act in a specific case (or a specific type of proceeding within an area of law) and they cannot meet the minimum requirements for lead approval set out on pages 6-8, they can apply for a waiver of those requirements if the relevant case:¹²

- **relates to another proceeding** in which they are, or have, acted
- is a proceeding, for which they have **specialist skills or experience**, or
- is taking place in a region with a **shortage of existing providers** with the necessary skills and experience.

The Selection Committee cannot recommend waiving the lead approval requirements unless the applicant has applied for limited approval and at least one of the three waiver grounds applies. The Committee must explain why they recommend waiving/not waiving the lead approval requirements, and the factors that have informed that decision

In deciding whether to recommend granting a limited approval, the Committee must also consider:¹³

- the extent to which the applicant meets/does not meet the lead approval requirements
- whether the applicant is suitable to act in the proceeding, and whether it would be more efficient for the applicant to act than another lawyer, and
- whether the applicant has the level of knowledge and skill required to act.

Overall, the Committee must always be satisfied that the applicant is sufficiently experienced and competent to act in the relevant proceeding(s).

¹⁰ Reg 3 of the Regulations.

¹¹ Reg 6A Legal Services (Quality Assurance) Regulations 2011.

¹² Reg 6B(1) and (2) of the Regulations.

¹³ Reg 6B(3) of the Regulations.

Approval requirements not specified in the Regulations

Parole Board approval

Parole Board approval is granted for proceedings before the New Zealand Parole Board. Additional information about the parole matters covered by Legal Aid is available on page 25 of the [Grants Handbook](#).

To be eligible for Parole Board approval, the applicant needs to:

- have at least 12 months' experience at criminal PAL 1
- have appeared as counsel with substantial and active involvement in 10 criminal cases, including at least 3 sentencing hearings where a plea of mitigation was made
- demonstrate the relevant skills and knowledge needed to appear as counsel before the Parole Board, including for a release hearing, postponement order, recall application, or an order that the offender not be released.

If the applicant already has criminal approval at PAL 2 or higher, they can accept parole assignments and do not need a separate Parole Board approval.

Employment Advocate approval

Employment advocate approval is available for non-lawyer employment advocates. Lawyers who want to represent legally aided clients in employment matters need civil legal aid approval.

Advocates applying for approval must be members of the Employment Law Institute of New Zealand (ELINZ). ELINZ members are bound by the ELINZ Code of Conduct.

Applicants for employment advocate approval also need to demonstrate experience dealing with mediation, dispute resolution and/or human resources issues. The application should include the following information in the *Additional information* section:

- the applicant's qualifications
- a brief employment history, including the applicant's experience in mediation, dispute resolution and/or human resources issues
- any relevant courses or training the applicant has completed.

Recommendations



Knowledge of the applicant and conflicts of interest

The Committee must assess applications on the information provided in the application form and the Committee's knowledge of the applicant.¹⁴ The Committee members can raise their subjective knowledge of the applicant, but their recommendation must be based on an objective assessment of:

- whether the applicant meets the experience and competence requirements listed in the Schedule to the Regulations (and, where applicable, whether a waiver under reg 6A or reg 6B is appropriate)
- whether they are satisfied that the applicant has the appropriate level of general experience, and knowledge and skill, to provide the relevant services.

Committee members must be wary of situations where they have a conflict of interest. Situations where the Secretary considers that a Committee member or chairperson may be conflicted include where:

- they have a close relationship with the applicant, for example, romantic partner, close relative, friend, or work colleague
- they may be perceived as biased, for example, because the applicant has laid a complaint against the member in the past.

Committee members must declare any conflicts of interest to the chairperson and the Legal Aid Providers team as soon as possible. They must also step aside if the chairperson considers that the conflict is likely to affect the member's impartiality.

The chairperson must also declare any conflicts of interest to the Secretary so that alternative arrangements can be made.

Recommendation requirements

The Committee's options

When the Committee is assessing an application, the Committee can recommend:

- **Approving** the application
- **Approving with a condition**
- **Declining** the application.

The Committee's recommendation must be to approve or decline the application. The Committee cannot request further information from the applicant before issuing their recommendation.

If additional information is required, the Committee must decline the application and provide detailed 'next steps' for the applicant. The next steps can include requests for additional information from the applicant, which will be considered by the next Committee.

¹⁴ Reg 11(2)(a) of the Regulations.

