



Part 19 – PDLA and Duty Solicitor Schemes

Policy on the Police Detention Legal Assistance Scheme (PDLA)	2
Rationale.....	2
Purpose of Policy	2
Glossary.....	2
Guidelines.....	3
Eligibility.....	3
Rosters/Lists	3
Requirements of PDLA Lawyers.....	3
Attendance	5
Assignment as a result of PDLA	6
Payment	7
Submitting Invoices	7
Appendix 1 – guidelines for when personal attendance may be desirable	10
Introduction	10
Assessing whether to attend personally	10
Having sufficient information	10
Factors relevant to attendance.....	11
Timing of attendance	13
Obligation to refer case on.....	14
Appendix 2 – rates for payment.....	15
Managing the PDLA Scheme List.....	15
Additions, Deletions and Changes to the PDLA Scheme List.....	15
Duty Solicitor Scheme	17
Introduction	17
Legislation.....	17
Protocols for Duty Solicitors.....	17
Your obligations to the Court as the Duty Solicitor.....	17
Providing legal advice and assistance to any unrepresented persons charged with an offence.....	18
Assisting applicants to fill in the legal aid application form	18
Giving information about the Preferred Provider scheme	18
Your role if you are the Supervising Duty Solicitor.....	19
What happens if I am unable to appear as the Duty Solicitor?	19
Managing Duty Solicitor Rosters.....	19
Introduction.....	19
Policy.....	19
Principles.....	19
Procedures	20
Payment Rates	21
Duty Solicitor Roster Notification	22

Policy on the Police Detention Legal Assistance Scheme (PDLA)

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.

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).

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.

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.

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.

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.

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.
 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

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

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.

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.

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.

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).

Appendix 1 – 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.
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

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.

- 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 	<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
	<p>is desirable e.g.</p> <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 - 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.

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.

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:
 - 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

Activity	Coverage	Rates	Documentation
Telephone attendance	Day or Night (24/7)	\$39/call	Completed form 13
Attendance in person	Day – 0800 to 1900hrs, Monday to Thursday Day – 0800 to 1700hrs, Friday, Saturday, Sunday, Public Holidays	\$110/hour (\$55/half hour or part thereof)	Completed form 13
Attendance in person	Night – 1900 to 0800hrs, Monday to Thursday Night - 1700 to 0800hrs, Friday, Saturday, Sunday, Public Holidays	\$166/hour (\$83/half hour or part thereof)	Completed form 13

Managing the PDLA Scheme List

1. The following describes how Agency staff manage the PDLA Scheme.
2. The Provider List is made up of lawyers approved for inclusion in the Legal Aid Scheme, Duty Solicitor Scheme and the Police Detention Legal Assistance Scheme.
3. The Provider List is managed by the Provider List Administration, Service Contracts, Head Office.

Additions, Deletions and Changes to the PDLA Scheme List

1. All notification of changes to a listed provider's details must be advised in writing to the Provider List Administrator. Address and phone changes can come via the Grants office, but changes to the Provider's litigation experience level, advancement of criminal categories, application for additional areas of law must come in writing from the listed provider or their supervisor.
2. A Listed Provider cannot be included on a roster or list unless or until they have been listed as approved for inclusion in the Scheme. In other words, they must have PDLA on Schedule A of their contract.
3. Providers requesting inclusion on a roster and who are not listed as approved for PDLA must be told to apply in writing to the Provider List Administrator in Head Office.

4. Three areas currently operate a PDLA roster. They are Northland, Auckland and Manukau and Hamilton City,
5. All other areas operate as static lists
6. All static lists will originate from Head Office and be sent to the relevant District Commander of Police for dissemination by them to individual Police Stations.
7. Rosters and lists are posted on the Agency's website, which the Police access.

Duty Solicitor Scheme

Introduction

The Agency is responsible for managing the Duty Solicitor Scheme to ensure that there are enough lawyers at each District Court to assist, advise and represent unrepresented defendants charged with an offence.

This section of the manual includes the Protocols for Duty Solicitor and outlines the procedure followed by Agency staff for compiling the duty solicitor roster.

