



MINISTRY OF
JUSTICE
Tāhū o te Ture

Duty lawyer service

Operational policy

February 2021

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Duty lawyer service

Introduction

This policy describes the operation of the duty lawyer service.

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.

The Ministry's Operations and Service Delivery Group is responsible for the duty lawyer service. This includes specifying the requirements of the role and managing the duty lawyer rosters to help ensure the criminal District Courts run efficiently and effectively.

The duty lawyer service is administered in two ways:

- by a Legal Aid office for courts where there is no Public Defence Service (PDS) presence
- by the Initial Criminal Legal Services Unit at the Manukau PDS, for courts where the PDS is in place.

Information on the duty lawyer approval criteria can be found in the [information for duty lawyers](#) section. Lawyers seeking duty lawyer approval listing should contact the Legal Aid Provider Services team by email at legalaidprovider@justice.govt.nz.

Appointment as a duty lawyer

Approval for listing as a duty lawyer does not guarantee a place on a court roster.

There are two possible ways of entering a duty lawyer roster:

1. **COURTS WITH NO PDS**
Duty lawyers seeking admission to a roster must register their interest with the Wellington legal aid office, email rostersDL@justice.govt.nz.
2. **COURTS WITH PDS**
Duty lawyers seeking admission to a roster must register their interest with the Initial Criminal Legal Services (ICLS) Unit who will provide information on roster admission. The ICLS Unit is based at the Manukau PDS, email duty.lawyer@justice.govt.nz.

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

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

- 'ICLS Unit' means the Initial Criminal Legal Services Unit
- 'PDS' means the Public Defence Service
- 'Secretary' means the Secretary for Justice
- 'Supervising duty lawyer, coordinator or team leader' in a court with no PDS presence, 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

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 their sentencing can be dealt with on the day and/or 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/or 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
- bail matters and name and detail suppression orders in accordance with the instructions (see Appendix 1).

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 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
- advising defendants on how to apply for legal aid and assisting defendants to complete a legal aid application (see also 'Applications for legal aid' below)
- assisting defendants to complete 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 remand on behalf of a defendant
- presenting sentencing submissions on behalf of a defendant
- carrying out any other duties specified by the Secretary.

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 supervisor or team leader and managed appropriately on a case by case basis.

Applications for criminal legal aid

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.

Duty lawyers' responsibilities include helping defendants complete a legal aid application forms and submit them to a Legal Aid office as soon as possible.

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 about special circumstances that the Legal Aid office would need to consider in making the decision to grant aid (eg relevant history, the need for an interpreter, serious mental health/intellectual disability problems, the financial circumstances of a partner)
- provide the reason for an interest of justice based application
- acknowledge on the form the name of the duty lawyer who has completed or helped complete the form.

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 case, a lawyer will be assigned to the case by the Legal Aid office on a rotational basis and they cannot choose their own lawyer. For more information on rotational assignments, please refer to the provider assignments section in the Grants Handbook
- 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 genuine preferred lawyer one will be assigned by the Legal Aid office.

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.

If a defendant specifically requests the duty lawyer act for them they may be nominated as their preferred provider for Criminal 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 duty lawyer supervisor the supervisor must also confirm that nomination. The provider must also hold an approval for the appropriate Criminal Provider Approval Level. The final decision on assignments is with Legal Aid.

Attendance requirements

Duty lawyers are required to:

- sign in at the designated time prior to court commencing
- be available to attend until notified they are no longer required, either by the supervising duty lawyer, 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. In courts where there is a duty lawyer supervisor, duty lawyers must first discuss any attendance for their own matter or as an agent with the 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
- negotiate with other duty lawyers to ensure coverage in the courtroom, cells and public area, at courts where there is no PDS presence.

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

COURTS WITH NO SUPERVISORS

Duty lawyers are responsible for finding their own replacement if they are unable to attend as rostered and must:

- notify Legal Aid by email (rostersDL@justice.govt.nz) and the court in advance who the replacement lawyer will be
- make sure the replacement lawyer is a provider who has at least the same Criminal Provider Approval Level and level of experience.

COURTS WITH PDS SUPERVISORS

The PDS duty lawyer supervisor is responsible for finding a replacement when a rostered duty lawyer is unable to attend. Replacements must come from the list of duty lawyers appointed to the particular court's roster.

Supervision of the duty lawyer service

In courts with PDS Supervisors, and at some other large courts, duty lawyer supervisor or team leader positions are in place.

In courts with no PDS presence, supervising duty lawyers or team leaders are to:

- ensure that both the Police cells and court foyer are adequately covered and that at least one duty lawyer remains inside the court
- provide supervision and direction (as required) to junior duty lawyers
- check with the court whether duty lawyers will be needed for late court sittings
- notify the local Legal Aid office of any non-attendance of rostered duty lawyers.

In courts with PDS presence, PDS duty lawyer supervisors are to:

- oversee the operation of the service
- manage the duty lawyer team, liaise with the court, organise the flow of work and have responsibility for arranging replacements

- take overall responsibility for the service at the court, including contributing to roster composition, assessing and inducting new applicants and contributing to the longer-term development of the duty lawyer service.

The PDS also has a broader professional leadership role in relation to the duty lawyer service nationwide.

Payment

Duty lawyers should complete the *Duty Lawyer Attendance and Invoice* form by entering their start and finish times, including the lunch break when they provide duty lawyer services.

They must record on the invoice/claims form their name and the hours they worked, ie start and finish times, lunch break, any time taken on non-duty lawyer matters and any applicable travel time and mileage claims.

