



MINISTRY OF
JUSTICE
Tāhū o te Ture

Duty Lawyer Service

Operational Policy

Criminal Process Improvement Programme

March 2024

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Contents

Duty lawyer service	4
Introduction	4
Appointment as a duty lawyer	5
Contract for the Provision of Specified Legal Services	5
Authority for the service	5
Glossary	5
Responsibilities of duty lawyers	5
Taking instructions	6
Applications for criminal legal aid	7
Attendance requirements	8
Supervision of the duty lawyer service	9
Payment	10
Travel time and mileage	11
Accommodation	12
Duty Lawyer Roster	12
Removal from the duty lawyer roster	13
Appendix 1 – Instructions on bail matters for duty lawyers in district courts	14
Appendix 2 – Payment rates	15
Appendix 3: – Performance Monitoring	16

Duty lawyer service

Introduction

1. This policy describes the operation of the duty lawyer service. It applies to the district courts at:

District Court:	From:
Auckland	27 May 2024
Christchurch	11 September 2023
Hamilton	4 September 2023
Hutt Valley	18 September 2023
Manukau	15 April 2024
North Shore	8 April 2024
Waitakere	25 March 2024

2. The object of the duty lawyer service is to ensure that a sufficient number of lawyers are available at each District Court for the purpose of assisting, advising, and representing unrepresented defendants charged with a criminal offence and where appropriate, resolving or progressing their matter.
3. The Secretary for Justice is responsible for the duty lawyer service and specifying the requirements of the role. The Legal Services Commissioner is responsible for the administration of the service.
4. This administration is undertaken with the aim of helping to ensure the criminal district courts run efficiently and effectively.
5. Court-specific duty lawyer instructions cover additional administrative aspects of the duty lawyer service at courts where the Public Defence Service operates. The instructions include matters such as:
 - the role of the PDS duty lawyer supervisor
 - specific hours of work
 - arrangements when duty lawyers are unable to attend as rostered
 - Saturday and public holiday roster arrangements
 - the wearing of duty lawyer badges.
6. The duty lawyer instructions can be found on the Ministry's website in [information for duty lawyers](#). If there is any conflict between the duty lawyer instructions and this policy, this policy prevails.
7. Information on the duty lawyer approval criteria can be found in the schedule to the Legal Services (Quality Assurance) Regulations 2011. Lawyers seeking duty lawyer approval to provide duty lawyer services should contact the Legal Aid Provider Services team by email at legalaidprovider@justice.govt.nz.

Appointment as a duty lawyer

8. Approval as a duty lawyer does not guarantee a place on a court roster. Duty lawyers seeking admission to a roster must register their interest with the National Scheduling team who will provide information on roster admission. The national scheduling team is based in Wellington and Auckland, email duty.lawyer@justice.govt.nz.

Contract for the Provision of Specified Legal Services

9. A duty lawyer may only be appointed to a roster if they have a current contract to provide Specified Legal Services.

Authority for the service

The duty lawyer service operates under the authority of the Secretary for Justice as a specified legal service pursuant to s68(2)(b) of the Legal Services Act 2011.

Glossary

10. In this document, unless the context requires otherwise:
 - ‘Duty lawyer service’ means the specified legal service to provide lawyers to unrepresented defendants established under s68(2)(b) of the 2011 Act
 - ‘PDS’ means the Public Defence Service
 - ‘Roster’ means a list, maintained by the Secretary, of duty lawyers approved to provide the duty lawyer service in a particular location and who have applied for and been granted a place on the list for the purpose of scheduling and allocating the duty lawyer service
 - ‘Rostered duty’ means the period on a specified date that the duty lawyer is scheduled to be available to provide duty lawyer services and in respect of which the duty lawyer has not notified the PDS duty lawyer supervisor that he or she is unavailable or arranged a replacement
 - ‘Secretary’ means the Secretary for Justice
 - ‘PDS duty lawyer supervisor’, means a duty lawyer who has been designated with additional responsibilities to ensure effective operation of the duty lawyer service in that court.

