



Public Defence Service

Statement of Service

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Version: 4 December 2008

Public Defence Service Statement of Service

1. Introduction

The Legal Services Agency (Agency) is a Crown entity established by the Legal Services Act 2000 (Act). Among other things, the Agency is responsible for the administration of the legal aid and related schemes. It may develop, trial and evaluate pilot plans for the delivery of schemes by listed providers.

The Agency was authorised to permanently employ salaried officers by the Minister of Justice on 17 July 2008. The Board of the Agency endorsed the authorisation on 26 August 2008. This came in to effect on 1 December 2008.

The Public Defence Service (PDS) employs salaried lawyers who will provide representation services to legally aided persons for up to one-third of the criminal legal aid caseload for the Auckland and Manukau District Courts. General performance objectives and outcomes of the PDS are stated in the Agency's Statement of Intent. In addition to the objective that the PDS is:

- To provide quality, professionally independent, services to legally aided persons in ways that deliver value for money; and

The desired outcome that PDS activities are that:

- Legally aided persons who choose or are assigned to the PDS receive quality advice and representation from a service which is highly respected;

Further objectives of the PDS are:

- To improve system flexibility and provide opportunities to test different approaches to meeting cultural and other needs of clients; and
- To provide opportunities to test new and innovative approaches to the management of legal services, and to encourage the development of areas of expertise.

The Agency recognises the special relationship between the Crown and Maori under the Treaty of Waitangi. This relationship has been respected in the establishment of the PDS through close consultation with a Ngati Whatua kaumatua on behalf of his Iwi. Responsiveness in service delivery to Maori will be a key focus of the PDS.

2. Purpose of Statement of Service

The purpose of the Statement of Service (Statement) is to ensure ongoing clarity within the Agency and within the legal profession and the public generally on core responsibilities and requirements of the PDS in relation to other services and functions of the Agency.

The Statement derives from statutory obligations, the Agency's Statement of Intent and the Memorandum of Understanding with the Minister of Justice, and Agency policies, procedures and responsibilities.

The Statement will serve as the core agreement between the PDS and the Chief Executive on behalf of all services and functions of the Agency.

The Statement refers to "PDS" and "Agency". Any use of the terms "PDS" and "Agency" is merely to present a distinction between the PDS and the various other services and functions of the Agency.

Appendices to this Statement may be amended, replaced or repealed at any time by agreement between the Agency and the PDS, in consultation with the Ministry of Justice as appropriate.

3. Principles for communications regarding the PDS

The Agency, including the PDS, will ensure that communications and information resources about the PDS are designed to inform and publicise rather than promote the PDS over private legal aid service provision.

The Agency will ensure that the general population and Auckland/Manukau communities have access to information on how the PDS operates as part of the criminal legal aid system.

The PDS will ensure that Auckland and Manukau Court clients and community and service agencies working with these clients have access to information on the PDS service delivery.

The PDS will ensure that its assigned clients are provided with information on how the PDS operates, how its services will be delivered and the Court processes they will be part of.

4. Relationship of the PDS within the Agency

The PDS is a service provided by the Agency. It is an integral part of the Agency operations. It operates as an individual unit within the Agency.

For a fixed term, the Service Development Manager will be responsible for the operation of the PDS, will report to the Chief Executive and with the exception of the Public Defender will act as delegated 'employer' of all PDS staff. The Public Defender will be employed by the Chief Executive and be accountable for providing the leadership and support for lawyer professional services.

While the PDS will operate as an individual unit within the Agency, it will participate, as appropriate, in Agency initiatives related to the delivery of criminal legal services.

The operations and staff of the PDS are subject to all statutory obligations, policies, procedures and delegations that relate to the Agency as a whole, except where exceptions are detailed.

As a unit of the Agency that provides legal services directly to individuals within the community, the PDS has particular responsibilities in that regard and specific provisions apply. The Agency also has responsibilities to listed providers who provide legal services to individuals under the legal aid and related schemes, and an obligation to demonstrate fairness to those providers.

