

Ministry of Justice
Triennial Review of Legal Aid

July 2025

Making Mental Health a Priority

About the Royal Australian and New Zealand College of Psychiatrists

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is a membership organisation that prepares doctors to be medical specialists in the field of psychiatry. It supports and enhances clinical practice, advocates for people affected by mental illness, and advises governments on matters related to mental health and addictions care.

The RANZCP is the peak body representing psychiatrists in Australia and New Zealand and, as a bi-national college, has strong ties with associations in the Asia-Pacific region. We represent over 8,730 members including more than 6000 qualified psychiatrists and 2500 trainees. Our training, policy and advocacy approach is led expert committees of psychiatrists and subject matter experts with academic, clinical and service delivery expertise in mental health and addiction.

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) welcomes the opportunity to provide feedback on the Triennial Legal Aid Review. This submission is made by the Faculty of Forensic Psychiatry and the Australia and New Zealand Prison Mental Health Advisory Group, with input from the external agencies such as the Forensic Science Group. We are leading experts working at the intersection of mental health and justice.

Our members are extensively trained in the provision of medical legal reports to the courts and frequently called upon to provide specialist psychiatric assessments that inform judicial decisions, particularly in cases involving mental impairment, disposition, fitness to stand trial, and insanity defences. We thus represent a significant subset of expert report writers and believe our psychiatric expertise places us as a significant stakeholder in this space.

Unfortunately, we only became aware of the review through informal channels and note with concern the Ministry of Justice did not directly approach us regarding this review. We interpret this as a misunderstanding of the critical role psychiatric expert witnesses play in the judicial process.

We acknowledge the Ministry's concerns regarding the increasing number and cost of expert reports and appreciate the intent to ensure the sustainability and effectiveness of the legal aid system. However we would also request a more formal opportunity to work with the Ministry of Justice to workshop solutions that will not create harmful, unintended consequences. Considering the limited time to provide a fulsome response, we offer these preliminary thoughts in good faith and look forward to being more involved in the next round(s) of consultation.

Our Position

We seek to work collaboratively with the Ministry of Justice to deliver high-quality, cost-effective psychiatric evidence which is essential to achieving fair and equitable legal outcomes, particularly for people with mental health conditions and disabilities.

Psychiatric expert reports are not only clinically rigorous but also legally consequential. They assist courts in determining whether a defendant is fit to stand trial, whether an insanity defence is applicable, and whether sentencing should be informed by mental health and/or addiction considerations. These reports are often pivotal in justice outcomes.

We believe that the proposed changes listed in the discussion paper of the Triennial Review of Legal Aid, if progressed too quickly, will generate potentially harmful and unintended consequences. We seek to work with the Ministry and other relevant stakeholders to develop sustainable solutions that do not gloss over the very real concerns we and other leading experts in this space have.

We formally request to engage with the Ministry further to achieve evidence-based and working solutions for all parties. We also strongly recommend:

- Extending the consultation period to allow for meaningful engagement with stakeholders, including clinicians, legal professionals, and service users.

- Establishing a working group comprising forensic psychiatrists, legal aid representatives, Ministry officials, and other relevant experts to co-design sustainable, equitable solutions.

Why Demand for Psychiatric Reports Has Increased

The increase in psychiatric reports is less likely to reflect inappropriate overuse, but rather a long-overdue recognition of unmet need reflecting the well documented evidence of high prevalence of mental illness and addictions in those appearing in the criminal courts. We attribute this rise to a complex tapestry of factors, including:

- Underfunding of general adult mental health and addiction services that has led to more individuals with untreated or undiagnosed mental health and addiction conditions entering the criminal justice system.
- Growing awareness of mental impairment and its legal implications that has prompted defence counsel to seek psychiatric input more routinely.
- Specialist courts, such as the CPMIP courts, have highlighted and generated increased need for timely and accurate psychiatric assessments.
- Capacity constraints within forensic mental health services mean that court-ordered reports cannot always be completed in time. Existing constraints are already recognised as a “[chronic issue](#)” by Dr Vanessa Caldwell, Deputy Health and Disability Commissioner.
- There is already high levels of [media attention](#) focused on Courts' inability to secure Section 38 CPMIP reports, implying access to psychiatric experts is already a problem.
- Section 38 reports have not traditionally been paid for by legal aid when they were prepared by regional forensic services.
- Anecdotally, we understand that the anxiety relating to the legal risk for defence counsel is also a factor, with concern about failing to canvass psychiatric issues leading to appeals or professional complaints.
- Socio-economic drivers of criminal offending including a cost-of-living crisis and rising poverty, and a methamphetamine epidemic, and a rise in non-accidental child injury.

Importance Of Psychiatric Evidence in Sentencing and Justice Outcomes

Importance of psychiatric evidence in sentencing and justice outcomes It is well recognised and without doubt that there are increasing numbers of people incarcerated who suffer serious mental illness in New Zealand. Several epidemiological studies (from New Zealand and internationally) have highlighted the high and increasing prevalence of serious mental illness in prisons and in persons charged with criminal offences. Symptoms of mental illness often contribute to offending behaviours with the risk of recidivism remaining high without appropriate recognition and treatment of mentally ill offenders.

Specialist reports identify and provide direction to the courts on the impact of symptoms of mental illness on offending behaviours and make recommendations as to appropriate interventions, which reduces risk of recidivism, provides advice on medico-legal defences and diminishes the risk of incarcerating people who require appropriate mental health treatment. Inappropriate incarceration of the mentally ill is expensive and contributes to the growing prison population. Incarceration of mentally disordered people leads to more severe mental illness and long-term worse outcomes.

Case Example: Teina Pora

Failure to recognise people impacted by mental illness in the criminal court process will lead to appeals, miscarriages of justice and potentially expose the Crown to legal redress.

The case of Teina Pora is a sobering example of what can happen when psychiatric evidence is absent or inadequate. Convicted in 1994 for the rape and murder of Susan Burdett, Pora was later found to have a mental age of around nine or ten due to foetal alcohol spectrum disorder. His confession, obtained during a prolonged police interview without legal representation, was later deemed unreliable.

In 2015, the Privy Council quashed his convictions, citing serious concerns about the reliability of his confession and the absence of proper psychiatric evaluation. The actual perpetrator, Malcolm Rewa, was convicted in 2019.

The Crown paid \$2.52 million NZD in compensation to Teina Pora — a figure that does not include the additional costs of legal proceedings, appeals, and the broader social and reputational impact. This case underscores the critical importance of timely, high-quality psychiatric expert reports in preventing wrongful convictions and ensuring justice.

Example: Zhang v R 2019

In the context of legal aid reform, Zhang v R underscores the need for a justice system that is responsive to mental health and addiction, and that relies on expert input to ensure fair and proportionate outcomes. Any reduction in access to psychiatric reports risks undermining these principles and reversing progress toward a more rehabilitative and equitable sentencing framework.

The Court of Appeal's decision in Zhang v R marked a significant shift in how New Zealand courts approach sentencing for methamphetamine-related offences. The judgment revised the rigid sentencing bands established in R v Fatu, introducing a more nuanced framework that considers:

- The role of the offender (e.g. courier vs organiser),
- The quantity of drugs involved, and
- Critically, the personal circumstances of the offender — including addiction, mental illness, trauma, and socio-economic disadvantage.

The Court explicitly recognised that addiction is a health issue, not merely a criminal one, and that mental health conditions should be treated as mitigating factors in sentencing. It also criticised the routine imposition of minimum periods of imprisonment without proper judicial reasoning, calling for greater discretion and individualised justice.

This decision reinforces the importance of psychiatric expert reports in informing sentencing decisions. Without access to high-quality assessments, courts may overlook critical factors that affect culpability, rehabilitation prospects, and the appropriateness of custodial sentences.

