

CODE OF CONDUCT FOR PDS LAWYERS

Date: March 2024

Purpose of the PDS

1. The purpose of the Public Defence Service ("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 2011.

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; to protect, 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, including discharging the duties of disclosure of all relevant information to the client and of keeping the client informed of the progress of the case.

Duty to Act with Integrity and Independence

3. A PDS lawyer 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 Ministry of Justice, clients or any other person or body.

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

5. A PDS lawyer shall treat all clients fairly, reasonably and without discrimination. He or she must not 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 25 or 26 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 must only act for clients in cases appropriate to their provider approval level (PAL), or under supervision in cases above their PAL.
9. 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

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

Duty to the Court

12. A PDS lawyer must never deceive, or recklessly or knowingly mislead, the Court.
13. 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

14. PDS lawyers shall comply with the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 and shall have regard to any guidance issued by the New Zealand Law Society. These Rules are expressly incorporated as a term of this Code of Conduct.
15. The Director, PDS (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.
16. This Code applies in addition to the Ministry of Justice Code of Conduct and 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 Director, PDS 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

17. 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.
18. 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.
19. Where a PDS lawyer provides advice, assistance or representation to a client and 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

20. A PDS lawyer shall not pay any fee, commission, inducement, gratuity, gift, benefit or other form of compensation to a client or to a witness except for payments made from PDS funds in respect of proper witness expenses, fees of expert witness, or similar costs.
21. Other than their professional salary, a PDS lawyer 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. Any gift is to be reported to the Office Public Defender who will determine the appropriate response. A PDS lawyer who accepts a gift should declare the gift to the Office Public Defender.

Relationship with the Legal Profession and Others

22. A PDS lawyer shall not practice law (whether paid or unpaid) 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 their manager.
23. A PDS lawyer shall not act in a governing role of any other organisation or community body that is funded by the Ministry of Justice, without express written permission from the Deputy Director Legal.
24. 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

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

- (a) 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.
26. A PDS lawyer may cease to act for a client following approval from their Office Public Defender where:
- (a) the client's behaviour towards the PDS lawyer or any other employee is violent, threatening or abusive;
 - (b) there is some other substantive reason for withdrawal.
27. If a PDS lawyer ceases to act, the Office Public Defender shall give reasons to the client for so doing and shall take steps to inform the client of this fact in writing and without delay. In the case of paragraph 26(a) above, reasons for ceasing to act need not be provided to the client without delay, if it would be unsafe to do so.
28. 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 Lawyers and Conveyancers Act 2006 (Lawyers: Conduct and Client Care) Rules.

he or she must report the matter to the Office Public Defender or, where that may be inappropriate (for example, where the Office Public Defender is the cause of the concern), to the Director, PDS or delegated person. Any such report would be subject to the provisions of the Protected Disclosures Act 2000.

Standards of Conduct

29. A PDS lawyer:
- (a) 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.
 - (b) who is a member of a professional body shall comply with the rules of conduct and any guidance issued by that body.
 - (c) must apply any professional rules or guidance, approved by the New Zealand Law Society relating to the treatment of victims and witnesses.
 - (d) 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.
30. PDS terms, conditions, policies and procedures shall apply to all employees except where varied or overwritten by an express provision of this Code.

Complaints

31. A complaint against an employee shall be dealt with under the procedures laid down in the PDS Complaints Policy and, if appropriate, the terms of the lawyer's employment agreement.
32. 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 31 above as well.

DISCLOSURE GUIDELINES

Date: August 2025

Background and purpose

These Guidelines set out the process for receiving, managing and distributing disclosure material.

Requirement for disclosure

Rule 7 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules) provides:

A lawyer must promptly disclose to a client all information that the lawyer has or acquires that is relevant to the matter in respect of which the lawyer is engaged by the client.

Thus, PDS lawyers are ultimately responsible for ensuring that all relevant material is disclosed to the client. The Rules do not, however, detail how it is disclosed or what constitutes acceptable disclosing.