In respect of the professional obligations of the PDS to its clients and to the Courts, the Agency acknowledges that it will not intervene with the delivery of legal services by the PDS, except and unless that delivery is in breach of the provisions of this Statement.

5. Obligations arising from relationship between the PDS and Agency

5.1 Obligations relating to professional conduct

Pursuant to section 65 of the Act, all PDS listed providers will ensure that they fulfil their obligations under any rules or codes of conduct of any professional body to which they belong. They will fulfil their rights, obligations, responsibilities or duties as a lawyer; and the fact that the PDS listed providers provide legal services under the Public Defence Service does not in any way affect the relationship between, or the rights of, the lawyer and their client or any privilege arising out of that relationship.

The Public Defender will act as Head of Professional Standards for the PDS. The Public Defender may delegate that role, subject to consultation and agreement with the Chief Executive. The Public Defender may seek such support and advice for the role as may be necessary.

Subject to the above, no member of the Agency, whether employed by the PDS or elsewhere within the Agency, shall attempt to influence a PDS listed provider in the conduct of their professional duties.

The PDS and the Agency will observe policies for dealing with the need to protect client information and upholding the professional obligations of lawyers, and the Agency's obligations regarding the Official Information Act 1982, Privacy Act 1993, and external and internal audits.

In the event that any issues, concerns or matters arise that might affect the fulfilment of these obligations or responsibilities, or there are complaints received by either the Agency or the PDS concerning the PDS' obligations under this Statement, the PDS will notify the Agency by informing the Manager Service Contracts. Similarly the Agency, through the Manager

Service Contracts, will notify the PDS of any issues relevant to the performance of its obligations under this Statement.

5.2 **Obligations relating to listed providers**

All listed providers have both statutory and contractual obligations. Notwithstanding that the PDS lawyers are employees within the Agency, applications for approval as a listed provider, or matters arising from the listing as provider will be dealt with in the same way as any other listed provider.

For private practice listed providers, a condition of listing is a Contract for Services with the Agency. The PDS listed providers will enter into an Agreement for Listed Provider Employed by the Legal Services Agency. This agreement is substantially the same as the contract offered to private practice listed providers except where clauses expressly apply only to private practice listed providers.

If the PDS receives any complaints relating to the Agreement for Listed Provider Employed by the Legal Services Agency, the PDS will notify the Agency by informing the Manager Service Contracts. Similarly the Agency, through the Manager Service Contracts, will notify the PDS of any complaints it receives relating to the Agreement for Listed Provider Employed by the Legal Services Agency.

5.3 **Agency responsibilities**

The Agency recognises that it has responsibilities across all listed providers in the administration of legal aid and related schemes. Accordingly, areas of activity within the Agency that will operate separately from the PDS and where the Agency will take into account its obligation to act in a manner that is fair and consistent to all listed providers are:

Service Contracts

Management of listing of providers – policy, procedures and activities regarding:

- applications for listing
- local consultative groups
- assessment of applications
- approvals of listings and conditions on approved listings
- increases in litigation experience levels
- dealing with complaints
- reviews of listed providers
- temporary suspensions and/or cancellations of listing(s)
- audit follow up
- police detention legal assistance lists

Grants

Administration of legal aid and related schemes – policy, procedures and activities regarding:

- duty solicitor scheme/rosters

- police detention legal assistance rosters (specified areas only)
- eligibility for legal aid
- conditions on a grant of legal aid
- repayment requirements
- reconsiderations
- assignments
- reviews
- examinations of claims

Audit Services

Management of listed provider audits – policy, procedures and activities regarding:

- listed provider random audit programme
- quality and value audits
- special audits
- reports to the Risk Management Committee

Debt Management Group

Management of the recovery of debt established as a condition of a grant of legal aid – policy, procedures and activities regarding:

- establishing and renegotiating repayment arrangements
- recovering debt, including write-offs
- debt enforcement, including the imposition of interest charges
- executing security documentation to allow lawyers to register and release securities on the Agency's behalf, such as statutory land charges and caveats, to manage the Agency's risk of debt collection. This includes the payment of associated fees and disbursements to lawyers
- managing the reconsideration of Agency debt related decisions and submissions to the Legal Aid Review Panel
- providing an 0800 call centre service

6. Commencement date

The PDS as a permanent service commenced on 1 December 2008. This Statement is effective from that date.

