Legal Services Agency
Pokapū Ratonga Ture

12 June 2009

All Duty Lawyers
Wellington, Lower Hutt and Porirua District Courts

Dear Duty Lawyer

Wellington, Lower Hutt and Porirua District Courts: Duty Lawyer Instructions applicable from 15 June 2009

Attached are the Agency's revised duty lawyer instructions for the Wellington, Porirua and Lower Hutt District Courts. These are effective from the start of the next duty lawyer roster on Monday 15 June 2009.

The instructions have been revised to incorporate the changes that are to be implemented to the duty solicitor scheme at these courts from 15 June 2009.

Please note the following new procedures for duty lawyers providing services at these courts:

Duty lawyer co-ordinators
Duty lawyer co-ordinators will take oversight of the duty solicitor scheme at the court, i.e.

- work with the Agency in managing the composition of the roster to make sure it meets the needs of the court
- undertake assessment and induction of new entrants to the roster, and
- manage replacements for all weekdays (with the exception of public holidays).

Liaison person
One duty lawyer rostered on list and other busy court days will be designated the liaison person. The liaison person will:

- stay until the end of the day and will deal with any late opposed bails
- be responsible for ensuring coverage of the cells, and
- be the day's contact person for the court.

Record of Attendance
All duty lawyers (including Saturday/public holiday duty lawyers) are required to complete the *Record of Attendance* form for the day. These are located in the Bail Room at the Wellington District Court, and at the court counter at the

Porirua and Lower Hutt courts. Please leave the completed forms in the folder as arrangements have been made for them to be collected.

Replacements
For each week there is a designated duty lawyer co-ordinator who is responsible for arranging replacements for that week. If you are unable to attend your rostered weekday session you must contact the designated co-ordinator.

If you have any queries, please contact Angela Cook, project manager, at angela.cook@lsa.govt.nz or telephone 04 495 5964.

Yours sincerely

Alison Hill
Manager Policy and Development

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Role of the Agency in administering the duty lawyer scheme

1. Relevant sections of the Legal Services Act 2000 are:

   Section 46 (2):

   > "The Agency must administer the duty solicitor scheme in accordance with this Act and any regulations made under it, and in particular must determine the conditions under which listed providers provide services under the scheme"; and

   Section 92 (a):

   > A function of the Agency is to "administer schemes in as consistent, accountable, inexpensive, and efficient a manner as is consistent with the purpose of this Act".

2. Under these two sections the Agency holds responsibility for rostering, and for issuing administrative instructions on the delivery of the scheme.

Rostering policy across the Wellington, Lower Hutt, Porirua and Upper Hutt District Courts

3. Duty lawyers are not eligible to be rostered at more than one of the Wellington, Lower Hutt or Porirua District Courts.

4. Entry to any of the Wellington, Porirua or Lower Hutt duty lawyer rosters for new applicants is dependent upon:

   - the applicant being recommended as suitable by a panel of duty lawyer co-ordinators, and
   - suitable spaces being available (See: Policy for admission to duty lawyer rosters)

5. A separate policy operates for the Saturday and public holiday roster. Entry to the Saturday and public holiday roster is by appointment only. See paragraphs 34 - 38 for further details.

6. Rosters are prepared by Agency staff in consultation with duty lawyer co-ordinators and Ministry of Justice (Courts) staff.

7. If necessary, duty lawyers currently rostered at Wellington, Lower Hutt or Porirua may also be rostered at the Upper Hutt Court. This circumstance will only occur if a workable roster cannot be developed from the available pool of duty lawyers indicating Upper Hutt as their preferred court. The Agency undertakes to enter

into discussion with Upper Hutt duty lawyers and court staff before rostering duty lawyers from outside the available Upper Hutt pool of duty lawyers.

Designated roles on the duty lawyer roster

Duty lawyer co-ordinator

8. Duty lawyer co-ordinators will take oversight of the duty solicitor scheme at the court, ie

- work with the Agency in managing the composition of the roster to make sure it meets the needs of the Court
- undertake assessment and induction of new entrants to the roster, and
- manage replacements for all weekdays (with the exception of public holidays)

Note: The co-ordinators' names appear on the right side of the roster beside the weeks they have rostered responsibility for.

Liaison person

9. A liaison person is rostered on list and other busy court days. The liaison person will:

- stay until the end of the day and will deal with any late opposed bails
- be responsible for ensuring coverage of the cells[1], and
- be the day's contact person for the court.