Responsibilities of duty lawyers

11. Duty lawyers are required to provide services to unrepresented defendants in accordance with the following broad guidance. They deal with:
 - matters where the defendant wishes to be represented by the duty lawyer, intends to enter a guilty plea and it can be entered on the day and/or a legal aid application is not required
 - matters where the defendant wishes to be represented by the duty lawyer at their sentencing and it can be dealt with or remanded to the next court event on the day and a legal aid application is not required
 - matters where the defendant wishes to be represented by the duty lawyer, intends to enter a not guilty plea and the matter can be dealt with or remanded to the next court event on the day and/or a legal aid application is not required
 - matters where the defendant wishes to seek a remand without plea to make a legal aid application

- interim name and case detail suppression orders
- bail matters in accordance with the instructions in Appendix 1.

12. The responsibilities of duty lawyers dealing with the above matters include:

- obtaining information from the Court and the prosecution
- explaining the nature and seriousness of a charge
- advising the defendant whether they may have a defence to a charge
- providing information about the range of sentences that the court may impose for a charge
- advising unrepresented defendants about plea, the possibility of a remand without plea, and the right to elect to be tried by a jury
- explaining what happens after a defendant pleads guilty/not guilty to a charge
- presenting sentencing submissions and relevant applications on behalf of a defendant
- advising defendants on how to apply for legal aid and if required, assisting defendants to complete a legal aid application (see also 'Applications for criminal legal aid' below)
- assessing whether an urgent legal application is required to progress the defendant's matter on the day
- assisting defendants to complete a legal aid application for reconsideration (form 11) if required
- advising unrepresented defendants about bail and applying for bail on behalf of the defendant (see Appendix 1)
- applying for a remand on behalf of a defendant
- carrying out any other duties specified by the Secretary.

13. If a judge directs the duty lawyer to undertake duties beyond their usual role, the duty lawyer should do what they can to comply while still being able to fulfil the normal scope of their work. Any concerns will need to be discussed with the PDS duty lawyer supervisor and managed appropriately on a case-by-case basis.

Taking instructions

14. Where a matter can be progressed on the day, it is the intention of the policy that duty lawyers progress appropriate proceedings as far as possible on the day or assist defendants, who may qualify, to complete an urgent legal aid application. It may not be appropriate for a duty lawyer to progress proceedings where the charges are serious, the case is complex, or it would impact the court's ability to deal with the business of the day.

15. Where a matter has a maximum term of imprisonment over 10 years and for any matter the Crown will prosecute, duty lawyers will assist unrepresented defendants, who may qualify, to complete a legal aid application.

16. When determining whether it would be appropriate to progress applicable proceedings, or whether a legal aid application is required, the duty lawyer must consider:

- the defendant's informed instructions
- the likelihood that the defendant will go to prison if convicted
- whether there are complex factual, legal or evidential matters that will require further enquiries that can't be made on the day

- the time required and the demands of the day
 - the prospects of the matter being progressed on the day
 - their own knowledge and experience in relation to the type of matter.
17. Where duty lawyers accept instructions to progress proceedings as a duty lawyer, they should record the defendant's instructions in writing in all category 3 matters and in any other matter when it is appropriate. A 'Duty Lawyer Instructions' form may be used for this purpose. It is the responsibility of the individual duty lawyer to retain the written instructions.
18. If a duty lawyer accepts instructions to progress proceedings, for example to enter a guilty plea but sentencing cannot be completed on the same day, the duty lawyer instructions form should be updated and if a legal aid application is not required, a handover note provided to the PDS duty lawyer supervisor for the next scheduled appearance when sentencing will occur. If practical, an arrangement may be made for the same duty lawyer to assist the defendant at the next appearance. If not, the PDS duty lawyer supervisor will make arrangements for another duty lawyer to appear.

Applications for criminal legal aid

19. Duty lawyers are reminded of their obligations under rule 9.5 of the Lawyers and Conveyancers Act (Lawyer: Conduct and Client Care) Rules 2008 to inform a defendant about the availability of legal aid.
20. When assisting a defendant to complete an application for legal aid, duty lawyers must:
- check that all sections of the application form are complete and accurate
 - check that the financial details section is completed for all applicants
 - advise defendants that an application form in which they have given false information cannot be submitted
 - provide information that the Legal Aid office may need to consider in making the decision to grant aid where there are special circumstances (eg relevant history, the need for an interpreter, serious mental health/intellectual disability problems, the financial circumstances of a partner or other relevant financial information)
 - provide the reasons for an interests of justice based application
 - acknowledge on the form the name of the duty lawyer who has completed or helped complete the form
 - print legibly.
21. Duty lawyers assisting with the completion of legal aid application forms must advise defendants that if legal aid is granted:
- for a Provider Approval Level 1 or 2 case¹, a lawyer will be assigned to the case by the Legal Aid office on a rotational basis and they cannot choose their own lawyer, unless an exception applies. For more information on rotational assignments, please refer to the provider assignments section in the Grants Handbook