Consistency with the Regulations

The Committee's recommendations **must** be consistent with the approval requirements set out in the Regulations. The Secretary cannot adopt a recommendation that is inconsistent with the minimum approval requirements.

The Committee's recommendation must include:

- specific reasons why the applicant did/did not meet the **minimum approval requirements**
- specific reasons why the applicant demonstrated/did not demonstrate sufficient general experience, and **knowledge and skill** for approval
- reasons why a **waiver** of the minimum approval criteria was/was not justified (applications for limited approval only)
- what **conditions** are recommended (if any) and why the condition was required
- specific **next steps** for the applicant if their application is declined.

General experience

In the *Information about you and your practice* section of the form, applicants are asked about their experience in the areas of law relevant to the approvals they are applying for.

The purpose of this section is to give the Selection Committee and Secretary information about how frequently the applicant undertakes work in those areas of law, and the range of proceedings in which they have experience.

At question 22, the applicant is asked to state how many years they have practised in each area of law. This is relevant to the minimum period of experience requirement.

At question 23, the applicant is asked to include the approximate number of cases, in that area of law, in which they have made a significant contribution to key parts of the case.

For the purposes of question 23:

- **'Senior'** means that the applicant acted as the lead lawyer during the case (whether or not their work was supervised)
- **'Junior'** means that the applicant did not act as the lead lawyer during the case.

Case examples

The included case examples are the main source of information for the Committee when they are assessing the applicant's experience and competence.

Each case example should include a coversheet setting out the applicant's involvement in the case. The applicant should list their supporting documents in the index at the bottom of the coversheet along with a brief description of the document's relevance.

Applicants are not expected to provide case examples for every type of proceeding within the relevant area of law. However, they are expected to provide case examples from a variety of proceedings in the area(s) of law they are applying for.

If the applicant is applying for a limited approval and cannot provide the required number of case examples, the applicant will provide as many as they can (if any).

The following table sets out the minimum number of case examples required for each approval.

Area of law	Minimum number of case examples
Criminal PAL 1	3 trials
Criminal PAL 2	3 trials that are Crown prosecutions
Criminal PAL 3	4 PAL 3 or 4 proceedings
Criminal PAL 4	4 PAL 3 or 4 proceedings, at least 1 being PAL 4
Duty Lawyer	4 (or fewer) showing 1 Judge-alone trial, 1 opposed bail hearing, 1 pre-trial hearing and 1 sentencing hearing.
Police Detention Legal Assistance	3 trials that are Crown prosecutions
Family/Family Legal Advice Service	5 of various types, including hearings where witnesses gave oral evidence
Civil	5 including substantive, interlocutory and procedural hearings
Mental Health	3 observations of completed mental health cases
Court of Appeal and Supreme Court	5 appeals in the High Court or higher
Refugee and Protected Persons	5, with at least 1 being from the Immigration and Protection Tribunal
Waitangi Tribunal	3 substantial Waitangi Tribunal proceedings
Māori Land Court and Māori Appellate Court	3 substantial Māori Land Court Proceedings

Confidentiality and application content

The Committee members and Ministry staff involved in the approval process are bound by strict confidentiality requirements. However, if the applicant's case examples include the names or identifying information of children, vulnerable people or those with name suppression, applicants are encouraged to redact that information. Applicants are also encouraged to use discretion when including photographic material.

References

The applicant must provide at least two references from lawyers who have observed their work in the relevant area of law.

References must be provided for all applications, including applications for limited approval (unless the Secretary waives that requirement).

Independent referees are preferred where possible. References from relatives will not be accepted by the Secretary.

Referees do not need to be approved legal aid providers but must have experience equivalent to the approval the applicant is seeking. The Committee can contact the applicant's referees to verify the information they have provided.

It is expected that the applicant's referees will have observed them undertaking a substantial and active role in at least one relevant case, and can comment on their experience in most of the following tasks:

- providing advice to clients
- undertaking preparation work
- representing clients in court
- producing documents and correspondence
- communicating with Judges, other lawyers, experts and court staff
- working with people from different cultural backgrounds.

If the applicant is applying for more than one approval, they need to provide at least one reference for each area (the same person can complete a referee declaration for multiple areas of law).

The fit and proper person requirement

Questions 18-21 of the application form asks the applicant to provide information about their convictions and any upheld/substantiated professional complaints.

