



MINISTRY OF
JUSTICE
Tāhū o te Ture

Alcohol and Other Drug Treatment Court (AODT)

Duty Lawyer - Operational policy

September 2021

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Alcohol and Other Drug Treatment (AODT) Court

Introduction

This policy describes the administrative arrangements for the Alcohol and Other Drug Treatment (AODT) Court lawyer service at the Auckland, Waitākere and Hamilton District Courts.

The intention of the AODT Court is to reduce drug use and associated offending through supervising the defendant and providing them with treatment programmes and life skills support.

The court is solution focused and aims to 'break the cycle' by treating the causes of offending.

It supports people whose offending is driven by moderate to severe alcohol and/or other drug (AOD) addiction or dependency. Participants are given the opportunity to participate in AOD treatment, which is then considered at sentencing.

The court is an alternative to prison and applies evidence-based best practice in a potentially transformative programme of case management, treatment, drug testing, monitoring and mentoring.

Sentencing is deferred while participants go through the rigorous programme, which includes regular court appearances to check on progress, and may take one to two years to complete.

The goals of the AODT Court are to:

- reduce reoffending
- reduce rates of imprisonment
- reduce alcohol and other drug consumption and dependency
- positively impact health and wellbeing
- be cost effective
- align to the key principles of Te Ao Mārama.

As the AODT courts cater to local need, some processes differ across the three courts.

Appointment as an AODT lawyer

The operating model for the AODT Court is a dedicated team attending court one day per week.

AODT Court legal teams consist of one PDS team leader and three defence lawyers (one PDS and two private). Public Defence Service (PDS) and private defence counsel will be rostered into these courts and will act in accordance with the applicable duty lawyer operational policy.

Lawyers must meet the following criteria:

- have duty lawyer approval, and a current criminal PAL 1 approval or above
- support the therapeutic goals of AODT Courts
- champion the increasing use of te reo and tikanga Māori
- understand and agree to the workload and time commitment involved.

The AODT Court sitting days are:

- AODT Court Auckland: Thursday
- AODT Court Waitākere: Wednesday
- AODT Court Waikato: Thursday.

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.

If you are not currently approved as a legal aid provider, you can begin the application process here: justice.govt.nz/about/lawyers-and-service-providers/legal-aid-lawyers/become-a-legal-aid-lawyer.

Information on the duty lawyer approval criteria can be found in the schedule to the [Legal Services \(Quality Assurance\) Regulations 2011](#).

AODT Legal Services team

Team leader role

In addition to being part of the AODT defence lawyer team, the team leader will also oversee the day to day operation and quality of service provided to participants and the AODT Court.

A team leader's core responsibilities are:

- leading the AODT Legal Services team on the days the AODT Court operates
- contributing to new initiatives and improvements to the AODT defence lawyer service
- establishing and maintaining excellent working relationships with all stakeholders.

The team leader will also:

- organise the work of the AODT Legal Services team to assist the smooth operation of the Court and oversee the delivery of a quality service
- ensure sufficient lawyers are available to meet the needs of the participants and the AODT Court
- oversee workflow so matters progress efficiently
- conduct quality assurance and other checks of AODT defence lawyers' performance, including file reviews and court observations at regular intervals
- be sufficiently familiar with participants' cases to act for or on behalf of team members who are unavailable
- attend to administrative matters including:
 - manage the roster
 - arrange replacement lawyers if necessary
 - manage attendances outside normal AODT Court days
 - allocate cases between the team
- receive, respond to and/or escalate any concerns or complaints about the quality of legal services being delivered in the AODT Court
- be the contact point for the AODT Legal Services team
- work with the wider AODT Court team to promote continuous improvement and professional development for lawyers
- notify Legal Aid of any non-attendance of rostered AODT defence lawyers
- provide participant attendance reports and cost of service forms to the Legal Aid office, on the exit or graduation of the participant from the AODT Court programme, for the finalisation of the legal aid grant
- develop and maintain strong internal and external relationships with key contacts
- report to the Regional Senior Duty Lawyer Supervisor.

AODT Quality Assurance Referral process

PDS Team Leaders will perform quality assurance checks including file reviews and court observations. Any concerns identified can be referred to Legal Aid Providers.

If the AODT Team Leader performs three consecutive file reviews that all receive a rating of 'Does not meet expectations' (DNME), the lawyer has received feedback and the opportunity to improve but still receives DNME on the third; then the file is to be referred to Legal Aid Provider as a Ministry concern.

If Legal Aid Providers (LAP) select an AODT file in the Audit programme, then LAP will contact PDS to obtain any applicable file review notes and observations. Files will be reviewed in accordance with the Auditing and Monitoring policy.