¹ Provider Approval Level refers to the experience and competence requirements for criminal matters in the schedule of the Legal Services (Quality Assurance) Regulations 2011.

- for a Provider Approval Level 3 or 4 case, the defendant is able to choose their own lawyer. If the defendant does not have a preferred lawyer, one will be assigned by the Legal Aid office. The preferred lawyer must have:
 - been directly approached by the aided person or
 - represented the person on other matters within the last 5 years or
 - been specifically recommended to the person by someone they trust or
 - provided advice to the client as a PDLA lawyer with the appropriate listing.
 - been appointed as a Youth Advocate in the Youth Court
22. The duty lawyer shall discuss with the PDS duty lawyer supervisor before submitting any legal aid application where:
- the duty lawyer is nominated as preferred counsel for a case requiring a PAL3 or PAL 4 provider
 - the duty lawyer considers that it is appropriate that the defendant applies for urgent legal aid in accordance with the defendant’s instructions to progress all their charges to plea or disposal on the day
 - the duty lawyer considers that it is appropriate that the defendant applies for urgent legal aid for bail in accordance with the instructions in Appendix 1.
23. Unless directed by a Judge, duty lawyers should not recommend urgent assignments for matters where the maximum penalty is less than 6 months, and bail is not opposed.
24. Urgent legal aid applications must be forwarded to the PDS duty lawyer supervisor. The PDS duty lawyer supervisor will send the applications to the Legal Aid office, respond to any queries there may be and liaise with Legal Aid when needed to ensure assignments are made promptly.
25. For cases requiring a PAL3 or PAL4 provider, duty lawyers are not permitted to ask a person if they can be that person’s preferred lawyer. Similarly, they are not permitted to nominate or recommend any other lawyer (or firm/chambers) as the preferred lawyer.
26. If a defendant specifically requests the duty lawyer to act for them, they may be nominated as their preferred provider for Provider Approval Level 3 or 4 cases. In such circumstances, the duty lawyer must provide details as to why they have been nominated as preferred lawyer (eg previous representation by the lawyer or recommendation by family/whanau or friends) on the legal aid application form. In courts where there is a PDS duty lawyer supervisor, the supervisor must also confirm that nomination. The provider must also hold an approval for the appropriate Provider Approval Level. The final decision on assignments is with Legal Aid.

Attendance requirements

27. Duty lawyers are required to:
- sign in at the designated time prior to court commencing
 - be available and at court to attend until notified they are no longer required, either by the PDS duty lawyer supervisor, the Judge, or the Registrar
 - give priority to unrepresented defendants. In limited circumstances, (eg seeking a remand) duty lawyers may represent their own client, or act as an agent, where this does not interfere with their duty lawyer responsibilities. Duty lawyers must first discuss any attendance for their own matter or as an agent with the PDS duty lawyer supervisor as soon as practicable, who will decide if it is suitable to do so

- record any time spent with their own clients as a deduction on the duty lawyer invoice/claim form.

28. If duty lawyers are not able to attend for their rostered duty, the following requirements apply:

- a. For weekdays, the PDS duty lawyer supervisor is responsible for finding a replacement when a rostered duty lawyer is unable to attend. Other than in exceptional circumstances, replacements must come from the list of duty lawyers appointed to that court's roster.
- b. A separate policy applies for Saturdays, and Public Holidays and the Duty Lawyer Instructions for the Court should be referred to (on the Ministry's website).

Supervision of the duty lawyer service

29. In courts with a PDS presence, PDS duty lawyer supervisors are in place to provide direction to duty lawyers.

30. In accordance with the terms of Provider Contract for the Provision of Legal Aid Services and Specified Legal Services, duty lawyers report to and must follow the direction of the PDS duty lawyer supervisor and should address any queries or correspondence relating to a Rostered Duty to the duty lawyer supervisor.