The bar for declining an application on fitness grounds is high. However, the Committee can include any concerns about the applicant's fitness to be a legal aid provider in the recommendation. The Committee must always go on to consider whether the applicant has met the relevant approval requirements.

When the Secretary is making a decision about the applicant's fitness, they must be satisfied that:¹⁵

- any convictions would not adversely affect the applicant's relationship with a legally-aided person or the integrity of the legal services system
- any upheld complaints would not adversely affect the integrity of the legal services system or breach any practice standard.

¹⁵ Reg 9C(3) of the Regulations.

Additional information

The application form includes an *Additional information* section at question 27 for any relevant information not captured elsewhere in the form. This may be information that the applicant is required to provide or additional information they want the Committee to consider.

Further information is required to establish eligibility for certain approvals under the Regulations, including:

- **Duty Lawyer approval** – confirmation that the applicant has successfully completed the duty lawyer training programme
- **Waitangi Tribunal approval** – information about the applicant’s knowledge of te Tiriti o Waitangi and Waitangi Tribunal jurisprudence, their understanding of tikanga Māori and ability in te reo Māori.
- **Māori Land Court approval** – information about the applicant’s knowledge of te Tiriti o Waitangi and Māori land law, their understanding of tikanga Māori and ability in te reo Māori.
- **Employment advocate approval** – information required to assess the employment advocate criteria.

Applicants may also provide additional information where:

- **Their experience is not recent** – they may explain why their relevant experience is not from the last five years and why the Secretary should waive the recency requirement under reg 6A of the Regulations
- **They are applying for a limited approval** – the applicant may explain why the Secretary should waive one or more of the lead approval requirements under reg 6B of the Regulations
- **They want a conditional approval** – the applicant may only want approval for a specific type of proceeding within an area of law, for example, civil approval restricted to employment matters
- **They have attended relevant courses** – they applicant may set out relevant professional development or courses they have completed that the Committee can take into consideration when assessing their general experience, and knowledge and skill
- **They have relevant qualifications** – the applicant may provide additional information about journal articles, academic papers or qualifications relevant to the approval.

Conditions

The Secretary can impose conditions on an applicant's approval under s 77(2) of the Act.¹⁶

If the applicant meets the approval requirements but the Committee has specific concerns about their experience, the Committee should consider whether the approval can be granted with a condition.

If the Committee recommends a condition, the recommendation must explain why the condition is required, and the steps the applicant needs to take to discharge it.

Please note that conditions cannot be used to approve an application that does not satisfy the minimum criteria. For example, a lawyer seeking lead family approval must have 18 months' recent experience working on family cases. If the applicant only has 12 months' experience, their application cannot be approved with a condition.

The Committee can recommend four kinds of conditions.



Reg 10(a)

Supervision

The Secretary can impose a condition requiring the applicant to be supervised. The supervision condition may apply to a particular kind of activity, a number of proceedings/appearances or for a specific period of time.



Reg 10(b)

Mentoring

The Secretary can require the applicant to be mentored for a specified period. The mentor must be available to provide support and guidance to the applicant but does not need to supervise their work.



Reg 10(c)

Training

The Secretary can require an applicant to undergo a specific type of training, for example, training in cross-examination. However, the Secretary cannot require the applicant to complete a specific course.



Reg 10(d)

Restricted to a type of proceedings

The Secretary can restrict an applicant's approval to a specific type of proceeding within an area of law. For example, a lead civil approval restricted to employment matters.



Reg 10(e)

Restricted to a specific proceeding

The Secretary can restrict an applicant's approval to a specific proceeding. This is usually done when the applicant is seeking a limited approval for a specific case.

¹⁶ The specific conditions are set out in reg 10 of the Regulations.

Verifying information in the application

The Committee can verify information included in the application.¹⁷ If this is required, at the Committee meeting the members will nominate one member to undertake the verification. The Committee will agree:

- who the nominated member will contact to verify the information
- what information needs to be verified to inform the recommendation
- what the recommendation will be. For example, if the information is not verified the Committee will recommend to decline, and if the information is verified, the Committee will recommend to approve/approve with a condition.

The nominated member will email the chairperson confirming the outcome, copying in the other Committee members and the LAP advisor.

Please note that the Committee can only verify specifics within the existing application. The Committee cannot ask the applicant to provide new information.

Internal review

The Secretary's decision is not final until 20 working days from the date of the decision letter. During that period the applicant can apply for an internal review if they disagree with any part of the Secretary's decision.