AODT defence lawyers

The primary role of an AODT Court defence lawyer is to provide participants with good quality legal representation while working collaboratively with the members of the AODT Court team.

Legal representation of a participant includes the following:

- Representation in the AODT Court includes representation on bail matters, treatment non-compliance, and, if directed by the judge, at whānau hui
- Representation in the district court may include representing a participant at sentencing when a participant exits the AODT Court before completing the programme
- Where an existing AODT Court participant is arrested for a breach of a bail condition or on new charge/s, they may be represented by a duty lawyer following their arrest
- The participant's AODT Court lawyer assumes responsibility for the new charges if they are transferred to the AODT Court.

The responsibilities of AODT lawyers are to:

- professionally and appropriately represent the interests and wishes of the participant, ensuring that their legal rights are protected and ensuring that their informed instructions are obtained and recorded
- advise participants of their legal rights and options in relation to treatment and sentencing
- attend AODT Court as rostered
- take direction from the AODT Court legal services team leader
- remain up to date with the AODT Court training
- attend additional AODT Court events and training as required by the judge
- reliably meet AODT Court deadlines for submitting information
- work effectively and collaboratively as a member of the AODT Court legal services team
- participate in any transition processes for file handover
- ensure that a request for disclosure and transfer of the file to the AODT Legal Services team is provided to the participant's assigned or instructed counsel after the determination hearing at which the participant is accepted into the AODT Court
- monitor the participant's progress between appearances and support their programme participation
- upon request, assist an AODT Court participant who is appearing on a breach of bail and/or new charge/s (including, where practicable, a participant from or appearing at another Court) when requested by a team leader, another duty lawyer, or a court staff member
- ensure that participant files are handled confidentially, properly maintained and regularly updated and stored securely
- participate and cooperate with quality assurance processes including formal file reviews and court observations by the AODT Legal Services team leader
- carry out any other duties specified by the Secretary
- champion te reo Māori and tikanga and uphold the kaupapa of the AODT Court.

Any concerns regarding the requirement of additional duties, should be raised with the AODT Legal Services team leader in the first instance, and will be managed on a case by case basis.

Applications for a criminal legal aid grant

Participants in the AODT court must have an open Legal Aid grant.

When assisting a defendant to complete an application for legal aid, 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 specifically attendance in AODT Court
- write or print legibly
- inform Legal Aid grants if a client is accepted into the AODT Court.

Once assigned to the AODT Court, the AODT Legal Services team will maintain oversight of the participants grant during their tenure in the AODT.

When a participant exits or graduates from AODT Court, the Public Defence Service (PDS) will provide a cost of service (COS) to Legal Aid grants. The COS applied to the participants grant of aid will be calculated at two hours' hearing time per attendance.

The length and associated costs of the AODT programme are greater than a standard criminal matter. In order to ensure just and equitable, consideration is given to the cost to the participant. On closure, the grant, will be considered for a write off under section 43 of the Legal Services Act 2011.

At the finalisation of the grant, Legal Aid Debt will apply a s43 partial write-off to reduce the total debt to \$1500 or apply the actual cost of services, whichever is lower.

This will ensure any repayment amounts do not exceed the average cost of a standard district court PAL1 criminal matter. If the participant exits the AODT programme early and withdraws their guilty plea, then costs incurred after exiting the AODT court will not be considered within the partial write off review and additional costs will be incurred.

Rostering policy

Only duty lawyers with a Criminal PAL1 approval who have applied to join the AODT Court lawyer rosters are eligible to act in the AODT Courts.

Rosters are prepared by the Ministry of Justice. Please email rostersDL@justice.govt.nz if you have queries about the roster.

Please note:

- AODT Court sits once per week and the Legal Service team are expected to attend for the full day
- AODT Court is likely to sit over holiday periods
- Lawyers are rostered for 12-18 months. The Legal Aid Providers team is responsible for selecting lawyers for the AODT Court Legal Services team.
- If required and called upon to do so by the team leader, any AODT defence lawyer in one court may act in another as a replacement. If required, travel will be paid to attend the alternate AODT court.
- Rostered lawyers will have a staggered transition between fixed terms to ensure the AODT court retains experience and supports participants.
- Acceptance for participating as an AODT lawyer does not guarantee an immediate place on the court roster.

If an additional or replacement lawyer is required, the Legal Service Providers team will:

- review the original pool of applicants
- where a suitable candidate is identified, approach them to determine their continued interest in the AODT roster and confirm availability

If a new selection process is required, the Legal Aid Providers team will:

- seek Expression of Interest
- consider applicants against the role criteria (i.e. the particular needs of the AODT court and Legal Services team)

The fixed term roster is managed by the Ministry of Justice which supports succession planning and provides opportunities for other lawyers who want to work in specialist courts.

