

Policy on the Police Detention Legal Assistance Scheme (PDLA)

1 Rationale

1. The Legal Services Agency is required to administer the Police Detention Legal Assistance Scheme for persons detained or questioned by the Police in accordance with sections 49 to 52 of the Legal Services Act 2000 including any regulations made under it. In particular the Agency will determine the conditions under which PDLA lawyers provide services under the PDLA Scheme.
2. The following policy sets out the guidelines for listing, remuneration rates, claims and procedures for approved PDLA lawyers of the PDLA Scheme.

2 Purpose of Policy

3. The PDLA Scheme covers legal advice or legal assistance, or both, either by telephone or in person, given to a person being detained or questioned by the Police.
4. The purpose of the policy is to set out the duties in relation to the administration and provision of the PDLA scheme.
5. The Agency requires PDLA lawyers to discharge their duties in accordance with this policy. PDLA lawyers should take guidance from the book: Becroft, A., & O'Driscoll, S., *Advising Suspects at the Police Station - A Practical Guide for Lawyers*: Wellington, NZ, Butterworths, 1998 and from Guidelines on when personal attendance may be desirable (see 23 below).

3 Glossary

6. In this policy, unless the context otherwise requires,
 - "the PDLA Scheme" means the Police Detention Legal Assistance Scheme
 - "PDLA lawyer" means a natural person who is a listed provider approved to provide services in relation to the Police Detention Legal Assistance Scheme
 - "the Agency" means the Legal Services Agency

- "attendance" means in person or by telephone
- "the Act" means the Legal Services Act 2000
- "listed provider" means a natural person included on the Legal Services Agency Provider List approved to provide legal aid services
- "Preferred lawyer" is the lead provider chosen by the legal aid applicant.

4 The Guidelines

7. The object of the PDLA scheme is to ensure a sufficient number of lawyers is available to provide legal advice or legal assistance, or both, as required by the Act.
8. The PDLA Scheme and these policies relate solely to persons being detained or questioned by the Police. In accordance with s51 of the Act , the PDLA Scheme applies to every unrepresented person:
 - being questioned as a suspect by the Police who is advised by Police that he or she may consult a lawyer
 - being detained by the Police, with or without arrest, and entitled under the New Zealand Bill of Rights Act 1990 to consult a lawyer.

5 Eligibility

9. A lawyer must be a listed provider with the Agency and hold an Agency approval to provide services under the PDLA Scheme before being included on a Roster or List (Section 69). The application form and information on criteria for listed provider approval are on the Agency's website at www.lsa.govt.nz (For Listed Providers/ Becoming a listed provider) or can be obtained by contacting the Provider List Administrator by email: provider@lsa.govt.nz.

6 Rosters/Lists

10. When making application for inclusion in the PDLA Scheme, the application must include contact telephone numbers for day and night contact and the area or towns where the applicant will be available to accept PDLA attendances. If circumstances require, the lawyer should be available to attend in person in these places (see 22 and 23 below).

11. Once approval from the Agency is gained, the PDLA lawyer's name and details will be entered onto the appropriate area's list or roster.
12. There are currently three areas where rosters operate. In all other cases static lists are prepared.
13. The Agency provides Police with the most up-to-date rosters or lists.

7 Requirements of PDLA Lawyers

14. The duties of PDLA lawyers approved to provide services under the PDLA Scheme referred to in the Act include:
 - Advising persons detained or questioned by the Police of their rights and obligations and the requirements of any enactment under which they are detained (if applicable);
 - Providing legal advice or legal assistance, or both, to persons detained or questioned, which may include attendance at the place where those persons are being detained or questioned;
 - Any other duties imposed by the Agency from time to time in connection with the Scheme.
15. PDLA lawyers must provide telephone number/s to ensure 24-hour accessibility.
16. PDLA lawyers must advise the Agency of the area or town/s where they are available to attend.
17. All PDLA lawyers should ensure that they are available, contactable and on time on the days or nights they are rostered.¹
18. If the PDLA lawyer's name is on a list rather than a roster, they will in principle be available as needed. The Agency, however, recognises there may be times when the lawyer cannot be available.
19. For all claims made under the PDLA Scheme, PDLA lawyers are expected to progressively record on the tax invoice all telephone calls and ensure visits to the Police Station are recorded, including name, arrival time, departure time, and name of person attended. This is required to provide information about the operation of the scheme and to support the Agency's periodic validation of claims.