Duty lawyer hours of work

10. Duty lawyers must report to the court on their rostered day at the times detailed below.

<u>Wellington District Court</u>

8.30 am on Mondays, Wednesdays and Fridays

9.00 am on Tuesdays and Thursdays

<u>Lower Hutt District Court</u>

9.00 am on Mondays, Wednesdays and Fridays

8.30 am on Tuesdays and Thursdays

[1] Generally the liaison person is expected to undertake the cells work and therefore deal with opposed bails called towards the end of the day. However, the liaison person retains discretion to ask another duty lawyer to complete the cells work.

Porirua District Court

9.00 am on Mondays, Wednesdays and Thursdays

8.30 am on Tuesdays and Fridays

11. Duty lawyers must be available to attend at the court until no longer required. Duty lawyers should programme other commitments outside their rostered duty lawyer sessions. If duty lawyers are not going to be available for much of their rostered day they need to seek a replacement in advance (see paragraph 20 below).

12. The liaison person for each day must confer with the duty lawyer team and the court, particularly at the lunch adjournment, to determine the court's duty lawyer coverage requirements into the afternoon. Once not required, duty lawyers must sign off.

13. The last duty lawyer at the court must confirm with the court that they are no longer required before leaving.

Record of Attendance form (Monday to Friday)

14. Each day the rostered duty lawyers must complete a *Record of Attendance* form. The forms are used by Agency staff as the basis for processing payments to duty lawyers.

15. The responsibilities of rostered and replacement duty lawyers concerning the *Record of Attendance* form are to accurately record:

    - start time
    - their lunch break
    - any other time taken, particularly to attend to their own clients, and
    - finish time (with signature)

    Payment will be made to individual duty lawyers only if they have verified their hours by signing the *Record of Attendance* form.

16. The last duty lawyer to sign off for the day is responsible for seeking the designated court staff member's verifying signature on the *Record of Attendance.*

17. The responsibilities of the court concerning the *Record of Attendance* form are:

    - Ensure the forms are made available to duty lawyers at the following locations

Wellington District Court:	Bail room
Lower Hutt District Court:	Court counter
Porirua District Court:	Court counter

- After certification by the designated court staff member at the:

  Wellington District Court
  the *Record of Attendance* should be made available for collection by Grants staff, along with any legal aid applications

  Lower Hutt & Porirua District Courts
  the *Record of Attendance* should be forwarded to the Wellington Legal Aid Office for processing, along with the day's legal aid applications.

  Note: Payment will not be made to individual duty lawyers without the signatures of both the duty lawyer and court staff member.

18. The responsibilities of the Legal Services Agency concerning the *Record of Attendance* form are:
    - supply *Record of Attendance* forms to the court
    - ensure forms are collected on a regular basis from the Wellington District Court, and
    - process payments to duty lawyers.

Arrangements when duty lawyers are unable to attend on a rostered day (Monday to Friday)

19. These instructions cover arrangements for duty lawyers rostered Monday to Friday only. See paragraphs 34 - 38 for Saturday and public holiday replacement procedures.

20. Duty lawyers are expected to programme other commitments outside their rostered duty lawyer sessions. Where absence from a rostered session is unavoidable duty lawyers should contact the rostered weekly duty lawyer co-ordinator to discuss replacement. Duty lawyer co-ordinator contact details are provided on the front page of the roster. Duty lawyer co-ordinators will either:
    - advise the duty lawyer that they will arrange a replacement themselves; or
    - request the duty lawyer to take responsibility for finding a replacement and discuss acceptable options for replacement.

21. Duty lawyer co-ordinators arranging replacements must ensure that the following people are notified when a replacement is arranged:
    - designated contact person at the relevant court
    - designated Agency staff.

22. If the duty lawyer co-ordinator requests that the duty lawyer take responsibility for finding a replacement, then the duty lawyer who is not attending is responsible for advising the co-ordinator, the court, and the Agency of the name of the replacement duty lawyer.

23. The Agency will prepare a list of duty lawyers available for replacement for each court and forward these to the relevant co-ordinators.

    Note: Only duty lawyers on the particular court roster are eligible to undertake sessions as a replacement.

24. Duty lawyer co-ordinators arranging replacements will take the following criteria into account when considering the list of available duty lawyers:
    - dependability
    - experience
    - competence
    - the particular skills the duty lawyer can bring to the team as a whole e.g. liaison persons must be replaced from the list of other suitable liaison persons.

25. Where relevant, co-ordinators will ensure that members of their own firm or chambers are not given opportunities for replacement over and above those provided to other available duty lawyers.