Attendance requirements

Lawyers are required to:

- make the AODT Court a first priority
- reschedule conflicting commitments on their AODT rostered day. Where this is unavoidable, contact must be made with the AODT team leader as soon as possible to discuss how those commitments can be managed.
- arrive and sign in at the designated time prior to court commencing
- be available to attend AODT Court unless notified by the team leader, judge or AODT coordinator.

Recording attendance

- Hours worked for each rostered day must be accurately recorded by AODT defence lawyers on the AODT Court '[Record of attendance/invoice](#)' form. The form is used by the Legal Aid office for processing payments, no other invoicing is required.
- A calculation tool for payments, called a ready reckoner, is available in Appendix One. Defence lawyers must complete a 'Record of attendance/invoice' form by entering their start and finish times, lunch break, time away from the AODT Court, and the dollar value of service (GST inclusive).
- Payments will not be made without signatures from both defence lawyer and the team leader. Hours will be verified by the team leader prior to signing. The correct GST number must be recorded on the form.
- The team leader will provide the 'Record of attendance/invoice' form to the Legal Aid office and a copy to Initial Criminal Legal Services (ICLS) unit.

Late arrival or non-attendance

- Payment may be withheld if a rostered AODT Court lawyer does not appear as required and fulfil the responsibilities to the AODT Court.

Unable to attend

- Where an absence is unavoidable, AODT Court lawyers must contact the team leader as soon as possible to discuss arrangements. The team leader will take responsibility for matters during absences.
- An AODT Court lawyer who has recurrent or ongoing scheduling conflicts will be removed from the AODT Court roster.
- AODT Court lawyers are not permitted to swap their rostered sessions with other lawyers including other AODT Court lawyers. Any changes must be discussed with and managed via the team leader.
- If required and if called upon to do so by the team leader, any AODT Court lawyer may act as a replacement lawyer in another AODT Court.

Payment for AODT lawyers

The AODT Court operates under the duty lawyer payment structure and has a dedicated Legal Services team.

Non PDS AODT defence lawyers will be paid a 'daily rate' for their attendance in Court, which will equate to a maximum 11.5 hours. This is based on: payment for a maximum of 8.5 hours for attendance at AODT Court, plus payment for a maximum of 3 hours for other attendances/preparation as required between court sittings. The daily rate acknowledges:

- attendance in AODT Court for duration of the whole day - court sittings can run late depending on the numbers of appearances. A 'whole day' in AODT Court is calculated on attendance at the Court for at least 8.5 hours. If the Court day is actually shorter than 8.5 hours, that should be reflected in a lesser time recorded and claimed on the 'Record of attendance/ invoice' form.
- attendance at any whānau hui, which are required on occasion at the direction of the presiding judge
- other attendances or preparation if required between court sittings
- where the client appears at the District Court on a breach of bail and/or on new charge/s, the AODT defence lawyer may be required to appear. There will be no extra claim available for such attendances as they are included in the AODT defence lawyer's daily rate allowance. where there are exceptional circumstances causing significant additional work, an additional claim may be made, in consultation with the AODT Legal Services team leader.
- additional payments will be made for attendance related to additional bail applications including bail variation matters; and for sentencing appearances for exiting AODT Court participants (as required). The AODT Court defence lawyers will be remunerated up to a maximum of four hours at the standard hourly rate of \$98.00 per hour (GST excl).
- where a monitoring period of supervision for the participant is required, defence lawyers may be remunerated for up to one hour per appearance. Any additional hours will be considered by the AODT Legal Services team leader
- apart from the above specified circumstances when an additional claim may be made, the maximum time allowance for other attendances/preparation between court sittings is 3 hours.
- Payment will not be made to AODT Court lawyers if they do not attend the AODT Court on a scheduled day.
- payment will not be made to AODT Court lawyers unless the 'Record of attendance/invoice' form is completed in full and signed by both the lawyer and team leader.

Standing up a new court

Payment for non-PDS lawyers during the standing up of a new AODT court will be based on court attendance until such time as there are participants in the AODT court. Until fully operational the Ministry will provide payment for an 8.5 -hour day (minus deductions as and where necessary) during this time. No disbursements will be applicable as there will be no required activity between court sittings.

Once participants are active in the AODT court the disbursements will be claimable to a maximum of 3 hours. The hours can be calculated using the ready reckoner. Payments over and above this amount will need to be referred to the team leader for approval.

