



Legal Services (Quality Assurance) Amendment Regulations 2013

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 20th day of May 2013

Present:
His Excellency the Governor-General in Council

Pursuant to section 114 of the Legal Services Act 2011, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Schedule
Schedule of principal regulations replaced

Regulations

1 Title

These regulations are the Legal Services (Quality Assurance) Amendment Regulations 2013.

2 Commencement

These regulations come into force on 1 July 2013.

3 Principal regulations

These regulations amend the Legal Services (Quality Assurance) Regulations 2011 (the **principal regulations**).

4 Regulation 3 amended (Interpretation)

In regulation 3(1), insert in its appropriate alphabetical order:

“**existing provider** means an applicant who—

- “(a) is a provider; or
- “(b) has been a provider and whose approval to provide legal aid services or specified legal services expired no more than 6 months before the date on which the application is made”.

5 Regulation 5 amended (Professional entry requirements)

After regulation 5(1), insert:

- “(1A) An applicant need not comply with subclause (1) if the applicant—

“(a) is an existing provider; and

“(b) has received written notice from the Secretary that compliance with that provision is not required.”

6 New regulation 9C and cross-heading inserted

After regulation 9B, insert:

*“Fit and proper persons***“9C Applicant must be fit and proper person**

- “(1) Every applicant must satisfy the Secretary that he or she is a fit and proper person to provide legal aid services or specified legal services.
- “(2) For the purposes of subclause (1), an applicant must provide to the Secretary—
 - “(a) details of any conviction of the applicant for an offence punishable by imprisonment; and
 - “(b) details of any complaint upheld against the applicant under the Act or the former Act.
- “(3) In deciding whether an applicant meets the criterion in subclause (1), the Secretary must be satisfied that—
 - “(a) any convictions of the applicant, when considered individually or together, would not adversely affect—
 - “(i) the applicant’s relationship with a client who is an aided person; or
 - “(ii) the integrity of the legal services system; and
 - “(b) any complaints upheld against the applicant under the Act or the former Act, when considered individually or together, would not—
 - “(i) adversely affect the integrity of the legal services system; or
 - “(ii) breach any practice standards; and
 - “(c) any complaints upheld against the applicant under the Lawyers and Conveyancers Act 2006, when considered individually or together, would not—
 - “(i) adversely affect the integrity of the legal services system; or
 - “(ii) breach any practice standards.
- “(4) An applicant need not comply with subclause (2)(b) if the applicant has received written notice from the Secretary that compliance with that provision is not required.
- “(5) If the Secretary gives notice that an applicant is not required to comply with subclause (2)(b), subclause (3)(b) does not apply.”

7 Schedule replaced

Replace the Schedule with the Schedule set out in the Schedule of these regulations.

Schedule

r 7

Schedule of principal regulations replaced**Schedule**

r 6

Experience and competence requirements

Experience and competence requirements for criminal matters

1 Experience and competence requirements for criminal matters

(1) In this clause and clauses 2 to 7,—

approval level 1 criminal proceedings means—

- (a) any proceeding—
 - (i) for which the procedure for trial is the Judge-alone trial procedure; and
 - (ii) that is not a Crown prosecution; and
- (b) any proceeding in a Youth Court

approval level 2 criminal proceedings means any proceeding—

- (a) that is a Crown prosecution; and
- (b) where the person charged may be liable to a penalty of no more than 10 years' imprisonment

approval level 3 criminal proceedings means any proceeding—

- (a) that is a Crown prosecution; and
- (b) where the person charged may be liable to a penalty of more than 10 years' imprisonment; and
- (c) that is not an approval level 4 criminal proceeding

approval level 4 criminal proceedings means any proceeding where the person charged—

- (a) is charged with—
 - (i) an offence listed in Schedule 1 of the Criminal Procedure Act 2011; or

Schedule—continued

- (ii) any offence not listed in that schedule that is punishable by imprisonment for life; or
- (b) may be liable to a sentence of preventive detention; or
- (c) would, if convicted, be subject to additional consequences under section 86D of the Sentencing Act 2002.

(2) An applicant who has the experience and competence required for a particular level of criminal proceedings has the experience and competence required for any level of criminal proceedings below that level.

(3) Any term that is defined in the Criminal Procedure Act 2011 and used, but not defined, in this schedule has the same meaning as in that Act.

2 Approval level 1 criminal proceedings

For approval level 1 criminal proceedings, the applicant must—

- (a) have at least 12 months' recent experience in criminal law practice; and
- (b) have appeared as counsel with substantial and active involvement in at least 3 trials in criminal proceedings.

3 Approval level 2 criminal proceedings

For approval level 2 criminal proceedings, the applicant must—

- (a) have at least 24 months' recent experience working on approval level 1 criminal proceedings; and
- (b) have appeared as counsel with substantial and active involvement in at least 3 trials in proceedings that are Crown prosecutions.