Legislation

The following sections of the Legal Services Act 2000 underpin the Agency's policies and procedures covering the Duty Solicitor Scheme.

- | | |
|-----|--|
| S46 | Assigns responsibility for managing the Duty Solicitor Scheme to the Legal Services Agency |
| S47 | Details the object of the Duty Solicitor Scheme |
| S48 | Specifies the duties of duty solicitors |

Protocols for Duty Solicitors

These protocols are provided as a guideline. They outline Agency expectations when you are rostered as the Duty Solicitor

Your obligations to the Court as the Duty Solicitor

- Sign in prior to Court commencing
- Be available to attend until notified you are no longer required, either by the supervising duty solicitor or the Judge
- Give priority to unrepresented defendants. In limited circumstances, (e.g. seeking a remand) representation of your own client is permissible only if it does not interfere with duty solicitor responsibilities. Any time spent with your own clients must be recorded as a deduction on the duty solicitor claim form
- At busy Courts, negotiate with other duty solicitors who will remain on duty in the Courtroom

Providing legal advice and assistance to any unrepresented persons charged with an offence

- Obtain information, where necessary, from the Police file or the Court for unrepresented defendants
- Deal with matters where the defendant wishes to be represented by the duty solicitor, intends to enter a guilty plea and their sentencing can be dealt with on the day. Clear reasons need to be stated on the legal aid application form for any exceptions to this general 'rule of thumb'
- Deal with only minor matters where the defendant wishes to be represented by the duty solicitor, intends to enter a not guilty plea and the matter can be dealt with on the day
- Deal with matters where the defendant wishes to seek a remand without plea to make a legal aid application

Assisting applicants to fill in the legal aid application form

- Check that all sections of the application form are filled in accurately
- Check that the financial details section is completed for all applicants
- Advise defendants that you are unable to submit an application form where they have given false information
- Provide information about special circumstances that the Agency would need to consider in making the decision to grant aid, e.g. relevant history or the need for an interpreter
- Submit all legal aid application forms to the Agency on the same day they are completed

Giving information about the Preferred Provider scheme

- A duty solicitor cannot seek nomination as preferred lawyer but may accept nomination if the defendant requests this, as long as there is a genuine preferred lawyer relationship. In such a case, the duty solicitor should tell the defendant that they will note this preference on the application form, but that the Agency will make the final assignment. The duty solicitor must provide details as to why they have been nominated as preferred lawyer, e.g. previous representation by the lawyer or recommendation by family/whanau or friends
- Advise the defendant they will be assigned a lawyer by the Agency if they do not have a genuine preferred lawyer
- Advise the defendant that at the Agency's discretion, the duty solicitor who has assisted them may also be the lawyer who is assigned to them
- Advise the defendant that as duty solicitor you are unable to nominate or recommend any other lawyer (or firm/chambers) as the preferred lawyer

Your role if you are the Supervising Duty Solicitor

- Ensure that both the Police cells and Court foyer are adequately covered and that at least one duty solicitor remains inside the Court
- Provide supervision and direction (as required) to junior lawyers rostered on with you
- Check with the Court whether duty solicitors will be needed for late Court sittings
- Notify the Agency of any non attendances of rostered duty solicitors

What happens if I am unable to appear as the Duty Solicitor?

- Take responsibility for finding your own replacement
- Only find a replacement when you are genuinely unavailable
- Notify the Agency and Court who the replacement lawyer will be
- Make sure the replacement lawyer is a listed provider and at least the same proceedings category and level of experience (or higher) as yourself

Managing Duty Solicitor Rosters

The following details the procedure used by the Agency in preparing duty solicitor rosters.

Introduction

These guidelines assist the Agency in managing the preparation of duty solicitor rosters. In preparing the duty solicitor rosters, the Agency will need to consider:

1. Duty solicitors' requirements in regard to their availability (where possible).
2. The Service Level Agreements already negotiated with individual Courts in regard to duty solicitor roster management.

Policy

The Agency will undertake the management of duty solicitor rosters to ensure that Courts' business can be managed efficiently and effectively and the needs of unrepresented clients are met with the assistance of appropriately qualified duty solicitors.