If the applicant chooses to apply for an internal review, they will submit an internal review form and any additional information that supports their application. The original application, the decision letter, internal review form, and any new information, will be put to a different Selection Committee who will provide a new recommendation to the Secretary.

After the internal review has been considered, the Secretary will make a final decision.

The Review Authority

The Review Authority is an independent body with the power to review the Secretary's approval decisions. The applicant can ask the Authority to review the Secretary's decision within 20 working days of the decision date.¹⁸ The applicant does not have to pursue the internal review process before applying to the Authority.

The Authority must consider the application for review and any submissions made by the applicant and the Secretary. While it is the Secretary's decision that is subject to review, the Committee's recommendation may be provided to the Authority.

The Authority can confirm, modify, or reverse the Secretary's decision. The decision of the Authority is final and there is no right of appeal.

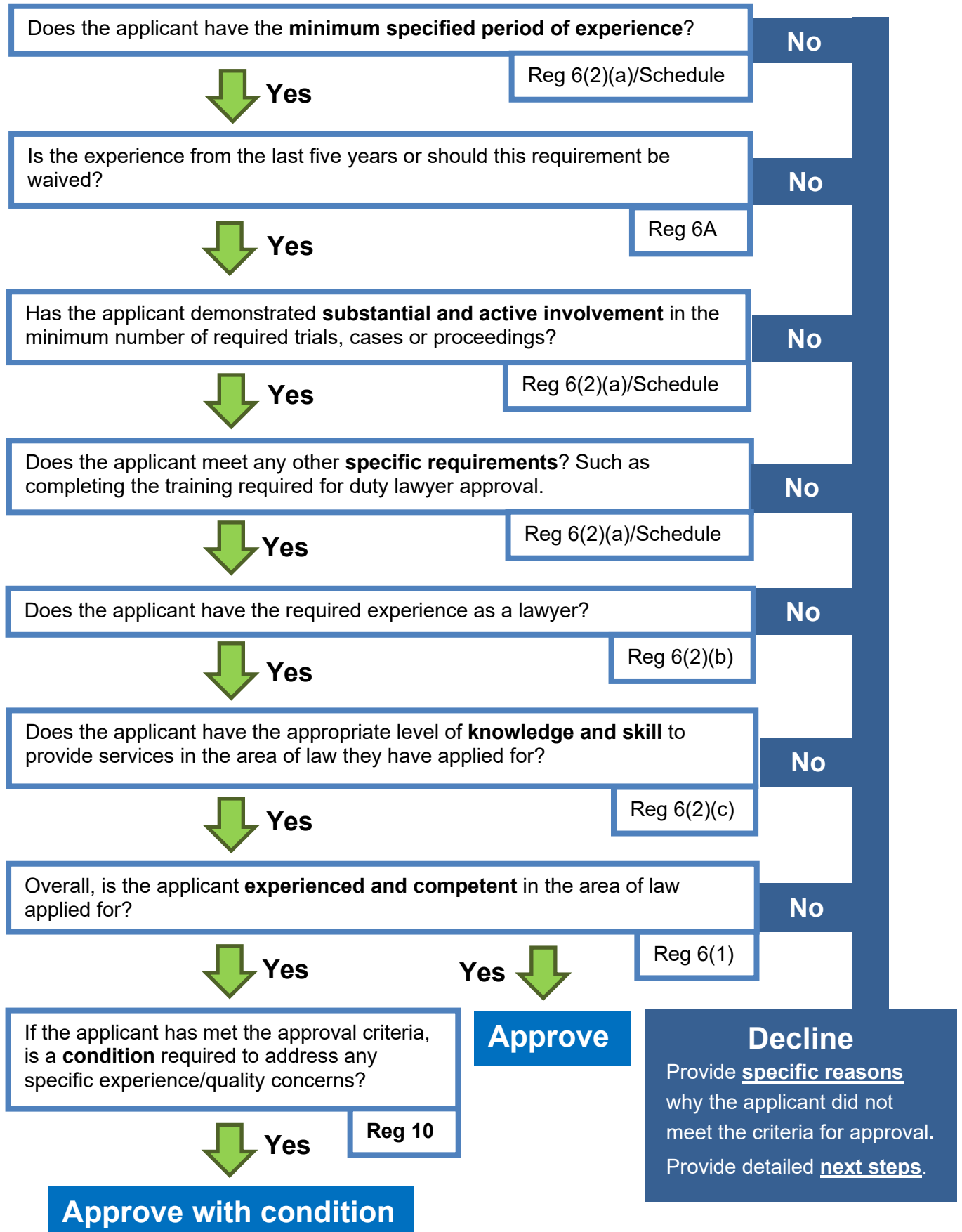
Additional information about the Authority and its decisions can be found [here](#).

