

## Policy for Admission to Duty Lawyer Rosters at specific District Courts<sup>1</sup>

### Introduction

1. This paper documents the policy for admission of lawyers to a duty lawyer roster at a Court where duty lawyer reforms have been implemented. These are all Courts where the Public Defence Service is in place.
2. The policy covers admission of lawyers, who have been approved as a duty lawyer under the Legal Services Act 2011 and the Legal Services (Quality Assurance) Regulations 2011 and who hold a current practising certificate issued by the New Zealand Law Society, to a duty lawyer roster at a Court where duty lawyer reforms have been implemented. The policy also applies to duty lawyers already on a roster at one of the Courts who wish to be included on a roster at a different Court.
3. The Ministry accepts that for some newly approved duty lawyers, participation in the duty lawyer service provides a valuable opportunity to consolidate and further develop their practice of criminal law. Each year the Ministry will endeavour to set aside roster sessions for the entry of newly approved duty lawyers on to rosters.
4. Entry to a duty lawyer roster is dependent upon both the availability of roster sessions at a Court and the suitability of available lawyers for those sessions.
5. Lawyers should note that there is no entitlement to gaining a place on a duty lawyer roster.
6. Lawyers are not eligible for payment until they have been admitted to a duty lawyer roster. Lawyers can usually only appear on one duty lawyer roster<sup>2</sup>.

### Process

7. Please see the flowchart on page 5 for an overview of the admission process.

### Applying for admission to a duty lawyer roster

8. Lawyers interested in seeking entry to a duty lawyer roster at one of the Courts covered by this policy should contact the Initial Criminal Legal Services (ICLS) unit [duty.lawyer@justice.govt.nz] for an expression of interest form.
9. Along with their expression of interest, lawyers should provide the ICLS with relevant information about their background, including:
  - Current CV with information about:
    - duty solicitor/lawyer experience;
    - criminal law experience
    - recent criminal law continuing education

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<sup>1</sup> This policy applies at the Courts where the Public Defence Service is in place.

<sup>2</sup> There may be some exceptions to this, such as duty lawyers appearing at smaller satellite courts.

- familiarity with the local court
- Two referees (Preferably two experienced criminal lawyers or duty lawyers who could be contacted about recent performance as a criminal lawyer/duty lawyer);
- The NZLS Duty Lawyer Training Programme assessed observation form;
- Any other relevant information.

10. The lawyer's information will then be held on the ICLS expression of interest register for the preferred Court, to be considered if roster sessions become available and need to be filled at that Court.

11. The lawyer should advise the ICLS if there is a substantial change in their situation (e.g. further continuing legal education undertaken, change to criminal listing approval status, or they no longer seek admission to a duty lawyer roster).

### **Admission to duty lawyer roster**

12. The ICLS may admit a lawyer to a duty lawyer roster (if sessions are available and require to be filled) when it is satisfied the lawyer is suitable<sup>3</sup>. In making this decision the ICLS may consider, amongst other relevant information, the following:

- information provided to it by the applicant
- Legal Services and a Duty Lawyer Supervisors prior knowledge of the lawyer
- Duty Lawyer Supervisors' reports from any induction<sup>4</sup> and observed assessment
- information obtained from a lawyer's referees
- any recommendations made to it by an assessment panel

13. In deciding if a lawyer is suitable for an available roster session the ICLS may also take into account:

- other possible changes within the roster
- the nature of service required (e.g. a day when a specialist court sits requiring relevant experience)
- the balance of skills and level of experience of the rostered duty lawyer team that day
- the competence, experience and skills of the lawyer
- the lawyer's ability to provide a sound legal service to defendants and the court
- the lawyer's interpersonal skills when relating to defendants
- the lawyer's interpersonal skills and working relationships with other agencies and the Court

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<sup>3</sup> To be suitable a lawyer must, amongst other things, demonstrate the skills for a competent duty lawyer in Appendix 1.

<sup>4</sup> Induction may involve familiarising the lawyer with the particular Court's processes, personnel and other agencies that contribute to the court process.

- if the lawyer is a newly approved duty lawyer, whether there is appropriate supervision and mentoring available on the available roster session day
- the reliability of a lawyer
- any justified complaints

14. Where there are several suitable lawyers for an available roster session, the ICLS may confer further with the assessment panel for the Court to agree on the most suitable lawyer for the available session.

15. The ICLS will advise any lawyer who has been accepted as suitable for admission to a duty lawyer roster of that decision and of the date they will be offered sessions on that duty lawyer roster.

### **Assessment Panel**

16. When a duty lawyer roster session becomes available at a particular Court, and needs to be filled, the ICLS will refer the expression of interest register for that Court to the assessment panel [the Panel] before the commencement of the next roster cycle. The ICLS will also provide to the Panel any relevant information (see paragraph 9) supplied by the lawyer.

17. Any duty lawyer supervisors may be members of the Panel. One duty lawyer supervisor may be designated as the Panel convenor. If possible, the Panel should comprise two supervisors from a court, or court cluster.