The starting point **must** be to ascertain the client's instructions prior to their first PDS court appearance. Thus, during the first telephone discussion, text or meeting with the client, the lawyer **must** ask the client if he or she wishes to receive copies of any disclosure material, and how the client wants to receive it. If a lawyer has been unable to ascertain if and how the client wishes to receive disclosure prior to their first PDS court appearance, lawyers should consider whether disclosing all information at this first meeting could be working through the disclosure with the client via laptop copy or using the lawyer's hard copy before the default action of printing all disclosure.

If a client is in custody and wishes to have a copy of disclosure, then a hard copy should be sent.

Handling disclosure

The three principal ways of providing disclosure material are by email, by post or by hand. As noted above, the lawyer must take instructions from the client, during their first discussion, as to the client's preferred manner of receipt. These instructions must be recorded on the disclosure/correspondence label on the inside cover of the file and must ensure email addresses are written clearly. Support staff will then record that information as a file note against the client matter in Affinity and send an email (from the generic office inbox) to the client to ensure their email address has been noted down correctly and asking them to confirm receipt. If a receipt is not received, then no disclosure is to be sent to the client.

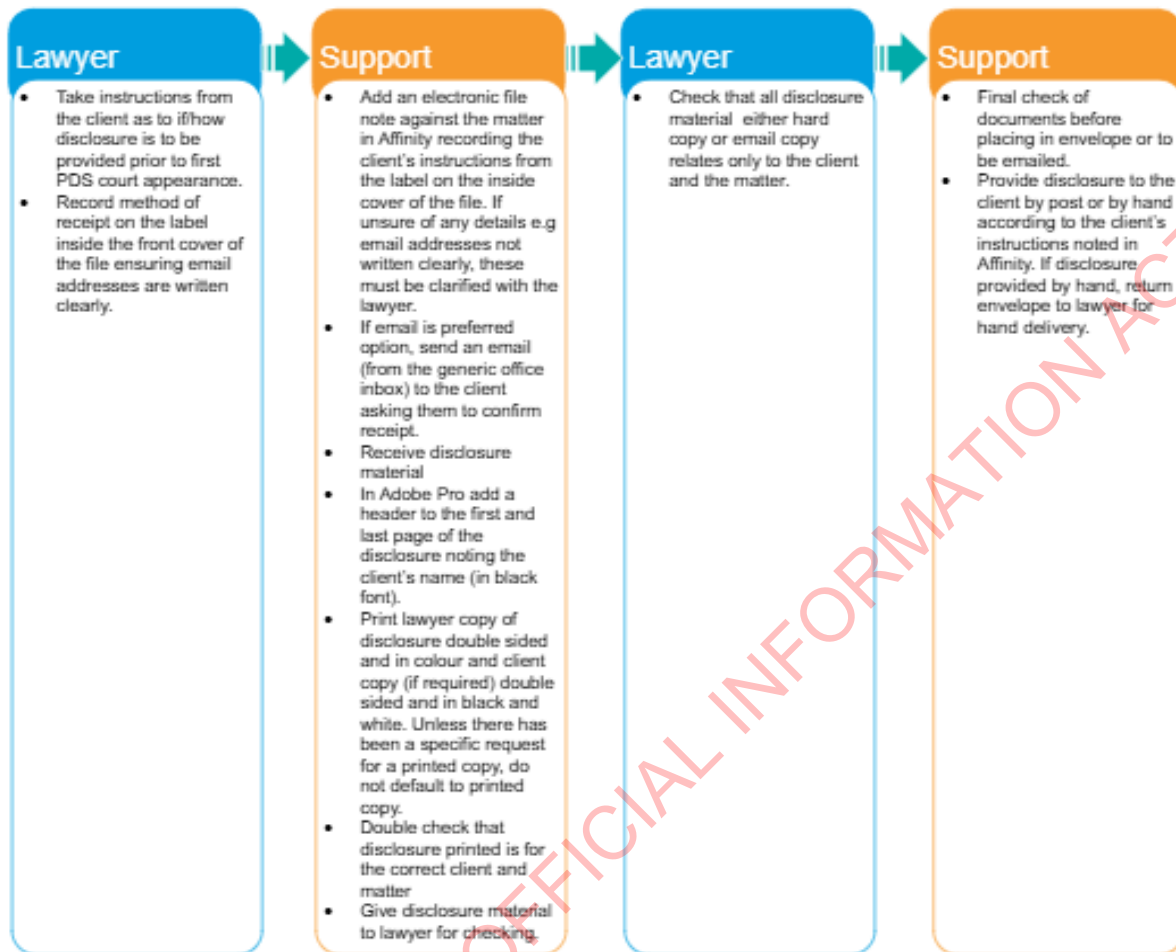
If lawyers are unable to obtain instructions from their client, then a file note must be recorded outlining the reasons why e.g client failed to appear or attended via AVL.