¹ It is recognised, however, that as Court lawyers they may not be fully available during Court hours.

20. PDLA lawyers must advise the Agency Head Office of any change of contact details or withdrawal from the PDLA Scheme. All notifications should be directed to:

Email: provider@lsa.govt.nz
Fax:(04) 495 5911

Or

Provider List Administration
Legal Services Agency
PO Box 5333,
Wellington
DX: SP22526

21. For locations where the Agency operates a roster, a PDLA lawyer must advise the Agency contact for the roster as soon as possible if he or she is unable to attend any rostered session.

8 Attendance

22. The person being questioned or detained will receive, free of charge, the services of one lawyer who holds an Agency approval for inclusion in the PDLA Scheme. Services under the PDLA Scheme means legal advice or legal assistance, or both, given at the time of detention or questioning.

The Agency expects that:

- when a PDLA lawyer is available they will attend any eligible person;
 - the PDLA lawyer makes the decision to attend in person or provide assistance by telephone after giving consideration to advice or the most appropriate form of attendance for the detained person.
23. Guidelines on when personal attendance under the PDLA scheme may be desirable have been developed in conjunction with the profession. The PDLA lawyer's decision about whether to attend should be consistent with these guidelines.

The guidelines are intended to assist PDLA lawyers to:

- deliver a legal service appropriate to the eligible person's circumstances and the circumstances of their alleged offending, and
- as far as possible, provide the same level of service regardless of the locality where the eligible person is being questioned or detained and the particular PDLA lawyer they have contacted.

The guidelines are attached at Appendix 1.

24. All attendances under the PDLA Scheme must be carried out by the PDLA lawyer personally, not their agent or employee.
25. The Agency is under no obligation, under the PDLA Scheme, to pay for the legal advice or legal assistance, or both, given to a person being detained or questioned by the Police by a lawyer who is not a listed provider approved by the Agency for inclusion in the PDLA Scheme.
26. The Agency will reimburse for all telephone attendances. Justification for multiple attendances on the same person on the same occasion must be provided to the Agency.
27. If a situation arises where the PDLA lawyer provides telephone legal advice or legal assistance, or both, and is subsequently required to attend in person, the Agency will consider remunerating for both the telephone attendance and the attendance in person provided the PDLA lawyer advises the reasons on the tax invoice.
28. The Agency would expect all attendances in person to be carried out by an approved PDLA lawyer in the area. However, if for exceptional reasons a PDLA lawyer attends at a place of detention outside their area, the Agency will consider payment of travel on receipt of a full explanation of the reasons, and in accordance with the Agency's Travel Policy (see 38 below).
29. The services of a suitably qualified interpreter may be engaged to assist a PDLA lawyer give legal advice or legal assistance, or both, to a person being detained or questioned by the Police.

9 Assignment as a result of PDLA

30. The involvement of an approved PDLA lawyer in assisting a person who is detained or questioned by the Police may give that PDLA lawyer preferential opportunity for assignment as lead provider for that person if they are subsequently charged, apply for legal aid and have

not nominated a preferred lawyer. In this situation the Agency would expect PDLA lawyers to:

- keep both the Police and the local legal aid office fully informed of their prior involvement and intention to become further involved as lead provider;
 - notify the Agency of this arrangement by providing a completed application form nominating the PDLA lawyer as the preferred lawyer prior to the first appearance or by notifying the Agency either by telephone or in writing to obtain assignment provided that such advice is given prior to the hearing and at the earliest possible opportunity;
 - inform the Agency of the full name of the specified person and clearly identify the date and place upon which and at which legal advice or legal assistance, or both, was given to that person.
31. Where a detained person has received assistance under the PDLA Scheme and is subsequently charged with an offence, and successfully applies for legal aid, the Agency will assign the case to the PDLA lawyer where the aided person has not nominated a preferred lawyer and provided the PDLA lawyer is:
- approved in the appropriate proceedings category for the case;
 - willing to undertake the assignment;
 - able to appear on the expected substantive date/s.
32. In accordance with the Agency's Policy on Assignment, Termination of Assignment and Reassignment, the Agency will not in general assign to a PDLA lawyer based outside the location where the case is to be held.
33. The inclusion of a person's name in any tax invoice tendered for the purposes of payment under the PDLA Scheme shall not, of itself, constitute sufficient notice to the Agency for the purposes of assignment as preferred lawyer.
34. If it is not clear whether the aided person received legal advice or legal assistance, or both, from the PDLA lawyer making the application, the Agency may turn down the application for assignment.

10 Payment

35. Rates of payment for attendance under the scheme are contained in Appendix 2.

Interpreters

36. Interpreters/translators will be paid by the PDLA lawyer and invoiced to the Agency as a disbursement.
37. The Agency will pay actual and reasonable interpreter/translator fees.

Travel

38. Travel under the PDLA Scheme will be in accordance with the Agency's Travel Policy. The Agency will reimburse PDLA lawyers' travel costs in situations where "...the client is detained and the provider is required to attend the client at their place of detention ...". Consistent with the Travel Policy, travel costs will be reimbursed on a per kilometre basis, not on an hourly remuneration basis. The Agency's standard rate for mileage will apply. Travel is a non-taxable allowance.

The provisions of clause 28 will apply for travel outside the area.

Submitting Invoices

39. The Agency shall authorise and make payments for attendances only to PDLA lawyers whose names are included on the PDLA Scheme Provider List.

The Agency would expect:

- PDLA tax invoices to be submitted monthly, or when each tax invoice is fully complete, whichever is the earlier;
 - all claims for remuneration to be made on the PDLA Tax Invoice (form 13 for all locations other than Auckland and form 13a for Auckland). A copy can be downloaded from the Agency website (www.lsa.govt.nz) or obtained from Baseline Stationers by downloading a copy of the order form from the Agency website (www.lsa.govt.nz).
40. For the purposes of remuneration, the rate for a telephone attendance is a fixed fee irrespective of the duration of the call.
41. Attendances by telephone and in person carried out under the PDLA Scheme must be certified by the PDLA lawyer when submitting their

invoice.

Attendance by Telephone

Details to be entered on the PDLA tax invoice must include:

- Date and time of attendance
- Detained person's name
- Place of detention
- Disbursements, such as any cost associated with receiving the call
- Signature and date – certification the telephone attendances took place at dates and times described on the tax invoice

And for Auckland PDLA lawyers:

- a brief description of the type of offence – e.g. assault, EBA
- approximate duration of call and
- whether own client and/ or youth.

Attendance in Person

Details to be entered on the PDLA tax invoice must include:

- Date and Time
- Duration of visit
- Detained person's name
- Place of detention
- Disbursements, if any
- Full details if claiming for multiple attendance for the same person on the same occasion
- Written explanation if claim includes a personal attendance outside the PDLA lawyer's area
- Signature and date – certification the telephone attendances took place at dates and times described on the tax invoice

And for Auckland PDLA lawyers:

- a brief description of the type of offence – e.g. assault, EBA
- whether own client and/ or youth.

42. Up to 10 telephone attendances and one attendance in person may be entered on each PDLA tax invoice. A separate tax invoice will need to be submitted for subsequent claims for attendance in person or if telephone attendances total more than 10 for the billing period.