On 17 July 2008 the Minister of Justice by way of notice in the Gazette, authorised the Agency to employ salaried officers on a permanent basis but only for the same or related purposes as were trialled in the PDS at Auckland and Manukau (section 84(1)(b) of the Act).

On 26 August 2008 the Agency's Board confirmed making the PDS permanent at Auckland and Manukau and that it continue to operate to its current Statement subject to any minor amendments or annual adjustments.

Whilst the PDS first commenced as a pilot plan on 3 May 2004, it effectively became permanent from 1 December 2008.

7. Obligations of the PDS

7.1 Code of Conduct – general

The mission of the Agency is “helping people access justice”. It is derived from the purpose of the Act.

The Agency is committed to core values:

- fairness
- integrity
- respect
- responsiveness

As employees of the Agency, PDS staff are expected to be committed to the Agency’s mission and values.

In furtherance of these, and reflecting the Government’s and communities’ expectations of standards for those employed by public sector organisations, PDS staff are to commit to the Agency’s Code of Conduct and are required to acknowledge receipt of a copy.

7.2 Code of Conduct - professional

In recognition of the fact that lawyers employed by the PDS have professional obligations alongside their obligations as employees of a public sector organisation and to ensure clarity in this regard, the PDS is required to have and operate in accordance with a Code of Conduct for PDS Lawyers and Other PDS Employees. Key elements of the Code of Conduct for PDS Lawyers and Other PDS Employees are ensuring the integrity and independence of the PDS in providing legal advice and representation and in the management and conduct of cases; and ensuring that the volume of cases undertaken is such that professional standards are not compromised.

The Code of Conduct for PDS Lawyers and Other PDS Employees is attached at Appendix 1. The PDS lawyers and other PDS employees are required to acknowledge receipt of a copy.

7.3 General responsibilities

In conducting its operations, the PDS will:

- provide services to a standard that best meets the legal needs of clients
- where appropriate, provide or facilitate services that may be in the interest of the clients’ personal and social needs where they are related to their legal needs
- ensure that the culture of clients, and their families/whanau is acknowledged, respected and maintained
- ensure that all personnel providing services:

- are competent to do so
 - hold relevant, appropriate and recognised qualifications
 - are listed providers commensurate with the level of demonstrated competence and experience
 - are monitored, supervised and provided with opportunities to enhance their knowledge and skills
- maintain sound and auditable office, financial and staff systems which will assist the PDS lawyers to fulfil their obligations as listed providers
 - comply with the Agency's requirements for the administration of the legal aid and related schemes
 - comply with all Agency policies, procedures and delegations except where exemptions are detailed
 - establish and maintain effective working relationships with:
 - the judiciary
 - local lawyers
 - representatives of legal professional organisations
 - relevant community organisations – particularly those which have an understanding and may provide services to client groups serviced by the PDS
 - iwi/hapu
 - statutory agencies, such as the Police, Court staff and Department of Corrections

8. Services to be provided

8.1 Parameters of services

The PDS will provide such legal services as are appropriate in relation to the:

- legal aid scheme
 - criminal legal aid
- duty solicitor scheme
- police detention legal assistance scheme (not currently in effect)

8.2 Location

The PDS will provide legal services at the following Courts:

- Auckland High Court
- Auckland District Court
- Manukau District Court
- Court of Appeal
- Supreme Court

For greater clarity, the PDS may provide legal services in the Court of Appeal, the Supreme Court, and in other Courts, where the matter originated in, was incidental or related to, or arose out of, a matter that originated in the

Auckland and Manukau Courts. For example, occasionally PDS lawyers may be obliged to go to outlying courts such as Waitakere, North Shore and Papakura where assigned persons have incidental or related charges to those that emanated from the courts in Auckland and/or Manukau.