¹⁷ Reg 11(2)(b) of the Regulations.

¹⁸ Section 82(2) of the Act. However, s 82(3) of the Act allows an applicant three months to apply to the Review Authority if exceptional circumstances prevent them applying within 20 working days.

Decision-making maps


Lead Approval Applications



Limited Approval Applications

No  Use lead approval process

Has the applicant **applied for** a limited approval for a case, or a type of proceeding?

Yes  **Please note** that 'type of proceeding' means a specific part of an area of law. The minimum approval requirements cannot be waived for a whole area of law, eg. family.

Which of the **three limited waiver grounds** applies?

Does the relevant case **relate to another case** in which the applicant is acting, or has acted?

Yes 

Does the applicant have **specialist skills or experience** relevant to the proceeding(s)?

Yes 

Is there a **shortage** of existing providers with the necessary skills and experience?

Yes 

Reg 6B(2)(a-c)

No 

To what extent has the applicant failed to meet the minimum approval requirements for the area of law, and **does the available information justify a waiver** of the remaining requirements?

Yes 

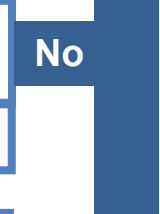
Reg 6B(3)(a)/Schedule

No 

Is the applicant **suitable** to act in the proceeding, and would it be **more efficient** for them to act instead of another lawyer?

Yes 

Reg 6B(3)(b)

No 

Does the applicant have the required experience as a lawyer, and **knowledge and skill**, to act in the proceeding(s)?

Yes 

Reg 6(2)(b-c)

No 

Overall, is the applicant sufficiently **experienced and competent** to act in the proceeding(s)?

Yes 

Yes 

Reg 6(1)

No 

If the applicant has met the approval criteria, is a **condition** required to address any specific experience/quality concerns?

Yes 

Reg 10

Approve with condition

Approve
Restricted to relevant proceeding(s)

Decline
Provide specific reasons why the application was declined.
Provide detailed next steps.

Appendix 1

Guidance for assessing Criminal PALs

The table below sets out the minimum PAL required for proceedings by reference to the case type and maximum penalty, whether the matter is a Crown or Police prosecution, the offence category in s 6 of the Criminal Procedure Act 2011 and the Legal Aid fixed fee schedules.

Case type and maximum penalty	Crown / Police prosecutions	CPA offence category	Legal aid fee schedule	Minimum required PAL
Judge alone, non-imprisonment	Police	OC1	A	PAL1
Judge alone, less than 2 years' imprisonment	Police	OC2	A	PAL1
Judge alone, 2-10 years' imprisonment	Police	OC3	B-C	PAL1
Judge alone or Jury trial elected, 2-10 years' imprisonment	Crown	OC3	D	PAL2
Judge alone or Jury trial, all cases 10+ years' imprisonment except schedule F	Crown	OC3	E	PAL3
Judge alone or jury trial, life/liable for preventive detention	Crown	OC3	F	PAL4
Judge alone or jury trial, life/Sch. 1 Criminal Procedure Act	Crown	OC4	F	PAL4
High Court appeals for sentence and conviction	N/A	N/A	G	Same as substantive matter
Appeals to the Court of Appeal	N/A	N/A	H	N/A
Appeals to the Supreme Court	N/A	N/A	I	N/A
Parole matters	N/A	N/A	J	PAL2

Appendix 2

Glossary

Act means the Legal Services Act 2011.

Lead provider means a lawyer or employment advocate approved by the Secretary to provide legal aid services or specified legal services in one or more areas of law.

Ministry means the Ministry of Justice

PAL means Provider Approval Level (for criminal approvals). These are the approval levels for criminal proceedings in cl 1 of the Schedule to the Regulations.

Regulations means the Legal Services (Quality Assurance) Regulations 2011

Secretary means the Secretary for Justice.

Supervised provider means a lawyer approved by the Secretary to provide legal aid services in one or more areas of law under the supervision of a lead provider.

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