Concerns with the Current Proposed Options

We are deeply concerned that the proposed changes could dramatically reduce access to legal aid funded psychiatric reports. There could, in turn, be unintended consequences that could exacerbate existing inequities, led to injustices, and increasing costs for appeal courts.

The capping of funds per report or hourly remuneration for specialist assessors via legal aid will likely lead to disadvantage for the defence, as expert assessors providing reports at the request of the Crown are likely to be reimbursed at a significantly higher rate (not legal aid funding). This could be considered to be procedural discrimination against the defence.

Reducing the access and quality of specialist reports could exacerbate existing inequities for already vulnerable population groups such as youth and those with disabilities. Results of the [2023 Legal Needs Survey](#) show that of the disabled people surveyed, over half, 54% had experienced a legal issue in the past year and enduring legal issues leads to stress, anxiety and fear. The age profile of criminal legal aid clients highlight that young people would be negatively impacted if access to [specialist reports was to reduce](#).

Potential Breach of Te Tiriti o Waitangi

We voice a grave concern for exacerbating equity issues for those with low incomes, those disenfranchised by colonial impacts, poverty, and racism – and particularly for Māori who make up over 40% of those coming before the Courts and more than 50% of the prison population.

Reduced access to reports means Courts have less access to information about defendants' individual histories, which is likely to worsen inequities for Māori, and potentially breach Te Tiriti o Waitangi and the Crown's duty to protect Māori.

The proposed changes to legal aid funding — particularly the capping of fees and hours for psychiatric expert reports — risk breaching the principles of Te Tiriti o Waitangi, foundational to Aotearoa New Zealand's constitutional framework.

Under Te Tiriti, the Crown has a duty to uphold the principles of:

- Partnership: Engaging meaningfully with Māori in the design and implementation of policies that affect them.
- Protection: Actively protecting Māori rights, including the right to equitable access to justice and culturally appropriate health and mental health services.
- Participation: Ensuring Māori are able to participate fully and equally in all aspects of society, including the justice system.

Māori are significantly overrepresented in the criminal justice system and are more likely to experience mental distress, trauma, and systemic disadvantage. Psychiatric expert reports are often critical in identifying these factors and ensuring that Māori defendants receive fair and culturally competent treatment under the law.

Capping access to these reports — or reducing their quality through underfunding — risks:

- Undermining culturally responsive assessments, which are essential for understanding the context of offending and for informing appropriate sentencing or diversion.
- Exacerbating existing inequities, by limiting the ability of Māori to access the same level of expert input as non-Māori.
- Failing to consult with Māori stakeholders, including Māori clinicians and justice advocates, in the development of these reforms.

Such outcomes would be inconsistent with the Crown's obligations under Te Tiriti and may further erode trust in the justice system among Māori communities. Any reform to legal aid must therefore be developed in partnership with Māori and must explicitly address the need for equity in access to expert psychiatric evidence.

Contravention of the United Nations Convention on the Rights of Persons with Disabilities

We are concerned proposed changes will have intended consequences that may contravene New Zealand's obligations under the United Nations Convention on the Rights of Persons with Disabilities. New Zealand ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in 2008, committing to uphold and progressively realise the rights of disabled people, including their right to equal access to justice¹. The Convention does not create new rights but clarifies how existing human rights apply to disabled people, including those with psychosocial and cognitive impairments.

Article 13 of the CRPD specifically requires that States Parties ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, and by facilitating the role of expert witnesses such as psychiatrists and psychologists.

The proposed changes to legal aid — particularly the capping of fees and hours for psychiatric reports — risk undermining this obligation in several ways:

- Reduced access to expert psychiatric assessments may prevent disabled defendants from receiving fair trial protections, such as fitness to stand trial evaluations or insanity defences.
- Inadequate funding may deter qualified experts from participating, limiting the availability of appropriate accommodations and undermining procedural fairness.
- Disproportionate impact on people with psychosocial disabilities, who are already overrepresented in the criminal justice system, may deepen systemic discrimination and violate the principle of non-discrimination enshrined in Article 5 of the Convention.