31. PDS duty lawyer supervisors' responsibilities include but are not limited to:

- managing the day-to-day operation of the service including sign-on and sign-off times
- organising the flow of work to ensure that both the cells and courtrooms are adequately covered
- ensuring that any complex matters are allocated to a duty lawyer with appropriate experience
- ensuring that coverage by the duty lawyers attending on the day is appropriate in terms of their skill and experience
- providing supervision to junior duty lawyers as required
- receiving, reviewing, forwarding:
 - legal aid applications
 - names of duty lawyers who can be released for urgent assignments
 - claims for attendance
- overseeing handover of relevant information to assigned lawyers
- liaising with the court, prosecution and other stakeholders as required
- liaising with the Legal Aid office and Provider Services as needed

32. PDS duty lawyer supervisors' responsibilities also include monitoring the performance of duty lawyers and responding to poor performance. The aim is to ensure the effective and efficient operation of the duty lawyer service and that duty lawyers give due consideration to the intent and requirements of the duty lawyer operational policy. The process will involve feedback and discussion between the PDS duty lawyer supervisor and the duty lawyer and will be fair and

transparent. A report may be made to Provider Services which may result in removal from the roster subject to approval of the Legal Services Commissioner.

33. Steps in the process are explained in Appendix 4.
34. PDS duty lawyer supervisors report to and follow the directions of the relevant PDS manager.
35. In all cases, removal from a roster remains the responsibility of the Legal Services Commissioner.
36. PDS duty lawyer supervisors are also responsible for:
 - arranging replacement duty lawyers
 - when they are unable to attend, delegating the PDS duty lawyer supervisor role to another PDS duty lawyer or a non-PDS duty lawyer
 - working to support the delivery of an effective and efficient, quality service at the court and taking overall responsibility for the service at the court,
 - assessing and advising LAS of the number of duty lawyers needed on the roster and the mix of experience levels,
 - assessing and inducting new applicants to the roster and contributing to the longer-term development of the duty lawyer service
 - advising LAS the duty lawyers (if any) who may be available to accept an urgent assignment.

Payment

37. A minimum payment of two hours will apply to duty lawyer attendances that are required for less than two hours on weekdays, a minimum payment of four hours will apply to duty lawyer attendances that last for less than four hours for weekends and public holidays.
38. This policy will only apply when the attendance is shortened or cancelled due to the courts circumstances and will not apply when it is shortened or cancelled due to the duty lawyer's circumstances. If the duty lawyer attendance is longer than the minimum payment, they will be able to claim only for the hours worked in quarter hourly units.
39. The minimum payment is not available if a duty lawyer is on-call but isn't required to attend.
40. *Note: Courts that have 'elective' rosters for duty lawyers will advise the national schedulers of who will be working each day. Duty lawyers who have chosen not to work an attendance will not be eligible for a minimum payment.*
41. When they provide duty lawyer services, duty lawyers should complete the *Duty Lawyer Attendance and Invoice* form by entering their start and finish times, including the lunch break.
42. They must record on the invoice form their name, GST number and the hours they worked, ie start and finish times, lunch break and any time taken on non-duty lawyer matters and any applicable travel time and mileage claims.

43. If the minimum payment policy is applicable to the recorded attendance, the PDS duty lawyer supervisor or designated court staff will note this accordingly.
44. In the event that a duty lawyer is unavoidably required to attend to other commitments during a rostered duty and has received agreement to attend to those other commitments by the PDS duty lawyer supervisor, they should notify the PDS duty lawyer supervisor of all the time spent on those other commitments and ensure that the time is recorded as a deduction under the “Private work/Lunch” column of the *Duty Lawyer Attendance and Invoice* form.
45. Rostered and replacement duty lawyers must:
- ensure the *Duty Lawyer Attendance and Invoice* form is completed and that the PDS duty lawyer supervisor is aware of their start and finish times, including their lunch break, any time taken to attend to their own clients or as an agent for another lawyer **and**
 - ensure the correct GST number is recorded on the form **and**
 - certify the hours and amounts recorded by signing the form.
46. Payment will not be made to duty lawyers unless the form is completed in full including the signatures of both the duty lawyer and PDS duty lawyer supervisor or designated court staff member.
47. Duty lawyer attendance and invoice forms are submitted to the Auckland Legal Aid office each day by email to paymentsDL@justice.govt.nz for payment or as soon as possible. See Appendix 2 for duty lawyer payment rates.