18. The role of the Panel is to assess the suitability of a lawyer on the expression of interest register supplied by the ICLS for a particular court with respect to any available roster sessions that need to be filled. In assessing the suitability of a lawyer for an available roster session the Panel may take into account:

- other possible changes within the roster
- the nature of service required (e.g. a day when a specialist court sits requiring relevant experience)
- the balance of skills and level of experience of the rostered duty lawyer team that day
- the competence, experience and skills of the lawyer
- the lawyer's ability to provide a sound legal service to defendants and the court
- the lawyer's interpersonal skills when relating to defendants
- the lawyer's interpersonal skills and working relationships with other agencies and the Court
- if the lawyer is a newly approved duty lawyer, whether there is appropriate supervision and mentoring available on the available roster session day
- the reliability of the lawyer

- any justified complaints or concerns

19. The Panel will meet to assess the suitability of a lawyer on the ICLS expression of interest register for a particular Court before the end of each roster cycle where there are duty lawyer roster sessions that are both available and require to be filled. The Panel may meet at other times for this purpose if roster sessions become available and require to be filled before the end of a roster cycle.

20. After meeting<sup>5</sup> to assess the suitability of a lawyer on the ICLS expression of interest register for a particular Court, the Panel may:

- make written recommendations to the ICLS about the suitability of a lawyer on the ICLS expression of interest register for a particular Court
- request further information about a lawyer before making any recommendation about suitability
- request a lawyer undertake one or two observed assessments by a Duty Lawyer Supervisor(s) before the Panel makes a recommendation about that lawyer's suitability to the ICLS
- make a written recommendation that the available session(s) not be filled at that time.

### **Observed Assessment of Lawyers**

21. If a lawyer is requested by the Panel to undertake one or two observed assessments by a Duty Lawyer Supervisor(s) before the Panel makes a recommendation about that lawyer's suitability to the ICLS, the lawyer should, as requested, contact one or two of the local Duty Lawyer Supervisors to arrange for a suitable observed assessment date(s)<sup>6</sup>.

22. The Duty Lawyer Supervisor doing the observed assessment will observe and assess the lawyer at the Court against the assessment criteria set out in the Duty Lawyer Evaluation Form (see Appendix 1). Upon completion of the observed assessment the Duty Lawyer Supervisor will send the completed Duty Lawyer Evaluation Form to the Panel.

23. If a Duty Lawyer Supervisor who does the observed assessment considers a lawyer does not meet all the assessment criteria requirements, they should advise the lawyer of the areas of concern and identify any available options for the lawyer to meet those requirements. The lawyer must make an effort to remedy the areas of concern before any further observed assessment will be undertaken.

### **Observed Assessment Exception**

24. Where a lawyer has had recent experience as a duty lawyer at another Court the Panel may contact the relevant Duty Lawyer Supervisor (or other suitably experienced duty lawyer at that court) to determine whether the Duty Lawyer Supervisor would recommend that lawyer as suitable for a duty lawyer roster without the need for an observed assessment. The Panel can then take this information into account to assist it in assessing the suitability of a lawyer on the ICLS expression of interest register for a particular Court, as set out at paragraph 18-19.

