Legal Services Agency
Pokapū Ratonga Ture

Duty solicitor services at specific large courts

1 Introduction

Administrative changes to the duty solicitor scheme were introduced on a test basis from the latter part of 2006 at the Waitakere, Auckland, Wellington, Lower Hutt and Porirua District Courts[1]. The changes were seen as successful, resulting in an improved and more reliable service being provided to defendants and the courts.

With some modification, the changes have been adopted for the ongoing operation of the scheme at the above courts. During 2010 similar changes to the scheme's operation will be introduced at the remaining Auckland metropolitan district courts (Manukau, Papakura and Pukekohe, and North Shore).

This information sheet outlines duty solicitor arrangements at the large courts where changes have been implemented.

2 Summary of Arrangements

The key features of the duty solicitor scheme operating at the reformed courts are:

- appointed duty lawyer[2] supervisors or co-ordinators who work closely with Agency administrators to manage the rosters
- additional requirements for entry to the duty lawyer roster, including assessment and induction by duty lawyer supervisors or coordinators
- roster composition that takes into account duty lawyers' experience, competence, skills and team fit
- specially appointed duty lawyers for Saturdays and public holidays
- a consistent pattern of rostering, ie, being rostered at one court on the same day of the week
- participation on a duty lawyer roster is no longer required in order to be eligible for criminal legal aid work
- Agency staff assist defendants to complete legal aid applications on busy court mornings
- duty lawyer instructions are issued for each court to make the Agency's expectations clear.

[1] The Upper Hutt Court duty lawyer roster was also affected..

[2] The term 'duty lawyer' rather than 'duty solicitor' has been adopted at these courts.

3 Background to changes

When the Agency reviewed its duty solicitor services in 2005 it identified a number of stakeholder concerns about the operation of the duty lawyer service. Concerns ranged from the increasing number of inexperienced duty lawyers participating on court rosters to inappropriate duty lawyer practices.

The administrative changes the Agency subsequently introduced to the specified courts were intended to:

- improve the quality and consistency of duty lawyer services provided to defendants appearing before the District Court, and
- improve the effectiveness of the Duty Solicitor Scheme as a major contributor to an efficient summary court process.

An underlying principle of the changes was an acknowledgement that a 'one-size-fits-all' approach may not be appropriate so the changes were designed to fit each court's characteristics and stakeholders' needs, and to build on existing practices as appropriate.

4 Role of duty lawyer supervisor or coordinator

Duty lawyer supervisors are in place at the Auckland courts. Their role includes:

- working with the Agency in managing the composition of the roster to make sure it meets the needs of the Court
- assessing and inducting new entrants to the roster
- assuming responsibility for some administrative matters, including arranging replacement duty lawyers
- organising the flow of work and supervising their team on their rostered day.

While duty lawyer supervisor positions were also tested in the Wellington cluster courts, the role at those courts has since been replaced by *duty lawyer coordinator* positions.[3] The coordinator role retains most aspects of the supervisor role described above, but does not extend to supervising work on rostered days.

[3] The additional cost of the supervisor role had been expected to be met by compensatory reduced expenditure on duty solicitors because of their more efficient use. However, in the Wellington courts the necessary level of savings was not realised and the Agency was unable to continue with the duty lawyer supervisor role.

5 Roster entry

For the specified courts, a duty solicitor who wishes to enter the duty lawyer roster must be recommended by at least two duty lawyer supervisors or coordinators. Entry to the roster is dependant on suitable spaces being available, and waiting lists are in place where necessary.[4]

Applicants to the roster, especially newly qualified duty solicitors, are generally observed and assessed by duty lawyer supervisors or coordinators and familiarised with the court's operation. Applicants can be refused entry to the roster if they are not able to demonstrate sufficient competence during their period of assessment.

Note: For newly qualified lawyers assessment and induction occurs only after a lawyer has:

- received a certificate of completion from New Zealand Law Society Continuing Legal Education's Duty Solicitor Training Programme
- obtained a listing approval as a duty solicitor from the Agency.

6 Rostering policy

Generally, criminal legal aid providers have been required to undertake duty solicitor work to be eligible for categories 1 and 2 rotation assignments. At the specified courts, lawyers are no longer required to be on the court's roster in order to be eligible for these legal aid assignments. In addition duty solicitors in metropolitan Auckland and Wellington can only be rostered at one of the large district courts.[5]

The rosters at the specified courts are structured so that:

- each duty lawyer is rostered to a recurring pattern of duties, always on the same day, so they can plan around their rostered duties
- each day's team takes into account the experience, competence, skills and team fit of lawyers to ensure the service can meet the Court's needs.

In recognition of the different nature of Saturdays and public holiday courts (ie, JP arrest courts), a small pool of specially appointed skilled and experienced lawyers are rostered on these days.

7 Completion of criminal legal aid application forms

At these specified courts, the Agency employs Legal Aid Support Officers to assist defendants with their criminal legal aid applications on busy court mornings. The Legal Aid Support Officer role:

- enables lawyers to concentrate on their core role of providing legal advice
- provides greater assurance that any 'lawyer of choice' is genuinely preferred
- provides the Agency with more complete and more accurate applications, avoiding the need for follow up and facilitating prompt decisions on applications and more appropriate debt establishment decisions.

8 Duty Lawyer instructions

The arrangements in place at each of the specified courts are set down in *instructions* provided to duty lawyers rostered at those courts. The instructions clearly state the Agency's expectations of duty lawyers and provide the basis for monitoring the operation of the scheme.

The duty lawyer instructions and other information relevant to the duty solicitor scheme's operation at the specified courts can be found on the Agency's website www.lsa.govt.nz

If you require further information contact the Initial Criminal Legal Services Unit at the Manukau office of the Public Defence Service, which administers the duty solicitor service at these courts (email duty.lawyer@lsa.govt.nz or 09 261 2501)

[4] These changes were introduced to address concerns about an increasing number of inexperienced duty lawyers on court rosters and to safeguard the quality of rosters. The policy can be found on the Agency's website.

[5] As at October 2009, the exception is the North Shore roster where lawyers from other courts may also be rostered in order to be eligible for these legal aid assignments.