In the event that duty lawyers are unavoidably required to attend to other commitments during their rostered duty lawyer session, and have received agreement to attend to those other commitments by the supervising duty lawyers or team leaders, they should notify the supervising duty lawyers or team leaders 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.

Rostered and replacement duty lawyers must:

- complete the *Duty Lawyer Attendance and Invoice* form and ensure that the supervising duty lawyer or team leader 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 amount recorded by the supervising duty lawyers or team leaders by countersigning the record of attendance form when signing off for the day.

Payment will not be made to duty lawyers unless the form is completed in full with the signatures of both the duty lawyer and duty lawyer supervisor or designated court staff member.

For all courts, duty lawyer invoices /claims forms are submitted to the Wellington Legal Aid office each day for payment or as soon as possible. For work undertaken on Mondays to Fridays, claims will be paid in quarter hourly units. For work undertaken on weekends and public holidays, the minimum claim is for one hour irrespective of the time spent in court. See Appendix 2 for duty lawyer payment rates.

Travel time and mileage

When travel is non-local, duty lawyers can usually claim travel time and mileage to attend their rostered session.

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.

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.

Note that:

- lawyer's 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
- \$0.82 (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.

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

For all courts, 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.

Specific arrangements at courts with PDS Supervisors

Different duty lawyer arrangements have been put in place alongside the establishment of the PDS. At these courts:

- the roster has been restructured using selection criteria to determine duty lawyer suitability for initial appointment to a new 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](#))
- 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 duty lawyers' experience, competence, skills and team fit as well as lawyers' preferences and availability
- the PDS contributes up to 33% of the week-day duty lawyer sessions, including PDS-appointed duty lawyer supervisors.

Court-specific duty lawyer instructions cover administrative aspects of the duty lawyer service at courts with a PDS presence. The instructions include matters such as:

- the role of the 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.

Duty lawyer instructions for the courts with PDS can be found in [information for duty lawyers](#).

Removal from the duty lawyer roster

The Legal Aid office or the ICLS Unit 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.

The removal from the duty lawyer roster based on the performance or conduct of the duty lawyer, may follow from a Ministry of Justice or New Zealand Law Society complaint investigation.

Appendix 1 – Instructions on bail matters for duty lawyers in all 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

These instructions apply to all duty lawyers providing services in the district courts.

There are two systems operating. In some courts the Public Defence Service is responsible for the duty lawyer service and duty supervisors are in place. In other courts a duty coordinator or a team leader may be in place. The requirements under the two systems are outlined below.

All duty lawyers

Duty lawyers will assist unrepresented defendants:

1. where the defendant is bailable as of right or when bail is not opposed
2. on any opposed bail application required for a category 2¹ matter unless:
 - a. there is a statutory onus on a defendant to satisfy a Judge that bail should be granted **or**
 - b. further enquiries are required on a matter determinative of a grant of bail by the Court, and those enquiries are beyond the resources of the duty lawyers. (Duty lawyers are reminded they must make reasonable enquiries to assist defendants to confirm details, such as address or employment information) **or**
 - c. 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.

Courts without duty supervisors

Where a duty lawyer considers that a category 2 bail exception applies, they shall discuss this with the duty coordinator or team leader who must agree that the opposition to bail cannot be resolved by the duty lawyer.

The duty lawyer shall then:

1. assist the unrepresented defendant to file an urgent legal aid application and request an assignment **and**
2. note “Opposed bail” on the front of the application form

Duty lawyers will assist unrepresented defendants to file an urgent legal aid application when an urgent assignment is required and the defendant appears on a category 3 or 4 matter **and**:

1. bail is opposed **and**
2. the duty lawyer has made reasonable efforts to resolve opposition to bail with the prosecuting agency.

The duty lawyer will provide the Legal Aid office with the prosecuting agency's grounds for opposition to bail at the time the legal aid application is filed.

¹ Note category levels refer to offence categories under the Criminal Procedure Act 2011.

Courts with duty supervisors

Where a duty lawyer considers that a category 2 bail exception applies, they shall discuss this with the duty lawyer supervisor who must confirm that the opposition to bail cannot be resolved by the duty lawyer at this stage.

The duty lawyer shall then:

1. assist the unrepresented defendant to file an urgent legal aid application and request an assignment **and**
2. note "Opposed bail" on the front of the application form.

The duty lawyer supervisor shall then:

1. counter-sign the exception noted on the application form **and**
2. contact the local Legal Aid office as required.

Duty lawyers will assist unrepresented defendants to file an urgent legal aid application, when an urgent assignment is required and the defendant appears on a category 3 or 4 matter and:

1. bail is opposed **and**
2. the duty lawyer has made reasonable efforts to resolve the opposition to bail with the prosecuting agency **and**
3. the duty lawyer supervisor is of the view that the opposition to bail cannot be resolved by a duty lawyer.

All courts

Where the Legal Aid office is unable to find a lawyer to take an urgent assignment, it shall:

1. identify the duty lawyer highest placed on the rotation assignment list for the court concerned
2. in courts where a duty lawyer supervisor is in place, the Legal Aid office will confirm with the duty lawyer supervisor that the duty lawyer is available for the assignment
3. count the assignment as a rotational assignment.

Appendix 2 – Payment rates

| Activity | Coverage | Rates (GST exclusive) | Documentation |
|---------------------|------------------------------------|-----------------------|---|
| Attendance at court | Weekday | \$88/hour | Duty lawyer attendance and invoice form, completed with all applicable details. |
| Attendance at court | Saturday, Sunday or public holiday | \$108/hour | |
| Travel time | Monday-Sunday or public holiday | \$63/hour | |
| Mileage | Monday-Sunday or public holiday | \$0.82/kilometre | |



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