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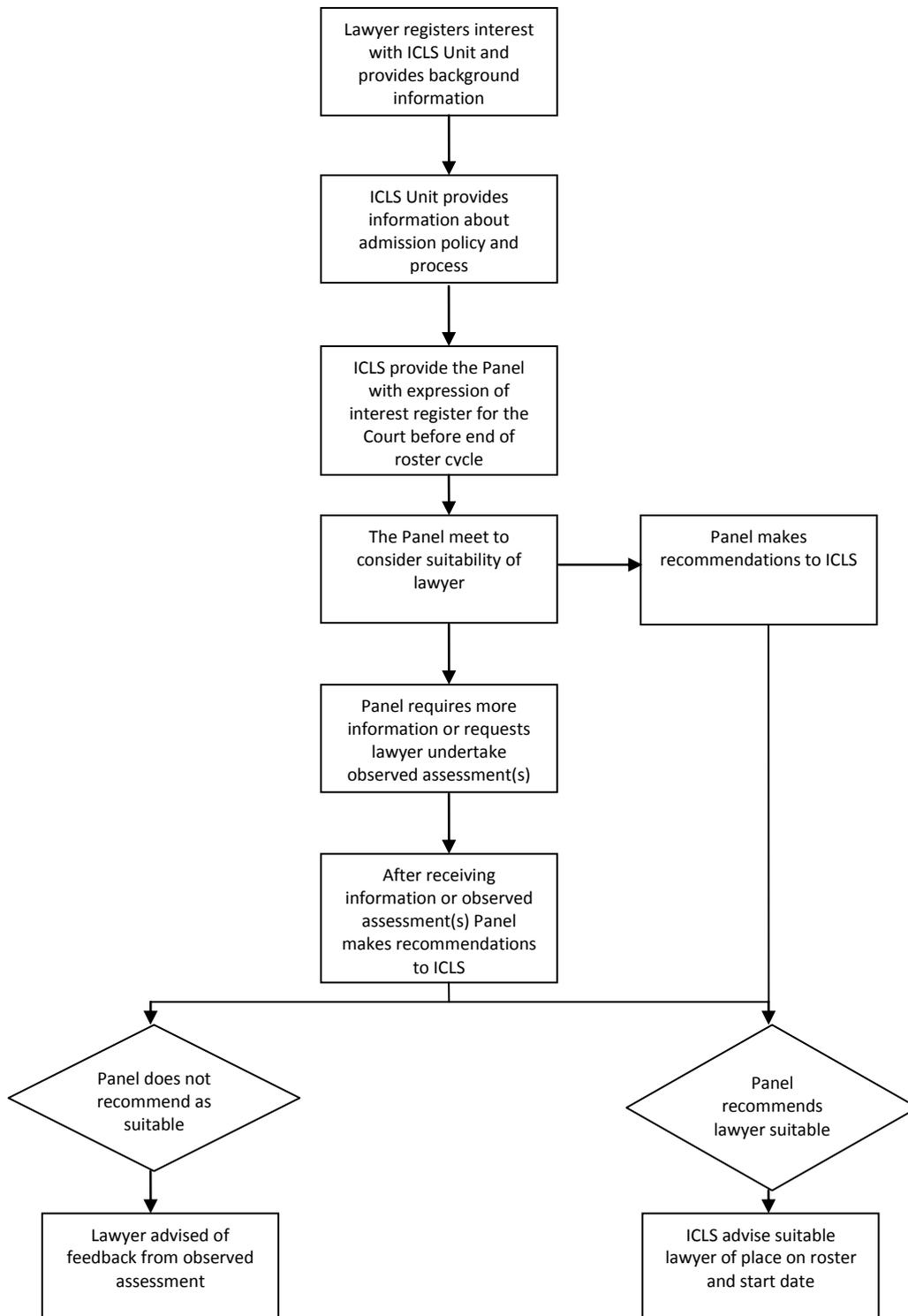
<sup>5</sup> If the Panel are not able to meet in person before the commencement of the next roster cycle they may confer by telephone and / or email.

<sup>6</sup> Where there is only one Duty Lawyer Supervisor at a Court, any other available Duty Lawyer Supervisor or any other suitably experienced duty lawyer agreed on by the Panel, can do the assessed observation required.

25. In circumstances where the Panel has no, or limited, knowledge of the lawyer, the lawyer will usually be requested to undertake one or two observed assessments.

26. If the Panel decide to make a recommendation that a lawyer is suitable and no observed assessment is required, the Panel may still require the lawyer to undertake a Court induction with a Duty Lawyer Supervisor.

## Summary of the process for admission to duty lawyer rosters



# DUTY LAWYER EVALUATION FORM

Appendix 1

Applicant's name: \_\_\_\_\_

Date of evaluation: \_\_\_\_\_

Duty Lawyer Supervisor assessing: \_\_\_\_\_

*If the duty lawyer supervisor has already observed and approved the applicant through the NZLS Duty Solicitor Training Programme please go to the "Overall assessment" and "Additional comment" boxes at the end of this form.*

	✓ or x	Comments
<b>GENERAL CONDUCT</b>		
Attends on time, suitably dressed	<input type="checkbox"/>	
Behaves appropriately in court and its environs	<input type="checkbox"/>	
Relates effectively with prosecutors, police, court staff, public and others	<input type="checkbox"/>	
<b>CLIENT RELATIONSHIP</b>		
Establishes rapport with defendant	<input type="checkbox"/>	
Uses appropriate vocabulary and language	<input type="checkbox"/>	
Covers relevant issues	<input type="checkbox"/>	
Elicits necessary information and listens	<input type="checkbox"/>	
Advises defendant appropriately and explains possible outcomes	<input type="checkbox"/>	
Explains the procedure for the appearance that day and beyond	<input type="checkbox"/>	
<b>KNOWLEDGE OF LAW AND COURT PROCESSES</b>		
Sound grasp of criminal law concepts and principles (e.g. burden/onus of proof)	<input type="checkbox"/>	
Understands the Court's procedures from plea through to resolution	<input type="checkbox"/>	
Knows where to locate and make appropriate use of services such as Probation, Forensic Psychiatric Service, Salvation Army etc and follows through on referral if required	<input type="checkbox"/>	
Adequate working knowledge of common offences set out in the Crimes Act 1961, Summary Offences Act, and Land Transport Act 1998. Familiar with legislation frequently relevant to criminal proceedings, e.g. Bail Act 2000, Sentencing Act 2002	<input type="checkbox"/>	
Knows when to seek advice from a more senior lawyer	<input type="checkbox"/>	