43. All travel claims associated with attendance in person at a place of detention to provide legal advice or legal assistance, or both, to a person being detained or questioned by the Police will be in accordance with the Agency's Travel Policy (see 38 above).

Police Detention Legal Assistance Scheme: Guidelines for when personal attendance may be desirable

Introduction

- 1 These guidelines are intended to assist Police Detention Legal Assistance (PDLA) lawyers in determining whether legal advice or assistance under the PDLA scheme should be provided over the telephone or face to face.
- 2 In many situations legal advice or assistance can be effectively provided over the telephone. However, in some situations the circumstances of the case, or the characteristics of the person, make attendance in person desirable. This is because face-to-face presence:
 - Allows a more in-depth assessment of the situation through obtaining more detailed and/or reliable information from the police and/or the person
 - Affords greater protection and safeguards for the person when they are particularly vulnerable, and/or
 - Better assures optimal outcomes for the person because of greater opportunity to fully engage with the Police and/or the person about options.

Assessing whether to attend personally

Having sufficient information

- 3 The PDLA lawyer should obtain sufficient information about the circumstances of each case they are contacted about. This is desirable in order to not only provide appropriate legal advice or assistance, but also to assess whether advice or assistance can be delivered effectively over the telephone or whether it should be in person at the police station or other place of questioning or detention.
- 4 The PDLA lawyer's initial questions should gather enough information for the lawyer to assess whether personal attendance is desirable². An initial assessment may need to be revised subsequently as the circumstances of the case and the person become clearer.

² It is noted that necessary and relevant information may not be obtainable from the Police for a variety of reasons, including that the Officer in Charge is not available.

- 5 In order to assess whether or not to attend personally, the lawyer should establish:
- The ***nature and seriousness of alleged offences***, including charge or possible charges and any factors that may impact on gravity, including the condition of any victim and previous convictions
 - The ***weight of evidence*** to date and intended, including
 - any statements made, particularly any admissions
 - statements from others
 - exhibits seized
 - any injuries to the complainant
 - any intentions police have concerning further evidence - e.g., an interview, obtaining bodily samples, a doctor's examination, an identification parade, a voice identification procedure or execution of any search warrants
 - The ***vulnerability*** of the person, including whether a young person or child or whether they have any disabilities such as mental health issues or intellectual disability or language difficulties
 - The person's ***resilience*** and likelihood that they will follow advice, and whether they seek the lawyer's attendance
Whether there are any issues in regard to ***Police conduct*** or whether adherence to correct procedure needs to be checked or overseen.

Factors relevant to attendance

- 6 The PDLA lawyer will need to weigh up a number of factors in determining whether legal advice or assistance is provided by telephone or face to face. As far as possible, the PDLA lawyer should exclude considerations of convenience and proximity to the place of detention in determining whether personal attendance is desirable.³
- 7 Factors relevant to the PDLA lawyer's assessment of whether or not to attend personally are outlined in the table below.

³ If attendance is deemed desirable and the PDLA lawyer who has taken the initial call cannot attend, the lawyer will need to advise Police that they must contact another PDLA lawyer (see paragraph 10 and 11 following). It is noted that mileage is paid for personal attendance under the scheme.