8.3 Assignments, caseloads, and case mix

8.3.1 General

- i) The PDS may undertake up to one-third of the total legal aid – criminal caseload for the Auckland and Manukau Courts, in addition to duty solicitor services and may participate in the police detention legal assistance scheme.
- ii) Private practice lawyers will continue to provide at least two-thirds of legal aid criminal defence services at these Courts. The choice of preferred lawyer will continue to be available to legally aided persons, provided Agency criteria for assignment as preferred lawyer are met. Legally aided persons may choose the PDS as a preferred lawyer.
- iii) Assignments will be made to the Public Defender as lead provider. The Public Defender may allocate the work to other PDS listed providers having regard to the area of law and the category for which the PDS listed provider is approved. On a day to day basis, this may be delegated to the Senior Supervising Lawyer.
- iv) Grants of legal aid to applicants with a PDS lawyer will not be specified in terms of a maximum grant. The Agency may require the legally aided person to repay some or all of the cost of services. The Agency will assess any repayment required according to the provisions of the Act and communicate this to the PDS. The PDS will advise the Agency as to the cost of services when the case finishes.
- v) The Agency's policy for making assignments is attached at Appendix 2.
- vi) The Agency will make publicly available the levels of assignments to the PDS and private practice lawyers.

8.3.2 Assignments: legal aid - criminal

With respect to assignment of legal aid – criminal:

- the Agency will:
 - assess an application for eligibility in accordance with the provisions of the Act
 - assess an application for repayment conditions on the grant in accordance with the provisions of the Act
- the PDS will:

- seek to maximise its level of preferred lawyer cases
- not undertake more than 33% of all legal aid - criminal cases at the Auckland and Manukau Courts
- in the event that preferred lawyer assignments do not reach sufficient levels up to allowed maximum case levels, the Agency will, on the basis of accumulated totals, make assignments to PDS that will not exceed for each proceedings category:
 - 33% of all assignments available in the Auckland and Manukau Courts
 - 50% of all assignments available on rotation
 - a 2 (PDS) to 1 (private provider) ratio of assignments available on rotation

8.3.3 *Assignments: duty solicitor*

With respect to the duty solicitor scheme, there will be a minimum and maximum number of hours allocated to the PDS; as set out in the Agency's Statement of Intent.

8.3.4 *Assignments: PDLA*

PDS is exempted from participation in the PDLA scheme.

9. **Budget**

The budget for the PDS will be reviewed at least annually in terms of the Agency's planning and budgeting timetable. Any budget reviews will be undertaken in consultation with the Ministry of Justice, with any increase in funding agreed in terms of Government's Budget process. The annual budget will be prepared by the Service Development Manager and approved by the Chief Executive in terms of the appropriation. The budget will be prepared having regard to:

- financial forecasts of the PDS
- forecasted client caseloads and case mix

The Service Development Manager will provide the Chief Executive with the following budgets:

- annual operating expenditure, distinguishing
 - personnel
 - general operating
 - disbursements¹
- annual capital expenditure (where necessary)
- annual legal aid cost savings
- establishment and development (where appropriate)

¹ The nature and quantum of disbursements, particularly in relation to Criminal Proceedings Category 4 matters is such that additional consideration of this may be required in the course in the year.

The annual legal aid cost savings of the PDS will equate to the value of legal aid expenditure that is estimated would be paid out to private practice lawyers if they were to be assigned the equivalent mix and volume of legally aided persons.

The PDS will undertake sufficient cases in each financial year to a level that had those cases been undertaken by private practice lawyers the amount paid would have been no less than what was made available to the PDS by way of a budget.

It is recognised that the annual budget relies on estimates of caseload and case mix. Nevertheless, the estimates form a firm expectation of the levels to be achieved unless experience demonstrates that the caseloads are excessive and professional standards in dealing with clients and cases are compromised.

Expenditure will only be authorised by the PDS in terms of delegations issued by the Chief Executive. The PDS will comply with all Agency requirements regarding financial and internal controls. This includes that the PDS may not authorise expenditure that would cause the PDS to exceed its appropriation.