If disclosure has not been given to the client and the file is due to be closed, a memo or handwritten note on the file copy of the disclosure letter advising the client wasn't given a copy and why.

The process for receiving and handling disclosure material is managed by the PDS onsite support staff (refer to the PDS disclosure user manual for the support team). When handling disclosure material support staff must double-check that the material they are handling relates to the client and matter for which it is intended. Support staff must also check file notes in Affinity for client instructions on how they wish to receive disclosure (if at all). However, the lead lawyer is responsible for checking all disclosure material before it is provided to the client. If the lead lawyer is unsure about what disclosure material should be sent, they must seek guidance from their Team Manager or OPD.

Support staff should continue to use the disclosure tracking sheet (if already being used in your office) and follow the relevant disclosure management processes in place for EVIs. Support staff should also continue to record all incoming disclosure in safe custody regardless of whether it is provided to the client or not. All disclosure must be saved in Affinity.

The process for handling and providing disclosure to the client is:



Record of disclosure provided

It is important to keep an accurate record of what disclosure material has been provided to the client. This ensures that the lawyer will be able to respond to any suggestion from the client that full disclosure has not been provided (a common complaint in competence of counsel appeals).

Large volume or complex disclosure

Disclosure material that exceeds 100 pages in total and the client has indicated they wish to receive by hand or by post needs to first be brought to the attention of the assigned lawyer before printing. The lawyer and the support staff should decide whether it is necessary to print a hard copy of the disclosure material for the file.

When there is a large volume of disclosure material it may be sufficient for the lawyer to give the client access to a hard copy at the PDS office. The client can then decide what, if any, disclosure material he or she wants a copy of.

Complex disclosure material, such as text messages that need to be re-formatted, should be discussed by the support staff and the lawyer to determine how that material is to be dealt with.

Victim impact statements

Victim impact statements are **not** to be sent to the client – section 23, Victims' Rights Act 2002. They must be returned to the prosecuting agency at the conclusion of the case.

Complainant's contact details

The obligation to redact the complainant's details from the disclosure material lies with the police or prosecuting agency. However, if a complainant's address, telephone number or other contact details appear in the disclosure material it may be redacted from the copy sent to the client.

Privacy breach

In the event of a privacy breach you must advise your manager as soon as possible.

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Public Defence Service

EVI Policy

May 2017

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Introduction

Purpose

The purpose of this policy is to ensure that the Public Defence Service (PDS) has clear processes to meet its statutory obligations regarding how evidential video interviews (EVIs) disclosed by Police are stored on PDS premises and who is entitled to view EVIs.

Background

An EVI is a witness's recorded statement. The Evidence Regulations 2007 (the Regulations) provide the procedural requirements for the recording of a witness's EVI should Police intend that the EVI be offered in evidence during a criminal proceeding. The Regulations also contain restrictions on the showing, viewing, copying and on-supply of EVIs.