26. "Swapping" of sessions will not be permitted. Swapping involves changes to two rostered days each time there is a replacement, and undermines the overall objectives of team-based rostering – ie setting up teams of duty lawyers who have the desired range of skills and attributes, who all attend on the same day, and who work well together.

Arrangements when a duty lawyer does not turn up for their rostered session

27. If a duty lawyer has not signed on within 15 minutes of their given start time they will be replaced and not paid.

28. If a duty lawyer does not attend the liaison person or court staff will contact the duty lawyer co-ordinator, or if not available, the Agency. The liaison person may be asked to call in another duty lawyer who is at the court.

Completion of criminal legal aid application forms

29. An Agency staff member, the legal aid support officer, will be present on list days at the three courts to assist defendants to complete legal aid application forms. At the start of each list day the legal aid support officer will liaise with the duty lawyer team about the court workload, and establish any particular requirements for the day.

30. The legal aid support officer is an integral part of the service at the court, and is expected to complete all legal aid application forms. On days when the legal aid

support officer is present, duty lawyers should not complete legal aid application forms when interviewing defendants unless the legal aid support officer requests them to do so.

31. When a liaison person is rostered, duty lawyers are to hand any legal aid applications that they have completed that day to the liaison person who is responsible for ensuring all forms are handed to court staff when signing out for the day. Arrangements for forwarding application forms to the Wellington Legal Aid Office will differ depending on the individual court.

32. On non-list days duty lawyers should hand completed application forms to court staff when signing out for the day.

33. All legal aid applications completed for defendants appearing on the day must be handed in before leaving the court.

Saturdays and public holidays

34. A separate policy operates for Saturdays and public holidays[2]. Admission to rosters is by appointment only.

35. Duty lawyers appointed to the Saturday and public holiday roster must be rostered on that particular court's weekday roster.

36. Rostered duty lawyers must be prepared to attend at the court by 9.00 am unless otherwise specified on the roster, but should contact the Police Watchhouse in advance to confirm the numbers appearing and any particular requirements for the day.

37. If unable to attend on their rostered day, Saturday and public holiday duty lawyers must find their own replacement. In the first instance replacements should occur from within the group of appointed Saturday and public holiday duty lawyers for the court. If none is available a replacement may then be sought from the wider pool of Saturday/public holiday duty lawyers at the Wellington, Lower Hutt or Porirua Courts.

38. On completion of a Saturday or public holiday session duty lawyers should complete the *Record of Attendance.* After certification by the deputy registrar at the court the invoice should be forwarded to the Wellington Legal Aid Office for processing.

Preferred lawyer nominations

39. The following instructions reflect existing policies and instructions detailed in the documents *Protocols for Duty Solicitors* and *Policy on Assignment, Termination of Assignment and Reassignment*[3].

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[2] A full copy of the policy for Saturdays and public holidays can be accessed through www.lsa.govt.nz. (follow the path Home Page /About Us / Legal Services / Duty Solicitor).

[3] A full copy of the policy on Assignment, Termination of Assignment and Reassignment can be accessed through www.lsa.govt.nz (follow the path Home Page / Information for Lawyers / General Policies).

40. Duty lawyers completing legal aid forms cannot seek nomination as a preferred lawyer but may accept nomination if the defendant requests this, provided that the applicant has genuinely asked the duty lawyer to be their lawyer. In such cases, duty lawyers should tell the defendant that they will note this preference on the application form, but that the Agency will make the final assignment. Duty lawyers 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 or the defendant has asked the duty lawyer to be their lawyer.

41. Duty lawyers completing legal aid application forms must advise defendants that:

- they are unable to nominate or recommend any other lawyer (or firm/chambers) as the preferred lawyer
- at the Agency's discretion the duty lawyer who has assisted them may also be the lawyer who is assigned to them
- the defendant will be assigned a lawyer by the Agency if the defendant does not have a genuine preferred lawyer
- if the duty lawyer is a secondary provider or does not have the appropriate listing approval he or she cannot accept nomination as preferred lawyer.

42. The Agency views abuse of the preferred lawyer process in criminal cases as a very serious matter. It is closely monitoring preferred lawyer assignment rates for individual duty lawyers at each court. If the Agency has information that raises concerns about a specific case of abuse of the process by duty lawyers when completing the application form it reserves the right not to assign the preferred lawyer, or to terminate the assignment and to assign from an assignment roster.

Duty lawyer badges

43. All duty lawyers are required to wear badges supplied by the Agency while providing duty lawyer services at the court. Badges should be collected from 6th floor Reception or the Legal Aid Office at the Wellington District Court and from the court counter at the Porirua and Lower Hutt District Courts. They should be returned to the same location at the end of the session.