The PDS is expected to meet the planning forecasts, performance measures and outcomes, approved in its annual budget and as set out in the Agency's Statement of Intent.

10. Other responsibilities of the Agency

In general, the Agency must fulfil its responsibilities in terms of:

- a Crown entity
- the Act and other statutory obligations
- being a good employer

The Agency acknowledges that its responsibilities are broad and that other services and functions of the Agency have a role in supporting the PDS to enable it to be a success. In particular this includes:

- (a) *human resource advice and support*: developing a remuneration framework, a performance management framework, and position description categories, and generally providing such advice on human resource issues as is requested.
- (b) *information technology services*: providing information technology services including helpdesk services under its vendor facilities management and application support contracts.
- (c) *financial services and payroll*: providing financial services, including processing the payroll fortnightly, processing supplier invoices, preparing monthly expenditure reports, and co-ordinating the budget cycle.
- (d) *information and reports*: providing business analysis support.
- (e) *corporate support*: providing advice and assistance in relation to purchases of goods and services and the provision of suitable accommodation.

- (f) *media requirements*: providing training for designated staff and assistance with media inquiries.

The Agency will also monitor the progress of the PDS on an ongoing basis and keep relevant stakeholders informed, as appropriate.

11. Reporting, monitoring and auditing

The PDS must ensure that it collects, stores and provides such data and information as is specified for the purposes of monitoring and auditing, and any other data and information that might reasonably be anticipated for those purposes.

The PDS will meet with the reporting requirements of the Agency's Statement of Intent with the Ministry of Justice.

The PDS will provide the Agency with such reports and information as are required to monitor and report on this Statement. The Manager Service Contracts, on behalf of the Agency, will report every four months on the performance of this Statement or as otherwise agreed.

From time to time the PDS will be required to provide data and information as one off events. This may arise from inquiries direct to the PDS, but may arise through the Agency, either on its own account or from external sources including those related to the Official Information Act 1982, Parliamentary Questions, Ombudsman's Office, or the Ministry of Justice. The PDS will respond to all inquiries within the required time having regard to the nature of the inquiry.

The operations of the PDS may be audited by the Agency's internal auditor according to the Agency's audit policy. The PDS will be audited by Audit New Zealand.

The PDS lawyers may be audited under the Act. Such audits will only be conducted by qualified lawyers.

12. Responsibilities for Statement

On behalf of the Chief Executive, the Manager Service Contracts is responsible for the updating of this Statement and its appendices.

Signed by the Chief Executive of) _____
the Legal Services Agency Signature

Name and Date

Signed by the Service) _____
Development Manager Signature

Name and Date

Appendix 1

Code of Conduct for PDS Lawyers and Other PDS Employees

Purpose of the PDS

1. The purpose of the PDS is to provide quality, timely and independent advice and representation to persons subject to criminal proceedings and who are eligible for a grant of Legal Aid pursuant to the provisions of the Legal Services Act 2000.

Duties to the Client

2. A PDS lawyer owes the following duties to each client:
 - (a) to do his or her utmost, consistent with the lawyer's duty to the Court; and to promote and work for the best interests of the client and to ensure that the client receives a fair hearing;
 - (b) to provide the client with fearless, vigorous and effective defence and to use all proper and lawful means to secure the best outcome for the client;
 - (c) to act with all reasonable diligence and promptness in handling the affairs of the client which shall include duties of disclosure of all relevant information in the case to the client and of keeping the client informed of the progress of the case.

Duty to Act with Integrity and Independence

3. All employees of the PDS shall act with honesty and integrity in carrying out his or her duties. He or she must never knowingly or recklessly give false or misleading information.
4. A PDS lawyer has a duty to maintain his or her professional independence and not to allow this to be compromised by prosecuting authorities, the Courts, the Agency, the Ministry of Justice, clients or any other person or body.