Section 42 of the Criminal Disclosure Act 2008 establishes an exception to its general obligation under s 13, that Police disclose the statements of all prosecution witnesses. It provides that the usual rules of disclosure do not apply to any copy or transcript of an EVI made under the Regulations. However, reg 28 of the Regulations provides that Police must disclose a transcript of the EVI as soon as practicable after a defendant pleads not guilty.

EVIs in sexual and violent cases or a child complainants' EVI

The Evidence Act 2006 (the Act) and the Regulations were amended in January 2016 (came into force 8 January 2017) to include new restrictions on defence counsel's access to video records. Pursuant to s 106(4A), a defendant's lawyer is not entitled to be given a copy of a video record of a witness's evidence in sexual and violent cases or a child complainants' video record evidence in all cases.

Sexual case is defined under s 4 of the Act as an offence against any of ss 128-142A or s 144A of the Crimes Act, or any other offence against a person of a sexual nature. Violent case is defined as any of the offences listed in s 87(5)(b) of the Sentencing Act 2002, or any other offence against a person of a violent nature.

The restrictions set out in the regulations are accompanied by new offences under s 119 of the Act in relation to unauthorised possession, use and distribution of video records.

An EVI lawyer's copy and an EVI working copy

Defendants and defence counsel still have the right to view a video record of a witness's evidence in sexual and violent cases and a child complainant's video record evidence before trial, where that video record is to be offered as an alternative way of giving evidence, but may not be provided a copy without making an application to the judge under s 106(4B) of the Act.

For sexual and violent cases and child complainants, s 106(3) provides that if a video record is to be offered by the prosecution as evidence, it must be *offered for viewing* (a lawyer's copy) to the defendant or the defendant's lawyer, prior to being offered in evidence and prior to any pre-trial consideration of admissibility (unless the judge directs otherwise). Under s 106(4) in any other case, where a video is to be offered as an alternate way of giving evidence, *a copy* (a working copy) *must be given* to defence counsel (unless the judge directs otherwise).

Premises where EVIs may be viewed

Under reg 20B of the Regulations, a copy of the video recording may be viewed at premises under the control of the Police or a Crown lawyer; or any other premises agreed to by the Police or a Crown lawyer (this could include PDS offices or prison if a client is in custody); or other premises as directed by a judge. Ultimately, this means that if Police agree, defence counsel can take possession of the video record and view it at a place agreed, then return it to Police. In all cases, the PDS process for handling EVIs outlined in this policy must be followed at all times.

Defence experts' viewing EVIs

A defence expert is able to view a working copy of a video record without an application to the judge. Under reg 20(c), one of the purposes for which Police may show a working copy is for an expert to view it. Under reg 20A, the expert may be given possession of a video record for the purposes of viewing it and providing expert advice, but he or she must comply with the requirements under reg 20A. The expert can view the video record in the absence of defence counsel.

Subpart 3 of the Regulations sets out the obligations on defence counsel when given a copy of a video record (a lawyer's copy as opposed to the working copy). The obligations remain largely the same as they have always been, though it is now clear that a defence expert may view the video record without defence counsel needing to be present. However, despite a defence expert being able to view the working copy without an application to the court, where a judge has ordered defence counsel be given a working copy of a video record under s 106(4B), that copy cannot be supplied to anyone (including an expert) without the judge's permission. It would be expedient to seek such an order at the time the application for a copy is made (where the lawyer's copy, as opposed to the working copy, is to be provided to the expert).

The Regulations apply to all EVIs, whether or not the prosecution intends to offer the EVI as an alternative means of evidence, with the exception of defendant's statements.

Disclosure, storage and usage rules for EVIs

There is nothing specifically set out in the Regulations that covers how a working copy should be stored and used once in the possession of defence counsel, but it is expected that it be treated the same as where a lawyer's copy is provided (though the PDS will hold it for a much shorter time). Regulation 31 states that a lawyer's copy of an EVI must be placed in "safe custody" and be returned to the Police as soon as the criminal proceedings are completed (however, if it is the working copy that has been provided, it will need to be returned upon completion of viewing or as arranged with the Police or the Crown).

