

12 July 2023

Section 9(2)(a)

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Our Ref: OIA 105401

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Tēnā koe Jonathan

Official Information Act 1982 request: Public Defence Service Delegation Policy

I refer to your 19 June 2023 request under the Official Information Act 1982 for information in relation to the Public Defence Service's delegation policy.

The Public Defence Service (PDS) does not have a separate delegation policy or guidelines.

All files assigned by Legal Aid to the relevant PDS office are the responsibility of the Office Public Defender (OPD).

The OPD is responsible for allocating files to the lawyers within the office on the basis of Provider Approval Level (PAL), complexity, seriousness and individual lawyer availability and workloads. Consideration may also be given to opportunities for career progression and trial experience.

A lawyer may be allocated to work on a file at a PAL higher than the lawyer is qualified for under the direct supervision of another lawyer who is approved at the higher PAL level (the supervisor). In these circumstances, the minimum expectations for supervision are those detailed in the [Legal Aid Services Grants Handbook](#) (the Manual) under the heading *Delegation of Work*.

For Supervised Providers:

- The supervisor is responsible for all work on the file, whether completed by the supervisor or the supervisee;
- The supervisor must review all written work and all submissions before they are filed;
- The supervisee must discuss any advice to be given to the client with the supervisor. The expectation is that the supervisor will be present during any meetings with the client;
- The supervisor must provide feedback on the supervisee's performance;
- The supervisor must be accessible and responsive to the supervisee;
- The supervisor (or an appropriately PAL qualified alternative lawyer) must be present at all court appearances, unless the appearance is not a substantive appearance and the supervisor is satisfied that the supervisee has the level of competence to manage the appearance without the presence of the supervisor (or another appropriately PAL qualified alternative lawyer). If the supervisor (or another appropriately PAL qualified lawyer) is not present the supervisor must be able to be contacted and give advice in a timely manner; and
- The supervisor (or suitably PAL qualified lawyer) must provide direct supervision for all substantive appearances (as listed in the Manual). In addition, the supervisor (or another suitably PAL qualified

lawyer) must provide direct supervision for all sentencing and sentencing indication hearings (this requirement exceeds the supervision requirements provided for in the Manual).

For all other lawyers undertaking work at a higher PAL level than they are approved for (other than Supervised Providers):

- The supervisor must be satisfied that the supervisee is capable of undertaking the work they are delegated; and
- The supervisor (or another suitably PAL qualified lawyer) must provide direct supervision for all substantive appearances (as listed in the Manual). In addition, the supervisor (or another suitably PAL qualified lawyer) must provide direct supervision for all sentencing and sentencing indication hearings (again, this requirement exceeds the supervision requirements provided for in the Manual).

All PDS lawyers are expected to be given the opportunity to junior on appropriate files and to appear, under supervision, in Judge-alone trials or jury trials at a high PAL level than they are qualified for. These opportunities are fundamental to a lawyer's development. The lawyers can undertake substantial and active roles in these trials under the direct supervision of a suitably PAL qualified lawyer.

The client does not need to be consulted about the work the supervised lawyer will undertake, although the supervisor needs to be satisfied that the supervisee has the competence to undertake the work they are allocated.

The PDS is in the process of reviewing its approach to supervision and, in particular, to the requirement that the supervising lawyer must be physically present in court for all substantive appearances, to better align with the 'direct oversight' requirements detailed in the Manual. As noted above, the PDS requirements are presently more prescriptive and onerous than the requirements provided for in the Manual.

I would be happy to discuss this matter further with you if of assistance.

Ngā mihi



Peter Hutchinson

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