



14 January 2011

Dear Provider

### Payment rates for Secondary Providers

In September 2010 the Agency became aware of inconsistencies in some of our offices in the payment rate for work undertaken by a secondary provider. The correct payment rate for secondary providers is the equivalent of Forum or Proceedings Category one, level one. However, payments to secondary providers were being paid at an incorrect higher rate, being the level 1 rate for the Proceedings or Forum category of the case. To clarify this situation a letter was sent on 2 September to all secondary providers advising that the correct rate of \$92/hr (GST excl) would be paid from 13 September 2010.

The Agency has since received widespread communication from both the New Zealand Law Society and individual providers and it has become apparent that the payment of the incorrect rate was more widespread than the Agency initially believed. Accordingly, the issue has been further investigated, legal advice has been obtained and we can now provide confirmation of the correct payment rates for secondary providers.

### Confirmation of the secondary provider rate

- All secondary providers are paid a fixed rate of \$92/hour (GST excl) irrespective of the Forum or Proceedings Category of the case. This is effective from 13 September 2010.
- The secondary provider rate applies to all law types –Criminal and Family, all Civil (including historic abuse cases) and Waitangi.
- Providers who have previously been paid at the correct rate (\$92 GST excl), and providers who have not previously been paid, will continue to be paid at the correct rate of \$92/hour (GST excl).
- Those providers who have previously been paid at an incorrect higher rate have a legitimate expectation that they will continue to be paid at

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those higher rates until they are given reasonable notice of the change in rate. As such these providers may, subject to the conditions outlined below, continue to claim the higher rate for work carried out on or before 31 March 2011.

- All work carried out from 1 April 2011 will be paid at the correct rate of \$92/hr (GST excl).

**Conditions for continuing to claim at the higher rate for work carried out on or before 31 March 2011**

Providers who wish to be paid at the higher rate for work carried out on or before 31 March 2011 must show that they have a legitimate expectation that this higher rate will be paid. This legitimate expectation only exists if payment has previously been received at the higher rate. Accordingly, evidence of previous payments at the higher rate must be provided by each firm or provider. This may be a copy of a Legal Aid tax invoice where the higher rate has been claimed and confirmation received (e.g. an Agency letter or remittance advice) showing that the higher rate had been paid.

This evidence will only need to be provided once to each Legal Aid regional office that holds applicable files.

**Back payment where there is a legitimate expectation of payment at the higher rate for work carried out on or before 31 March 2011 and the higher rate has been claimed.**

The obligation is on the provider to inform the Agency of the impacted invoices that require back payment. The Agency cannot currently identify these. The Agency requires information to be completed in spreadsheet format, with attached confirmation of the previous payment at higher rates as detailed above, and also outlining the following:

- Legal aid file number
- Client name
- Invoice reference number
- Total amount claimed for each invoice
- Total dollar amount and hours claimed for work completed by secondary providers
- Total dollar amount and hours paid for work completed by secondary providers
- Dollar amount of the difference now being claimed

**Back payment where there is a legitimate expectation of payment at the higher rate for work carried out on or before 31 March 2011 and the correct rate has been claimed.**

If following the 2 September 2010 letter you began claiming at the correct rate, you have a legitimate expectation of being paid at the higher rate, and would now like to claim the higher rate you will need to submit an invoice for

the difference as for auditing purposes we are unable to pay invoices in excess of the claimed amount. Please also attach confirmation of previous payment at the higher rates to show that a legitimate expectation exists.

Previous Agency communication has acknowledged that there have been delays in payments of invoices in certain regions in recent months. The Agency's main priority is ensuring that normal processing times are achieved across the country and that access to justice is not impeded. Therefore, as the amounts outstanding on each invoice for secondary provider are minimal, back payment of these invoices will not be given higher priority and will be actioned in due course.

If you have any general queries on this matter please email [info@lsa.govt.nz](mailto:info@lsa.govt.nz), and for any queries regarding a specific invoice please contact the local Legal Aid Office managing your file.

Yours sincerely

A handwritten signature in black ink, appearing to read 'MAshley', with a long, sweeping underline that loops back under the 'y'.

Marvynne Ashley  
Manager Service Delivery (Acting)