Regulation 32(1) provides that counsel may use the video record for the following purposes:

- Preparing the case;
- Obtaining advice from an expert;
- Providing legal advice to the client.

Regulation 32 also imposes the following restrictions:

- In the case of a copy of an EVI being provided of a complainant or any witness in a sexual or violent case, counsel must not supply it to any other person without the permission of a judge (this includes an expert). In any other situation, an expert can be provided with the lawyer's copy for viewing. However, under reg 20, the Police can provide the working copy to an expert.
- Where any expert is going to view a lawyer's copy, defence counsel must inform the expert of the need to comply with reg 20A, which sets out the requirements for experts viewing video records.
- A defendant can only view the EVI in the presence of defence counsel.

Under reg 33, the lawyer's copy cannot be copied without a judge's permission.

EVI practice management

The PDS must ensure that a record is kept of all EVI movements from the time the PDS receives the EVI until it is returned to Police.

The PDS must keep the EVI in a lockable secure storage unit at all times unless it is being used for one of the purposes authorised by the Regulations.

When a lawyer assigned to the case has requested that an EVI be taken out of secure storage, he or she is required to advise the Support Services Manager (SSM) or Legal Secretary Lead (LSL) (in the absence of an SSM) how long the EVI is required for and the purpose of the request. The lawyer must ensure that the EVI is at all times under his or her secure control while in his or her care. The EVI must be returned to the secure storage unit should it not be possible to complete, at one time, the permitted activity for which the EVI has been taken from the secure storage unit. If this is not possible the assigned lawyer must secure the EVI in a lockable cabinet at his or her desk. This applies if the EVI is required over the weekend or in evenings.

An assigned lawyer must be present for the entire viewing session if showing the EVI to the client. The lawyer must ensure that all mobile phones and other recording devices in the room are turned off and remain in the lawyer's view to ensure the EVI cannot be copied or recorded.

The EVI must not be taken off PDS premises except for the purposes specified in the Regulations, including the return of the EVI to the prosecuting agency after the disposal of the criminal proceedings. If it is necessary for an EVI to be taken off PDS premises the EVI must remain in the immediate custody and control of an assigned lawyer until it is returned to the SSM or LSL (in the absence of an SSM), unless the EVI is provided to an expert in accordance with the regulations and this policy.

Secure storage unit

Every PDS office must have a lockable secure storage unit. The only persons entitled to hold a key for the cabinet are the SSM or LLS (in the absence of an SSM) and the Office Public Defender (OPD). The key must be kept in a place not readily accessible by other staff.

The secure storage unit must be kept locked at all times unless EVIs are being uplifted or returned.

EVI record of movement log (EVI form)

A hard copy PDS EVI record of movement and viewing log (the EVI form) must be created on the receipt of every EVI and kept in an EVI folder. The purpose of the EVI form is to record the details and receipt of the EVI, any movements of the EVI while in PDS possession, and to record the return of the EVI to Police. The template EVI form is available in Affinity and on the PDS [JET page](#) (under the Correspondence/Forms tab).

While the Police may provide the PDS with a record of movement form, a separate PDS EVI form must be created and completed for each EVI received by the PDS.

EVI folder

The EVI folder must be kept close to or in the secure storage unit. The EVI folder must be divided into two parts:

- The first part is for EVIs that are currently not held in secure storage i.e. EVIs that are with an assigned lawyer for one of the purposes allowed by the Regulations; and
- The second part is for those that are currently held in the EVI secure storage unit.

The EVIs forms must be stored alphabetically by matter reference.

Clearly labelled EVI disks

The EVI disk must be clearly labelled with the following information so that it can readily be identified should it be found outside of the secure storage unit:

- Client's name;
- Matter number;
- Assigned lawyer's name;
- Officer in charge; and
- Date received.