Travel time and mileage

48. When travel is non-local, duty lawyers can usually claim travel time and mileage to attend their rostered duty.
49. In determining when a duty lawyer may claim for travel time and mileage, the following criteria will be considered:
- the travel is non-local, and
 - the travel is to attend the lawyer’s rostered appearance, or
 - the travel is to attend as a replacement for another rostered duty lawyer.
50. **Non-local travel** is defined as travel involving a return trip from the lawyer’s normal place of work to the travel destination where:
- the return distance is greater than 50 kilometres **OR**
 - the return travel time is greater than one hour.
51. Note that:
- lawyers may claim travel time, mileage at approved rates, and where prior approval is obtained, actual and reasonable accommodation disbursements
 - the cost of petrol cannot be claimed
 - insurance excess and fines will not be reimbursed

- evidence of travel distance or a GST receipt for disbursements are not required but can be requested to support a claim for reimbursement
- travel distance and any GST receipt amounts should be recorded on the invoice/attendance form.

52. When using a personal car, reimbursements for travel and mileage will be at the applicable rates, currently at:

- \$63.00 (excl GST) per hour for travel time
- \$0.95 (excl GST) per kilometre for private car mileage.

Accommodation

- Reimbursement will be on an actual and reasonable basis.
- GST receipts are required for accommodation expenses.
- The number of days for which accommodation and meals are claimed must be recorded on the invoice. We will not reimburse Koha.
- Expenses that will not be reimbursed include alcohol, minibar and snack-bar costs and hotel room video or movie charges.

53. Where an overnight stay is considered necessary, the duty lawyer is to contact dutylawyer@justice.govt.nz to obtain prior approval for accommodation expenses.

54. Duty lawyer invoices are submitted to paymentsDL@justice.govt.nz each day, or as soon as possible. See Appendix 2 for duty lawyer payment rates.

Duty Lawyer Roster

55. Arrangements have been put in place alongside the establishment of the PDS:

- the roster has been restructured using selection criteria to determine duty lawyer suitability for initial appointment to the roster, with specific appointment to the Saturday and public holiday roster
- subsequent admissions to the roster are subject to suitable vacancies and selection criteria being met. (See Policy for admission to duty lawyer rosters at specific district courts in [information for duty lawyers](#))
- Generally, the roster has a regular pattern, with duty lawyers rostered fortnightly, weekly, or monthly on the same day of the week
- roster composition takes into account the need for a mix of duty lawyers with a mix of experience and skills as well as lawyers' preferences and availability
- the PDS contributes up to 33% of the week-day duty lawyer service, including PDS duty lawyer supervisors.

Removal from the duty lawyer roster

56. The National Schedulers who are designated with preparing a court's roster has the authority to reduce a duty lawyer's rostered sessions, suspend, or remove a duty lawyer from the roster according to operational needs and/or based on the performance and conduct of the duty lawyer.
57. Removal from the duty lawyer roster based on the performance or conduct of the duty lawyer, may follow from a performance monitoring decision or a Ministry of Justice or New Zealand Law Society complaint investigation. See appendix 4 for more information on the performance monitoring process.

Appendix 1 – Instructions on bail matters for duty lawyers in district courts

THE FUNCTION OF A DUTY LAWYER IS TO ASSIST UNREPRESENTED DEFENDANTS APPEARING ON CRIMINAL MATTERS IN A DISTRICT COURT, INCLUDING APPLICATIONS FOR BAIL WHERE AN UNREPRESENTED DEFENDANT IS NOT BAILABLE AS OF RIGHT