Duty to Act Impartially, Avoid Discrimination and to Acknowledge Cultural Differences

5. All employees shall treat all clients fairly, reasonably and without discrimination. An employee must not therefore discriminate directly or indirectly against any person on grounds of race, colour, ethnic or national origin, sex, marital status, sexual orientation, disability, age, political persuasion or religion consistent with the New Zealand Bill of Rights Act 1990 and Human Rights Act 1993. All employees must ensure that the culture of clients and their families/whanau is acknowledged and respected.
6. A PDS lawyer must accept an assignment to act for any eligible client provided that:

- (a) he or she can competently act;
 - (b) no significant risk of conflict of interest arises;
 - (c) there is no substantial reason why the best interests of the client would not be served;
 - (d) no right of withdrawal would immediately arise under paragraphs 23 or 24 below.
7. A PDS lawyer shall provide advice, assistance or representation to a client only where he or she is competent to do so. Competence requires such legal knowledge, skill, experience and preparation as is reasonably necessary to properly represent the interests of the client.
8. A PDS lawyer shall not refuse to advise, assist or represent a client because of the nature of the allegation or the client or because of the lawyer's personal views.

Duty of Confidentiality

9. All employees shall keep all information about a client confidential unless the client specifically waives his or her right of confidentiality in this regard (subject however to any internal audit obligations).
10. A PDS lawyer is bound by the rules of legal professional privilege and any applicable Rules of Professional Conduct.

Duty to the Court

11. A PDS lawyer must never deceive, or recklessly or knowingly, mislead the Court.
12. As an officer of the Court, a PDS lawyer should support the authority and dignity of the Court by strict adherence to codes of professional behaviour and by manifesting a professional attitude towards the judge, prosecutor, witnesses and others in the courtroom and consistent with the proper and efficient administration of justice.

Relationship with other Professional Codes of Conduct

13. PDS lawyers shall comply with the New Zealand Law Society Rules of Conduct and Client Care and any amendments thereof and shall have regard to any guidance issued by that body; and the said Rules are hereby expressly incorporated as a term of this Code of Conduct.
14. The Public Defender (except as may be delegated by him or her) shall be responsible for the interpretation of this Code in practice and providing advice and guidance upon it.
15. This Code applies in addition to any professional or staff code that binds any employee of the PDS. Where any serious doubt arises as to the interpretation of this Code, the issues will be referred to the Public Defender who will provide

advice and guidance on the matter, consulting wherever appropriate with those responsible for other professional codes. So far as it is possible to do so, this Code must be interpreted in a way which is compatible with other professional codes.

Duty to Avoid Conflicts of Interest

16. A PDS lawyer shall not act for two or more clients where there is a conflict of interest, or a significant risk of conflict of interest, between the clients, or for any client where there is a conflict between the interest of the client and that of the PDS lawyer or the PDS.
17. Without prejudice to the preceding paragraph, a conflict of interest arises where the interests of a client require the PDS lawyer to act in a way which is contrary to the interests of another client, for example where the duty of confidentiality owed to a client comes into conflict with the duty to disclose all relevant information to another client.
18. Where a PDS lawyer provides advice, assistance or representation to a client and a conflict or a significant risk of conflict arises between the interest of two or more clients, or the PDS lawyer and a client, then he or she must cease to act.

Duty not to Offer or Accept Payments

19. An employee shall not pay any fee, commission, inducement, gratuity, gift, benefit or other form of compensation to a client or to a witness save for payments made from PDS funds in respect of proper witness expenses, fees of expert witness, or similar costs.
20. Save for the receipt of professional salary, an employee shall not accept any fee, commission, inducement, gratuity, gift (except where a refusal to accept is likely to cause offence), benefit or other form of compensation relating to his or her representation of a client of the PDS. Where a gift is substantial, it is to be reported to the Service Development Manager or to the Manager Service Contracts, who will determine the appropriate response. An employee who accepts a gift should declare the gift to the Service Development Manager or to the Manager Service Contracts for a decision on final disposal.

Relationship with the Legal Profession and Others

21. A PDS lawyer shall not practice law other than in the performance of his or her duties as an employee of the PDS, or engage in any other occupation, without express written permission from the Service Development Manager. A PDS lawyer is not able to provide legal aid services in their private capacity.
22. All employees shall endeavour to maintain relationships with the wider legal profession and other agencies in the criminal justice system based on courtesy, mutual respect and professionalism.