This label may be in addition to a Police label on the EVI. A template of the EVI labels is available on PDS [JET page](#) (under the Correspondence/Forms tab).

Safe custody data form in Affinity

An electronic record of the receipt of an EVI in the PDS office, all its movements within the office and its return to Police must be kept in the safe custody packet for the matter in Affinity. Instructions on how to update safe custody in Affinity are available on the PDS [JET page](#) (under the Training tab).

The process for handling EVIs

The following process must be followed for all EVIs received by the PDS. The process addresses the receiving, handling and returning of EVIs.

PART I - Receiving EVIs

Assigned lawyer

It is the responsibility of the lawyer assigned to a matter to arrange to uplift the EVI or for it to be delivered to the PDS office by Police.

When the EVI is delivered to the PDS office, an assigned lawyer must:

Role	Responsibilities
Assigned lawyer	• Receive the EVI directly from the delivery agent; • Sign for the EVI. It is likely Police will require a signed receipt; and • Complete and sign the EVI form and give it to the TLOA along with the EVI.

If an assigned lawyer is not available, the OPD, a senior lawyer, or the SSM or LSL (in the absence of an SSM) may undertake the above tasks. No other staff members are permitted to sign for and accept an EVI.

Role	Responsibilities
Support Services Manager (SSM) / Legal Secretary Lead (LSL) - in the absence of an SSM	• Create and attach an EVI label to the EVI; • Place a red sticker on the client file to indicate that an EVI is associated with the file; • Create an EVI form for the matter and ensure the person received the EVI signs the form; • Place the EVI form and the EVI in the EVI folder in the secure storage unit; and • Create a packet item for the EVI in the safe custody packet for the matter on the client file in Affinity.

PART II - Handling EVIs

When an assigned lawyer requires the EVI for one of the purposes authorised by the Regulations, he or she must make the request to the SSM or LSL (in the absence of an SSM) either in person or by email. An email request must include the file number, the client name, the particular purpose under the Regulations for which the EVI is required, and how long the EVI is required for. The lawyer must notify the OPD (and cc the SSM or LSL (in the absence of an SSM)) if the EVI is required outside of a normal working day (e.g. over a weekend). The lawyer must notify the SSM or LSL (in the absence of an SSM) if the EVI viewing must be made outside of the PDS office in a circumstance permitted by this policy.

On receiving a request for an EVI the SSM or LSL (in the absence of an SSM) will:

- Ensure the request was made by an assigned lawyer;
- Obtain the EVI from the secure storage unit;
- Check the label on the EVI prior to removal to ensure it is for the correct matter;

- Update the EVI form for that matter with the following details: date taken, due date, purpose and lawyer name. The place of viewing should also be noted if it is intended to be outside the PDS office;
- Hand-deliver the EVI and the EVI form to the assigned lawyer;
- On receiving the EVI, the assigned lawyer must sign the EVI form confirming receipt;
- The SSM or LSL (in the absence of an SSM) must retain the signed form in the first section of the EVI folder; and
- The SSM or LSL (in the absence of an SSM) must update the EVI packet item in safe custody in Affinity, noting the following information: Borrower, Borrower details (purpose of the request and location of viewing if not in the PDS office), Borrowed (date taken) and For Return by (Date due). Instructions on how to update a packet item are available on the PDS [JET page](#) (under the Training tab).

Viewing EVIs – additional matters

The EVI must be viewed in the PDS office unless an exception allowed in this policy applies. An EVI must not be removed from PDS premises for the purpose of viewing it at a lawyer's home.

When showing the EVI to the client, an assigned lawyer must at first instance arrange the viewing to take place at the PDS office. If a client is in custody, an assigned lawyer should arrange a viewing at the prison.

Providing EVIs to experts

Where the regulations allow defence counsel to provide the EVI to an expert for advice, or where a judge has given permission (in the case of a complainant or any witness in a sexual or violent case), an assigned lawyer must send the EVI with the ["transfer of EVI to expert letter"](#) and ensure that the expert signs the this, which informs the expert of the requirements under reg 20A. This can be completed electronically.