Fully operational is defined as the participant numbers filling a full day court schedule and will be paid to a maximum of 11.5 hours. Refer to Payment for AODT lawyers for full criteria.

Team leaders are responsible for submitting AODT Court invoices and claims to paymentsDL@justice.govt.nz each day, or as soon as possible.

There will be no payment for attendance at Judge-led AODT Court training days. Legal aid payments can only be made for the provision of legal services.

It is anticipated that AODT Court training will be compatible with the Continuous Professional Development (CPD) framework of the New Zealand Law Society (NZLS), and as such CPD hours would be claimable by lawyers attending AODT Court training days.

Travel time and mileage

Travel time and mileage is not applicable for work at rostered or elected court location. If an AODT defence lawyer is asked to perform work outside of the rostered or elected court location, a claim for travel time and mileage, may be considered against the following criteria:

- the travel is non-local and
- the travel is to attend as a replacement for another rostered AODT defence lawyer.

Where an overnight stay or travel is considered necessary, the AODT team leader will consult with ICLS and the Regional Senior Duty Lawyer Supervisor to obtain prior approval.

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.

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

- \$63.00 (excl GST) per hour for travel time
- \$0.79 (excl GST) per kilometre for mileage in petrol, hybrid and electric vehicles.

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.

Removal from the AODT Legal Services team

An AODT defence lawyer wishing to resign from the AODT Court roster prior to the completion of their rostered term must provide one month's written notice to the team leader and to Legal Aid Services rostersdl@justice.govt.nz.

The Ministry has the authority to suspend or remove an AODT Court lawyer from the roster according to operational needs and/or based on the performance and conduct of the duty lawyer. This may result from a Ministry or NZLS complaint investigation.