Withdrawal of Legal Representative

23. A PDS lawyer shall cease to act for a client where:

- (a) a conflict or a significant risk of conflict of interest or breach of confidentiality arises;
 - (b) a conflict or a significant risk of conflict arises between the client's interests and the lawyer's duty to the Court;
 - (c) the client withdraws instructions.
24. A PDS lawyer may cease to act for a client where:
- (a) the client's behaviour towards the PDS lawyer or any other employee is violent, threatening or abusive;
 - (b) there is some other substantial reason for withdrawal, approved by the Public Defender.
25. If a PDS lawyer ceases to act, then he or she shall give reasons to the client for so doing, except in the case of paragraph 23(c) above, and shall take steps to inform the client of this fact without delay.

Public Interest Disclosure

26. If an employee believes that he or she is being required to act in a way which:
- (a) is illegal, improper or unethical;
 - (b) is in breach of professional rules;
 - (c) may involve maladministration, fraud or misuse of public funds;
 - (d) is otherwise inconsistent with this Code or the New Zealand Law Society Rules of Conduct and Client Care

he or she must report the matter to the Public Defender or, where that may be inappropriate (for example where the Public Defender is the cause of the concern), to the Chief Executive of the Legal Services Agency subject however to the provisions of the Protected Disclosures Act 2000.

Standards of Conduct

27. An employee shall not do anything to bring the PDS into disrepute or to diminish public confidence in the criminal justice system in the course of his or her employment or otherwise.
28. An employee who is a member of a professional body shall comply with the rules of conduct and any guidance issued by that body.
29. All employees must apply any professional rules or guidance, approved by the New Zealand Law Society relating to the treatment of victims and witnesses.

30. An employee shall not misuse his or her position or information acquired in the course of his or her duties to further his or her own private interests or those of others.
31. The terms, conditions, policies and procedures contained in the PDS office manual shall apply to all employees except where varied or overridden by an express provision of this Code.

Complaints

32. A complaint against an employee shall be dealt with under the procedures laid down by the PDS manual and the terms of the employee's contract of service.
33. A professional complaint against a PDS lawyer may be dealt with under the procedure laid down by the Lawyers and Conveyancers Act 2006, and if relevant under paragraph 32 above as well.

Appendix 2

Policies for the Treatment of Granting and Assignment for Public Defence Service Cases

Assignments

1. Grants staff will assign to the Public Defender as lead provider, rather than to individual PDS lawyers. No more than the agreed maximum proportion of Auckland/Manukau caseload will be assigned to the PDS. On the basis of accumulated totals, the maximum level of assignments to the PDS will not exceed, for each proceedings category:
 - 33% of all assignments available in the Auckland and Manukau Courts
 - 50% of all assignments available on rotation
 - a 2 (PDS) to 1 (private provider) ratio of assignments available on rotation

The PDS Assignment Guidelines Summary Statement is attached as Schedule A to this Appendix.

2. The Public Defender, as lead provider, will be responsible for the allocation of cases to staff approved at the appropriate criminal proceedings category. On a day to day basis, this may be delegated to the Senior Supervising Lawyer.
3. The Public Defender will be responsible for any required re-allocation of a case within the PDS, and this will occur in consultation with the client. Approval from a Grants officer and consultation with the Service Development Manager will not be required for re-allocation within the PDS, but will still be required for re-assignment to an external lead provider if this is required.
4. 'Preferred lawyer' assignments where the client nominates the PDS will be assigned to the Public Defender as lead provider. Allocation of a particular lawyer when the PDS, or a particular lawyer within the PDS, has been nominated as preferred lawyer will be a matter for determination by PDS management, and will take place in consultation with the client.
5. 'In rotation' assignments for categories 1 & 2 cases will be assigned to the Public Defender following current policy, up to a maximum of 50% of total Auckland/Manukau 'in rotation' cases. The lawyer assigned by the PDS must be listed as available for categories 1 & 2 'in rotation' cases and be approved as a duty solicitor rostered at the Court (but not necessarily on duty on the day of assignment)².
6. 'In rotation' assignments for categories 3 & 4 cases will be assigned to the Public Defender following current policy, up to a maximum of 50% of total Auckland/Manukau 'in rotation' cases. The lawyer assigned by the PDS must be listed as available for categories 3 & 4 'in rotation' cases at the Court.