New Zealand has also acceded to the Optional Protocol of the CRPD, which allows individuals to bring complaints to the UN Committee on the Rights of Persons with Disabilities. This elevates the risk of international scrutiny if domestic policies are found to contravene the Convention's standards².

In this context, any reform to legal aid must be carefully assessed for its compliance with international human rights obligations. Reducing access to psychiatric expert reports not only risks miscarriages of justice but may also place New Zealand in breach of its commitments under the CRPD.

Risks of Capping Fees and Hours

While capping fees may appear cost-saving, inadequate reports will ensue which can lead to appeals and retrials, delays in proceedings, wrongful convictions, and increased incarceration- or compensation costs. We warn against fiscal dominated decisions and argue that investment in access to quality specialist reports will prevent costly consequences.

This will create an immediate disincentive for report writers to take on complex cases. This is a decline in quality as proposed remuneration does not reflect the complexity and rigour required. We are already aware of existing parity issues across Section 38 and 88 reports, ACC reports, and Ministry-ordered reports and are interested to work alongside the Ministry to limit existing confusion and inequity. We do not believe a fee and time cap is the way to achieve parity as it ineffectually circumvents the complex nature of cases.

Forensic psychiatry is a highly specialised field, and experts may decline work if compensation is significantly below market rates. For example, Junior clinical psychologists (within 3-5 years post-graduation) are the only group who are qualified to do this work for whom a market rate of \$170/hr would approach parity with their usual remuneration. Junior clinical psychologists, under supervision, can do less complex medicolegal work but they do not have sufficient training or experience to complete most of the reports that are currently funded under legal aid.

There is international experience to show that reforms driven by fiscal priorities have led to reduced access and quality in both Australia and the United Kingdom. New Zealand has a small population and corresponding small number of experts and specialists – many of these already under contract to forensic mental health services and are burdened with high workloads. Substantially decreased remuneration will lead to loss of experienced expert assessors. Even at the current rate of remuneration it is often difficult to secure report writers.

Unintended Consequences

The proposed changes to legal aid funding for psychiatric expert reports — particularly the capping of fees and hours — carry a range of serious and far-reaching unintended consequences. These consequences are not hypothetical; they are foreseeable based on both local experience and international precedent.

1. Increased Appeals, Retrials, and Procedural Delays

Limiting access to high-quality psychiatric reports will likely result in more defendants being tried without adequate assessment of their mental state. This increases the risk of unfit individuals being tried or convicted, insanity defences being overlooked, and procedural errors that will later be challenged on appeal.

2. Wrongful Convictions and Miscarriages of Justice

Without access to timely and expert psychiatric input, the justice system risks repeating failures like the Teina Pora case. These are not only costly — with Pora's compensation alone totalling \$2.52 million — but deeply damaging to public trust in the integrity of the courts.

3. Worsening Inequities for Māori and Disabled People

Reducing access to psychiatric reports will disproportionately affect Māori and people with disabilities, who are more likely to experience mental distress, trauma, and systemic disadvantage. This risks deepening structural injustice and violating both Te Tiriti o Waitangi and New Zealand's obligations as a signatory to the United Nations Convention on the Rights of People with Disabilities.

4. Shrinking the Pool of Qualified Experts

The proposed fee caps are significantly below market rates. If the financial model becomes unsustainable, experienced experts will withdraw from legal aid work, overseas experts will decline NZ cases, and less experienced or underqualified individuals may fill the gap — leading to lower-quality reports and increased risk of error.

5. Reputational Risk to the Profession and the Courts

Experts asked to produce reports under constrained conditions may face professional risk, including cross-examination, reputational damage, and regulatory complaints. Courts relying on flawed evidence risk undermining their own credibility.

6. Long-Term Financial Costs to the Justice System

While the proposed changes may appear to offer short-term savings, the long-term costs are likely to be significantly higher. These include increased court time, legal aid expenditure, compensation payments for wrongful convictions, and greater incarceration costs for individuals who might otherwise be diverted.