Principles

The guiding principles for managing the duty solicitor rosters are as follows:

1. The Agency will allocate list days equitably amongst the list of duty solicitors available.
2. The Agency will allocate non-list days equitably amongst the list of duty solicitors available.
3. The Agency will ensure that sufficient numbers of duty solicitors are rostered to each Court.
4. The Agency will roster duty solicitors from the list of those available, and where necessary appoint a supervising duty solicitor to provide support to less experienced duty solicitors.
5. The Agency will put in place procedures for additional duty solicitors to be rostered if required by the Courts.
6. The Agency will take into account, where possible, duty solicitors' preference for a specific Court location in large metropolitan areas.
7. The Agency will demonstrate a transparent and fair process when allocating the mix of list and non-list days to duty solicitors, as the link between rosters and assignments affects a duty solicitors' livelihood.

Procedures

Agency staff responsible for preparing duty solicitor rosters are to use the following guidelines.

1. Prepare rosters up to three months in advance. This will depend on the size and frequency of when a particular Courts sits, and be determined by the Service Level Agreement already negotiated with each Court.
2. Request the Court calendar from the Registrar.
3. Not less than annually send a Duty Solicitor Roster Notification form to all duty solicitors, requesting they advise the Agency of their continued availability. Service Contracts at Head Office are to be advised of any duty solicitors who indicate that they are not available.
4. When preparing the draft roster the following process is used:
 - Prepare a list of duty solicitors available. It may be useful to sort the available duty solicitors by their proceedings categories or experience level.
 - Check:
 - For any changes to a duty solicitors' Proceedings Category or Level; litigation experience; and
 - Verify that the provider is approved by the Agency to perform Duty Solicitor work.
 - Allocate the Court list days first by working through the list, with attention to the mix of experienced duty solicitors required in a particular Court.

- Take into account genuine preferences where possible, for example if a duty solicitor has indicated they only work part-time on a regular basis, (e.g. they are employed as a permanent part-timer on Monday, Tuesday, Wednesday) or they have scheduled annual leave
 - Where a duty solicitor has indicated they are only available for Court list days and are not prepared to be available for less busy non-list days, staff will need to exercise judgement to ensure fairness when allocating the busier (and more profitable) list days.
 - For Courts where it is normal practice for one duty solicitor to be nominated or appointed by the Agency as the supervising duty solicitor, include this information on the roster.
 - For Courts where it is normal practice to assign responsibility for the Cells and the Foyer, include this information on the roster.
 - Allocate the Court non-list days by working through the list using the same process.
1. Check the other duty solicitor rosters where lawyers are available as duty solicitor at more than one Court. It is the Agency's responsibility to check the other duty solicitor rosters to ensure there are no clashes for the same day on the respective rosters.
 2. Confirm any changes and issue the final roster to the duty solicitors, the Court and the District Law Society.
 3. It should be noted that duty solicitors arranging replacements for their rostered day on (once the roster is issued) will potentially affect the number of assignments allocated to them. Refer to **Assignment when there is no Preferred Lawyer in Criminal Cases** for proceedings categories 1 and 2 cases where Option 1 is applied (see **Policy on Assignment, Termination of Assignment and Reassignment** in this manual).

Payment Rates

Activity	Coverage	Rate
Attendance at Court	Weekday	\$99/hour
Attendance at Court	Saturday, Sunday, Public Holiday	\$121/hour

Duty Solicitor Roster Notification

at [Court] for [period]

Please complete and return to the Agency by [date].

The Agency, where possible, will consider your particular requirements.

Name and Firm of
Lawyer

Are you still available for Duty Solicitor work? Yes No

Are there regular days of the week, including Saturdays, that you are unavailable for the Duty Solicitor roster. If so, please state which days and give reasons, e.g. only work part time Monday – Thursday.

Is there a block period of time in which you are unavailable during this proposed roster period, e.g. trial scheduled, annual leave planned? Please detail the time.

Please list any other Courts where you do Duty Solicitor work.

If you have any questions related to this proposed Duty Solicitor Roster, please contact [managing_practitioner_name] on [phone].