² For the duration of the duty lawyer test, "in rotation" assignments at the Auckland Court will be made in accordance with the protocols established under the duty lawyer test.

Grants and Amendments

7. The PDS will manage each assigned case within the total budget of the PDS, with no maximum grants made by Grants officers and no referral for amendments.
8. PDS will use a time recording system to record time taken, and other costing data, for individual cases. This data will be used to generate information required for management planning, and monitoring and reporting, as well as advising the cost of services for the calculation of the final repayment required by the client.
9. *Second criminal matter or matters*
The existing policy on additional charges will apply with the PDS cases. In other words, when Grants staff decide to treat an application as an amendment to a grant already assigned to the PDS, for the purposes of the PDS it will be treated as the same case. PDS staff will have the option to request consideration that the additional charge or charges be treated as a separate grant.
10. *Withdrawal of or amendment to, a grant of legal aid.*
The current policy and practice apply in the PDS cases. Sections 25 and 27 of the Legal Services Act 2000 detail circumstances in which the Agency can withdraw or amend a grant of criminal legal aid.

Disbursements

11. All disbursements will be managed by the PDS, with no referral to Grants staff.

Conditions on a Grant

12. Grants staff will retain responsibility for assessing the repayment requirement and setting up the conditions on a grant for the PDS cases. The decisions on conditions on a grant would be the same as if the case were not a PDS case.
13. Grants staff will assess the client's financial situation to set the prescribed repayment amount and make a decision on whether or not to require an interim repayment at the time the grant is approved. Grants staff will also make a decision to seek a client's authorisation to a charge over property as security for any debt. Grants staff will inform the legally aided person and the PDS of the conditions set.
14. The PDS will inform Grants staff when the case is finalised of the cost of services³ incurred.
15. If the PDS lawyer becomes aware that the financial situation of the applicant has changed or is not as it was conveyed to the Agency, the PDS lawyer is obliged to inform the Agency of this.
16. Agency standard procedures for the recovery of debt will apply including, when applicable, PDS obtaining a signed "authorisation to take a Statutory Land

³ The method used for calculating the cost of services is under development and when finalised will be incorporated in to this Statement.

Charge” letter from the aided person to allow a security over property to be taken and arranging registration or release of a statutory land charge and/or caveat.

17. The Debt Management Group staff will communicate directly with the legally aided person on the recovery of any repayment while the case is active and after the case is finalised.

Schedule A to Appendix 2

PDS Assignment Guidelines - Summary Statement

1. The calculations of assignment proportions for the PDS will be on the basis of the accumulated total number of assignments. Notwithstanding that the PDS commenced as a permanent service from 1 December 2008, the accumulated total number of assignments means the overall total number from the date the PDS commenced as a pilot plan (3 May 2004) to date. This approach of using the accumulated total number of assignments applies to
 - the number of assignments available, and
 - the number of assignments available on rotation
 - the numbers of assignments that have been made to the PDS and to private providers.

2. On the basis of accumulated total number of assignments, the maximum level of assignments to the PDS will not exceed, for each proceedings category:
 - 33% of all assignments available in the Auckland and Manukau Courts
 - 50% of all assignments available on rotation
 - a 2 (PDS) to 1 (private provider) ratio of assignments available on rotation.

3. The 2:1 ratio is a further restriction on the level of PDS assignments, and is introduced to ensure that in situations where the PDS is below the maximum levels but has capacity to catch up, it cannot do so at a rate that exceeds 2:1. The 2:1 ratio will therefore generally be employed (but not exceeded) to allow assignment up to the 50% on rotation maximum level if the PDS has the capacity. In exceptional circumstances, the Agency may agree to assign at a rate higher than 2:1 for specific reasons and a specific period of time.