Where possible, the EVI should be delivered to the expert by hand (by an assigned lawyer, a senior lawyer, the SSM, or the LSL (in the absence of an SSM)).

Upon receipt of the EVI, the expert must sign an EVI release letter. If hand delivery is not possible:

- The EVI must be couriered by a tracking method, requiring a signature upon receipt; and
- The EVI must be sent with an EVI release letter, requesting a signed return of receipt.

PART III - Returning EVIs upon completion of tasks

An assigned lawyer must return the EVI to the SSM or the LSL (in the absence of an SSM) immediately upon completion of the task for which it was sought.

On receiving the EVI, the SSM or LSL (in the absence of an SSM) will immediately retrieve the appropriate EVI form from the EVI folder.

An assigned lawyer must complete and sign the viewing and return sections of the EVI form.

The SSM or LSL (in the absence of an SSM) will then return the EVI into the secure storage unit and the completed EVI form to the second part of the EVI folder.

The SSM or LSL (in the absence of an SSM) must update the EVI packet item in safe custody in Affinity noting the returned date.

Returning EVIs to the Police

When a file is received for closing, the SSM or LSL (in the absence of an SSM) must check the file and safe custody on Affinity to see if the file has an EVI. If a file has an EVI, the SSM or LSL (in the absence of an SSM) must contact Police and agree the method by which the EVI will be returned.

The SSM or LSL (in the absence of an SSM) must note on the EVI form the method of return and note on the office calendar when the EVI needs to be prepared for return to the Police.

On the day the EVI is to be returned, the SSM or LSL (in the absence of an SSM) will retrieve the EVI form and the EVI from the secure storage unit. The EVI form and the EVI must be checked for the correct matter details prior to removal from storage.

On pick up or delivery the PDS EVI form must be completed and signed by the authorised person from Police receiving the EVI.

If it is agreed to courier the EVI, a copy of the agreement (either an email or a notification from Police) must be attached to the EVI form. The EVI must be sent with an [EVI release letter](#) (under the Correspondence/Forms tab), requesting a signed return of receipt. EVIs must be couriered by a tracking method, requiring a signature upon receipt.

Once the EVI has been returned to Police the SSM or LSL (in the absence of an SSM) must:

- Scan the completed EVI form into the Affinity matter file and attach the hard copy to the client file; and
- Update the safe custody packet on the client file in Affinity.

Roles and responsibilities

Role	Responsibilities
Assigned lawyer (either lead or liaison)	- Is responsible for ensuring the EVIs are only used for the purposes provided for in the Evidence Regulations 2007; - Must comply with the PDS EVI policy; - Should directly receive the EVI where practicable; and - Is responsible for the safe handling of EVIs relating to their client files.
Senior lawyers	May receive EVIs on behalf of an assigned lawyer.
Office Public Defender (OPD)	- Is responsible for compliance with the PDS EVI policy and the Evidence Regulations 2007 in their office; - May receive EVIs on behalf of an assigned lawyer; and - Holds a key to the office secure storage unit.
Support Services Manager (SSM) / Legal Secretary Lead (LSL) – in the absence of an SSM	- May receive EVIs on behalf of an assigned lawyer if a OPD or senior lawyer is unavailable; - Is responsible for the administration of EVIs in the office in accordance with this policy; - Is responsible for updating and maintaining the office secure storage unit; - Holds the office secure storage unit key; - Is responsible for ensuring the EVI form is kept updated and secure at all times; - Is responsible for ensuring safe custody in Affinity is updated for receipt, movements and return of all EVIS received in the office; - Is responsible for the secure return of an EVI to Police.