	Factors tending towards personal attendance	Factors tending towards telephone attendance only
Seriousness of offence(s)	<ul style="list-style-type: none"> • Most PC3 and 4 matters and some PC2 matters • If convicted, the consequences for the person are likely to be substantial - e.g. a prison sentence • Where the matter may become more serious – e.g. because of the condition of any victim or where other charges are in prospect 	<ul style="list-style-type: none"> • Solely drink-drive offences and offences where, if convicted, not imprisonable • Situation is clear and no value from attendance – e.g. statement(s) already given; charges settled and no others pending, and/or bail determined • Resilience of person so lawyer assured will follow advice, because: <ul style="list-style-type: none"> - familiar with police procedure - confidence to follow advice, including remaining silent if appropriate
Person's vulnerability	<ul style="list-style-type: none"> • Person has especial need for protection – e.g. child or young person, intellectual disability or mental health or language issues • Police appear unwilling to meet special requirements that lawyer perceives case requires • Person does not understand their situation, particularly its seriousness⁴ 	<ul style="list-style-type: none"> • Other arrangements can be put in place, such as attendance of Mental Health Team • Drink-driving or other matters where person will not be held in custody
Sufficiency of information about circumstances	<ul style="list-style-type: none"> • Cannot obtain enough detail or cannot assess reliability to determine appropriate advice or assistance • Peculiar circumstances of case suggest a fuller assessment of the situation is desirable e.g. <ul style="list-style-type: none"> - when person's role in relation to co-offenders is unclear - when person has injuries which should be seen - recent sexual offences where issues of consent 	<ul style="list-style-type: none"> • The circumstances of the case are able to be ascertained over the telephone

⁴ This does not include an obligation to always attend if the person is drunk or under the influence of drugs.

	Factors tending towards personal attendance	Factors tending towards telephone attendance only
	<ul style="list-style-type: none"> - when suitability for videotape interview needs to be assessed - when other defences available which can be articulated at the Police station 	
Potential to improve outcome	<ul style="list-style-type: none"> • Assessment suggests that attendance may result in an improved outcome for person, including: <ul style="list-style-type: none"> - possibility of lesser charges or release; - a potential defence, or - advancing matters relevant to mitigation 	<ul style="list-style-type: none"> • Objectives can be achieved by telephone • Police position is clear and is unlikely to alter – e.g. bail for DV cases
Monitoring police conduct	<ul style="list-style-type: none"> • Allegations about Police misconduct or mistreatment have been raised by person • Lawyer has concerns about Police actions • Next stage of Police evidence gathering is desirably overseen to safeguard person's rights 	<ul style="list-style-type: none"> • Lawyer can adequately assess Police behaviour by telephone • Rights of person are able to be safeguarded through advice to them by telephone
Attendance requested⁵	Other factors, as listed above, are evident	No other circumstances in the case suggest personal attendance is necessary

Timing of attendance

- 8 In general, a PDLA lawyer is expected to arrive at the Police station as soon as possible after the completion of the telephone contact.
- 9 It is recognised that it may be possible for the lawyer to negotiate with Police about the timing of their attendance at the Police station, especially at night. However, in considering the urgency of attending, the lawyer needs to take account of the overall circumstances of the case.

Obligation to refer case on

- 10 If personal attendance is required, a PDLA lawyer should refer a case on if he/she is:

⁵ Requested attendance is not an absolute obligation but is a factor that may alter the balance towards personal attendance. The lawyer should assess any such request after initial advice has been provided.

- not sufficiently experienced to deal with the seriousness or complexity of the case⁶
 - unable to attend themselves, whether because of geographic distance or personal commitments.
- 11 In the above situations, the PDLA lawyer who has taken the call should advise the Police that they must make contact with another PDLA lawyer and also advise the person that another lawyer is to be accessed.

⁶ For instance, a case should be referred on if the matter is equivalent to a legal aid proceedings category (PC) 3 and the lawyer's listing category is PC 2.

Appendix 2

Rates for Payment

Type of Attendance	Rate
Telephone Attendance	
at any time of the day or night, irrespective of the length of the call	\$39.00 per call (including GST)
Personal Attendance	
Day Time Rate – Mon to Thurs Between 8.00am and 7.00pm	\$55.00 (including GST) per half hour or part thereof
Night Time Rate – Mon to Thurs Between 7.00pm and 8.00am	\$83.00 (including GST) per half hour or part thereof
Fridays, Saturdays, Sundays – from 5.00pm Friday until 8.00am Monday, and Public Holidays – from 5.00pm the previous day until 8.00am the following day	\$83.00 (including GST) per half hour or part thereof ⁷

⁷ Lawyers should record under night rate on PDLA tax invoice.