1. These instructions apply to all duty lawyers providing services in the District Courts listed at clause 1 above.

A. Assistance with Bail Matters

2. Duty lawyers may assist unrepresented defendants where the defendant is bailable as of right or when bail is not opposed.
3. Duty lawyers may assist defendants to apply for bail in category 2 and 3 matters (for charges where the maximum penalty is up to 10 years imprisonment and the offence is not a Crown prosecution) where bail is opposed, including where the reverse onus provisions of the Bail Act 2000 apply, but in these cases before proceeding to apply for bail, a duty lawyer should consider:
 - a. The time required and the demands of the day.
 - b. If the defendant is under an order made pursuant to the Mental Health (Compulsory Assessment and Treatment) Act 1992 or the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 whether they can provide appropriate representation.
 - c. If the defendant is appearing on a warrant to arrest, whether the assigned lawyer is available.
 - d. All necessary enquiries and evidence is available so that a bail application can proceed on the day.
4. If the duty lawyer assists a defendant to apply for bail the duty lawyer should obtain the written instructions of the defendant (including the defendant confirmation/duty lawyer disclaimer) to the making of the bail application and retain them for their record.
5. In cases where the duty lawyer has interviewed a defendant in a category 3 or reverse onus case and the duty lawyer considers that it is appropriate that the defendant applies for urgent legal aid, they shall discuss this with the PDS duty lawyer supervisor who must agree that an urgent application is appropriate.
6. The duty lawyer shall then:
 - a. assist the unrepresented defendant to complete an urgent legal aid application **and**
 - b. complete the duty lawyer section on the front of the application form
 - c. provide the legal aid application form to the duty lawyer supervisor for submission to Legal Aid.

B. Imprisonment more than 10 years, Crown prosecutions and Category 4 Matters

7. Duty lawyers will assist unrepresented defendants on a category 3 matter with a maximum term of imprisonment over 10 years, Crown prosecutions and any category 4 matter to complete an urgent legal aid application and complete the duty lawyer section on the front of the application form. All legal aid applications must be forwarded to Legal Aid Services by the PDS duty lawyer supervisor.

Appendix 2 – Payment rates

Activity	Coverage	Rates (GST exclusive)	Documentation
Attendance at court	Weekday	\$103/hour	Duty lawyer attendance and invoice form, completed with all applicable details.
Attendance at court	Saturday, Sunday or public holiday	\$126/hour	
Travel time	Monday-Sunday or public holiday	\$63/hour	
Mileage	Monday-Sunday or public holiday	\$0.95/kilometre	

Appendix 3: – Performance Monitoring

Process Steps

1. The process steps ensure a fair and transparent process is followed. However, failure to complete any step in the process does not prevent the Legal Services Commissioner from responding appropriately to poor performance by a duty lawyer.
2. The Provider Contract for the Provision of Legal Aid Services and Specified Legal Services requires duty lawyers when providing the duty lawyer service to comply with applicable statutes and regulations, relevant professional obligations, the Secretary's Practice Standards, and this policy.
3. The supervisor monitors whether duty lawyers are following the duty lawyer operational policy. The aim is to ensure an effective and efficient duty lawyer service and that duty lawyers give due consideration to the intent and requirements of the duty lawyer operational policy. It is recognized that ahead of the duty lawyer operational policy, lawyers have professional obligations as well as obligations under applicable statutes and regulations.
4. Where a concern with a duty lawyer's performance arises, the supervisor will raise it in a face-to-face discussion with the duty lawyer. The supervisor will listen to the duty lawyer's responses and if appropriate invite them to take specified actions.
5. The duty lawyer may have a support person present at any step in the process and will be given an appropriate time period to respond to any feedback.
6. The outcome of the discussion will be noted and provided in writing to the duty lawyer.
7. If the concern continues, the supervisor may require the duty lawyer to consult with them regarding such concerns. This will allow the supervisor to provide the duty lawyer with timely feedback on their performance.
8. If the concern continues, the supervisor may prepare a report for the Manager Provider Services. Depending on the Manager's assessment, they may write to the duty lawyer about the concern raised and seek a response. The letter may include a reminder that appointment to the duty lawyer roster requires the duty lawyer to follow the duty lawyer operational policy and if they do not, they may be removed from the roster.
9. The supervisor will continue to monitor the duty lawyer's performance and if the concern continues, a second report will be prepared for the Manager Provider Services seeking the duty lawyer's removal from the roster.
10. If the Manager agrees, they can recommend to the Legal Services Commissioner the duty lawyer's removal from the roster. If the Legal Service Commissioner agrees the duty lawyer is immediately removed from the roster and informed why.
11. Removal from a roster does not prevent an application being made for re-appointment to a roster.



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