4 Approval level 3 criminal proceedings

For approval level 3 criminal proceedings, the applicant must—

- (a) have at least 36 months' recent experience working on approval level 2 criminal proceedings; and

Schedule—*continued*

- (b) have appeared as counsel with substantial and active involvement in at least 4 approval level 3 or 4 criminal proceedings where—
 - (i) at least 1 charge carries a maximum penalty of 10 years' imprisonment or more; or
 - (ii) the person charged is likely to face cumulative sentences of more than 10 years' imprisonment.

5 Approval level 4 criminal proceedings

For approval level 4 criminal proceedings, the applicant must—

- (a) have at least 24 months' recent experience working on approval level 3 criminal proceedings; and
- (b) have appeared as counsel with substantial and active involvement in at least 4 approval level 3 or 4 criminal proceedings where at least 1 of those proceedings is an approval level 4 criminal proceeding.

6 Experience requirements for duty lawyer scheme

For services under the duty lawyer scheme, the applicant must—

- (a) have at least 6 months' recent experience in criminal law practice; and
- (b) have appeared as counsel with substantial and active involvement in at least—
 - (i) 1 pre-trial hearing; and
 - (ii) 1 hearing at which an opposed application for bail was made; and
 - (iii) 1 trial conducted by or on behalf of the New Zealand Police before a Judge alone; and
 - (iv) 1 sentencing hearing at which a plea in mitigation was made; and
- (c) have successfully completed a course of training for duty lawyers that is conducted by the New Zealand Law Society, unless the Secretary has given written notice to the applicant that the applicant is not required to complete such a course of training.

Schedule—*continued***7 Police detention legal assistance scheme**

For services under the Police detention legal assistance scheme, the applicant must—

- (a) have at least 24 months' recent experience working on approval level 1 criminal proceedings; and
- (b) have appeared as counsel with substantial and active involvement in at least 3 trials in proceedings that are Crown prosecutions.

Experience and competence requirements for
civil matters

8 Civil

For civil proceedings, the applicant must—

- (a) have at least 18 months' recent experience working on civil cases; and
- (b) have appeared as counsel with substantial and active involvement in at least 3 civil proceedings; and
- (c) have assisted in the preparation of at least 2 other civil proceedings.

9 Family

For family law proceedings, the applicant must—

- (a) have at least 18 months' recent experience working on family cases; and
- (b) have had substantial and active involvement in at least 5 family cases of various types including, without limitation, interlocutory hearings, mediation conferences, judicial conferences, and proceedings where witnesses gave oral evidence.

10 Māori Land Court and Māori Appellate Court

For proceedings before the Māori Land Court or Māori Appellate Court, the applicant must—

- (a) have 18 months' recent experience working on Māori Land Court cases; and
- (b) have had substantial and active involvement in at least 3 substantial Māori Land Court proceedings; and

Schedule—*continued*

- (c) have sound knowledge of the Treaty of Waitangi and Māori land law; and
- (d) have an understanding of tikanga Māori and basic ability in te reo Māori.

11 Waitangi Tribunal

For proceedings before the Waitangi Tribunal, the applicant must—

- (a) have 18 months' recent experience working on Waitangi Tribunal cases; and
- (b) have had substantial and active involvement in at least 3 substantial Waitangi Tribunal proceedings; and
- (c) have sound knowledge of the Treaty of Waitangi and Waitangi Tribunal jurisprudence; and
- (d) have an understanding of tikanga Māori and basic ability in te reo Māori.

12 Mental health

For mental health proceedings, the applicant must—

- (a) have at least 24 months' recent experience working on family law or criminal law cases; and
- (b) have observed at least 3 completed mental health cases.

13 Refugees and protected persons

For any refugee proceedings, the applicant must—

- (a) have at least 18 months' recent experience working on refugee and protected persons cases; and
- (b) have had substantial and active involvement in at least 5 cases at the Refugee Status Branch level; and
- (c) have actively participated in at least 1 proceeding before the Immigration and Protection Tribunal, the Deportation Review Tribunal, the Refugee Status Appeals Authority, or the Removal Review Authority.

Schedule—*continued*Experience and competence requirements in
relation to appeals (civil or criminal)**14 Court of Appeal and Supreme Court**

For proceedings before the Court of Appeal or Supreme Court, the applicant must—

- (a) have at least 5 years' recent experience in litigation work; and
- (b) have had 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), all of which must have been held in the High Court or in another higher court.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 July 2013, amend the Legal Services (Quality Assurance) Regulations 2011 (the **principal regulations**).

The regulations do the following 3 things:

- amend terminology to bring the regulations into line with the Criminal Procedure Act 2011;
- make changes to the experience requirements for the duty solicitor scheme, and change the name of the scheme to the duty lawyer scheme;
- introduce a new requirement for the Secretary to be satisfied that applicants are fit and proper persons.

**Legal Services (Quality Assurance)
Amendment Regulations 2013**

2013/187

Issued under the authority of the Acts and Regulations Publication Act 1989.

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These regulations are administered by the Ministry of Justice.