Appendix One

Ready Reckoner calculation tool

AODT Court pilot Record of Attendance and Tax Invoice for Waitakere and Auckland District Court.								The payment is based on \$98 per hour plus 3 hours out of court work for a full day's (8 hours)att								
Ready Reckoner																
Standard daily rate = \$1,239.70 incl gst																
All time worked privately or signed off before 4.30 pm must be deducted from the daily rate as indicated																
								Hours of attendance	Out of court	Nominal Hours	Rate	Total	GST	Payment		
								8	3	11	\$ 98.00	\$ 1,078.00	\$ 161.70	\$ 1,239.70		
												\$ 11.00				
TIME finished (JY)	Hours worked privately or finished early	Dollar value incl gst	Amount to claim incl gst	total hours worked- to be entered in LSMS	standard DL rate	plus disbursements	Total to be paid	Hours worked	GST excl	Rate	Hours Paid	Disbs	Fees			
4:30 or after	0	0	\$1,239.70	8	\$809.60	\$430.10	\$1,239.70	\$374.00	8	\$1,078.00	98	11.00	TRUE	35%	65%	
4:15	0.25	\$28.18	\$1,211.53	7.75	\$784.30	\$427.23	\$1,211.53	\$371.50	7.75	\$1,053.50	98	10.75	TRUE			
4:00	0.5	\$56.35	\$1,183.35	7.5	\$759.00	\$424.35	\$1,183.35	\$369.00	7.5	\$1,029.00	98	10.50	TRUE			
3:45	0.75	\$84.53	\$1,155.18	7.25	\$733.70	\$421.48	\$1,155.18	\$366.50	7.25	\$1,004.50	98	10.25	TRUE			
3:30	1	\$112.70	\$1,127.00	7	\$708.40	\$418.60	\$1,127.00	\$364.00	7	\$980.00	98	10.00	TRUE			
3:15	1.25	\$140.88	\$1,098.83	6.75	\$683.10	\$415.73	\$1,098.83	\$361.50	6.75	\$955.50	98	9.75	TRUE			
3:00	1.5	\$169.05	\$1,070.65	6.5	\$657.80	\$412.85	\$1,070.65	\$359.00	6.5	\$931.00	98	9.50	TRUE			
2:45	1.75	\$197.23	\$1,042.48	6.25	\$632.50	\$409.98	\$1,042.48	\$356.50	6.25	\$906.50	98	9.25	TRUE			
2:30	2	\$225.40	\$1,014.30	6	\$607.20	\$407.10	\$1,014.30	\$354.00	6	\$882.00	98	9.00	TRUE			
2:15	2.25	\$253.58	\$986.13	5.75	\$581.90	\$404.23	\$986.13	\$351.50	5.75	\$857.50	98	8.75	TRUE			
2:00	2.5	\$281.75	\$957.95	5.5	\$556.60	\$401.35	\$957.95	\$349.00	5.5	\$833.00	98	8.50	TRUE			
1:45	2.75	\$309.93	\$929.78	5.25	\$531.30	\$398.48	\$929.78	\$346.50	5.25	\$808.50	98	8.25	TRUE			
1:30	3	\$338.10	\$901.60	5	\$506.00	\$395.60	\$901.60	\$344.00	5	\$784.00	98	8.00	TRUE			
1:15	3.25	\$366.28	\$873.43	4.75	\$480.70	\$392.73	\$873.43	\$341.50	4.75	\$759.50	98	7.75	TRUE			
1:00	3.5	\$394.45	\$845.25	4.5	\$455.40	\$389.85	\$845.25	\$339.00	4.5	\$735.00	98	7.50	TRUE			
12:45	3.75	\$422.63	\$817.08	4.25	\$430.10	\$386.98	\$817.08	\$336.50	4.25	\$710.50	98	7.25	TRUE			
12:30	4	\$450.80	\$788.90	4	\$404.80	\$384.10	\$788.90	\$334.00	4	\$686.00	98	7.00	TRUE			
12:15	4.25	\$478.98	\$760.73	3.75	\$379.50	\$381.23	\$760.73	\$331.50	3.75	\$661.50	98	6.75	TRUE			
12:00	4.5	\$507.15	\$732.55	3.5	\$354.20	\$378.35	\$732.55	\$329.00	3.5	\$637.00	98	6.50	TRUE			
11:45	4.75	\$535.33	\$704.38	3.25	\$328.90	\$375.48	\$704.38	\$326.50	3.25	\$612.50	98	6.25	TRUE			
11:30	5	\$563.50	\$676.20	3	\$303.60	\$372.60	\$676.20	\$324.00	3	\$588.00	98	6.00	TRUE			
11:15	5.25	\$591.68	\$648.03	2.75	\$278.30	\$369.73	\$648.03	\$321.50	2.75	\$563.50	98	5.75	TRUE			
11:00	5.5	\$619.85	\$619.85	2.5	\$253.00	\$366.85	\$619.85	\$319.00	2.5	\$539.00	98	5.50	TRUE			
10:45	5.75	\$648.03	\$591.68	2.25	\$227.70	\$363.98	\$591.68	\$316.50	2.25	\$514.50	98	5.25	TRUE			
10:30	6	\$676.20	\$563.50	2	\$202.40	\$361.10	\$563.50	\$314.00	2	\$490.00	98	5.00	TRUE			
10:15	6.25	\$704.38	\$535.33	1.75	\$177.10	\$358.23	\$535.33	\$311.50	1.75	\$465.50	98	4.75	TRUE			
10:00	6.5	\$732.55	\$507.15	1.5	\$151.80	\$355.35	\$507.15	\$309.00	1.5	\$441.00	98	4.50	TRUE			
9:45	6.75	\$760.73	\$478.98	1.25	\$126.50	\$352.48	\$478.98	\$306.50	1.25	\$416.50	98	4.25	TRUE			
9:30	7	\$788.90	\$450.80	1	\$101.20	\$349.60	\$450.80	\$304.00	1	\$392.00	98	4.00	TRUE			
9:15	7.25	\$817.08	\$422.63	0.75	\$75.90	\$346.73	\$422.63	\$301.50	0.75	\$367.50	98	3.75	TRUE			
9:00	7.5	\$845.25	\$394.45	0.5	\$50.60	\$343.85	\$394.45	\$299.00	0.5	\$343.00	98	3.50	TRUE			
8:45	7.75	\$873.43	\$366.28	0.25	\$25.30	\$340.98	\$366.28	\$296.50	0.25	\$318.50	98	3.25	TRUE			

Appendix Two - Glossary of Terms

In this document, unless the context requires otherwise the following definitions apply:

AOD

An abbreviation for alcohol and other drugs

COS

Means Cost of Service

DUTY LAWYER

A specified legal service to provide lawyers to unrepresented defendants established under s68(2)(b) of the Legal Service Act 2011

ICLS

Means the Initial Criminal Legal Services unit

NON-LOCAL TRAVEL

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. AND
- if the destination is the court, the provider is **not** on the roster for that court (criminal only).

PDS

Means the Public Defence Service

SECRETARY

Means the Secretary for Justice

SUPERVISING DUTY LAWYER

See Team Leader

TEAM LEADER

Means either: (a) in a court with no PDS presence – a duty lawyer who has been designated with additional responsibilities to ensure effective operation of the service in that court; or (b) in a court with a PDS presence – a lawyer who has been appointed as a supervisor or team leader (including if delegated by PDS to that role) whose role includes ensuring the effective operation of the service in that court.