Recommendations

To ensure that legal aid reforms uphold the principles of justice, equity, and clinical integrity, we recommend we meet with the Ministry in the first instance.

We offer the following recommendations in good faith that no changes will be rushed through. We trust there is opportunity for us to workshop together sustainable solutions we make the following recommendations:

1. Establish a Cross-Sector Working Group

Create a dedicated working group comprising forensic psychiatrists, legal professionals, Ministry officials, Māori health experts, and disability advocates. This group should be tasked with:

- Co-designing a sustainable funding model for expert reports.
- Developing quality assurance mechanisms.
- Ensuring reforms are culturally responsive and rights-compliant.

2. Protect Access to Specialist Psychiatric Reports

Guarantee continued access to psychiatric expert reports for defendants with mental health and addiction issues. These reports are essential for:

- Determining fitness to stand trial
- Supporting insanity defences
- Informing sentencing and diversion decisions

Restricting access will disproportionately harm the most vulnerable and undermine fair trial rights.

3. Avoid Fixed Fee and Hourly Caps

Reject rigid fee caps that fail to account for case complexity. Instead, adopt a flexible, needs-based funding model that:

- Reflects the time and expertise required.
- Aligns with market rates (e.g. ACC benchmarks).
- Allows for exceptions in complex or high-risk cases.

This will help retain qualified experts and ensure report quality.

4. Introduce Robust Quality Assurance Without Overregulation

Implement peer review or clinical audit processes to support report quality, but avoid burdensome accreditation systems that:

- Deter experienced practitioners.
- Create unnecessary administrative costs.
- Risk excluding culturally competent or regionally based experts.

Quality assurance should enhance, not hinder, access to justice.

5. Ensure Parity Across Report Types and Funding Streams

Standardise remuneration and expectations across:

- Section 38 and Section 88 reports
- ACC-funded forensic reports
- Legal aid-funded psychiatric assessments

This will reduce confusion, promote fairness, and support workforce sustainability.

6. Uphold Treaty and Human Rights Obligations

Ensure all reforms are consistent with:

- Te Tiriti o Waitangi, including partnership, protection, and participation.
- The UN Convention on the Rights of Persons with Disabilities, particularly Article 13 on access to justice.

This includes consulting with Māori and disability communities and embedding equity into all aspects of policy design.

Conclusion

The Ministry of Justice's goal of ensuring a sustainable and effective legal aid system is one we share. However, the proposed changes — particularly the capping of fees and hours for psychiatric expert reports — risk undermining the very foundations of a fair and equitable justice system.

Psychiatric expert reports are not ancillary; they are essential. They safeguard the rights of vulnerable defendants, inform judicial discretion, and prevent miscarriages of justice. As demonstrated in the case of Teina Pora, the absence of proper psychiatric input can result in devastating human and financial consequences. The Crown's \$2.52 million compensation payout is a stark reminder of what is at stake.

Moreover, the proposed reforms risk breaching New Zealand's obligations under both Te Tiriti o Waitangi and the United Nations Convention on the Rights of Persons with Disabilities. They threaten to deepen existing inequities, particularly for Māori and disabled people, and may expose the justice system to reputational and legal risk — both domestically and internationally.

Capping fees and hours may appear fiscally prudent, but it is a false economy. Poor-quality reports will lead to more appeals, retrials, delays, and wrongful convictions — all of which carry far greater costs than the reports themselves. The long-term impact will be felt not only in the courts but in the lives of individuals, families, and communities.

We therefore urge the Ministry to pause, consult meaningfully, and work collaboratively with experts in forensic psychiatry and related fields. We are ready and willing to contribute to a solution — one that balances cost-efficiency with clinical integrity, legal fairness, and human dignity.

We respectfully request to be included in the next round of consultation and reiterate our commitment to co-designing a legal aid framework that upholds justice, equity, and the rights of all people.

Ngā manaakitanga,

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