Excerpt from the Evidence Regulations 2007

18 How working copy identified and kept

- (1) A working copy must be—
 - (a) identified as a working copy by a copy of the certificate in the form set out in the Schedule; and
 - (b) placed in safe custody with the police.
- (2) A record of every person who views, or had custody of, a working copy must be kept with it.
- (3) The record must include—
 - (a) the name and occupation of the person who viewed, or had custody of, the working copy; and
 - (b) the date on which that person viewed it or, as the case requires, the period during which the person had custody of it.
- (4) Nothing in subclause (1)(b) prevents the police from—
 - (a) supplying the working copy under subpart 2; or
 - (b) making or supplying a copy of a working copy under subpart 2 or 3.

20 Limited purposes for which police may show working copy

- (1) The police may only show a working copy for the following purposes:
 - (a) to seek advice from a [Crown lawyer or any other person, for example, an expert,] to determine whether—
 - (i) any, and if so what, charges ought to be [filed]; or
 - (ii) any care or protection proceeding ought to be instituted:
 - [(b) to allow any of the following persons to know the case against them:
 - (i) a person suspected of having committed an offence to which the video record relates:
 - (ii) a defendant to a charge in relation to which the video record may be used in evidence:]]
 - [(c) to allow any lawyer representing a person referred to in paragraph (b)(i), a defendant's lawyer, or an expert to view it:]
 - (d) to allow the [witness] to view it:
 - (e) for the purpose of making a transcript:
 - [(f) to allow any Crown lawyer or expert to view it:]
 - (g) to enable any Judge to view it in order to—
 - (i) determine whether it is admissible in a proceeding; or
 - (ii) comply with any requirement in an enactment or imposed by a rule of law:
 - [(ga) for training or reviewing the performance of any person who is training as, or is, an interviewer:]
 - [(gb) to comply with an order of a Judge or judicial officer under section 119A of the Act to give the parties in other proceedings and (if relevant) their lawyers or an expert an opportunity to view a video record:]
 - (h) to enable the Commissioner or any other [constable] to discharge his or her duties under an enactment:
 - (i) to assist the police in any further investigations of suspected offences that may have been committed by any person referred to in paragraph (b).
 - [(2) Subclause (1)(b), (c), and (gb) is subject to regulation 20B.]
 - [(3) The Police must inform any expert who views a working copy that the expert must comply with regulation 20A.]

Compare: SR 1990/164 r 10

[20A Requirements for experts viewing video records

- (1) An expert may view a video record only for the purpose of providing expert advice.
- (2) An expert who views a video record must not copy the video record.
- (3) An expert who is given possession of a video record—
 - (a) must not give or show the video record to any other person; and
 - (b) must keep the video record in safe custody; and
 - (c) must return the video record to the Police or the relevant lawyer on the earlier of the following:
 - (i) when requested to do so by the Police or the relevant lawyer;
 - (ii) when ordered to do so by a Judge or judicial officer;
 - (iii) as soon as practicable after the proceedings to which it relates are finally determined or discontinued.]

[20B Limited places where working copy of video record of evidence may be viewed

A working copy to which section 106(4A) of the Act applies may be viewed by the persons referred to in regulation 20(b), (c), and (gb) only at the following places:

- (a) premises under the control of the Police or a Crown lawyer;
- (b) other premises agreed to by the Police or a Crown lawyer;
- (c) other premises as directed by a Judge or judicial officer.]

[30 Lawyer's copy

- (1) If this subpart applies in relation to a defendant's lawyer, the Police must make a copy of the working copy and supply it to that lawyer.
- (2) If this subpart applies in relation to a Crown lawyer, the Police may make a copy of the working copy and supply it to that lawyer.
- (3) A copy of a working copy supplied to a defendant's lawyer or a Crown lawyer must be certified, in the form set out in the Schedule, as a lawyer's copy.]

31 Custody of lawyer's copy

- (1) A lawyer who has a lawyer's copy supplied to him or her under [regulation 30] must place it in safe custody.
- (2) A lawyer who has a lawyer's copy must return it to the police as soon as practicable after the criminal proceeding to which it relates is finally determined or discontinued.
- (3) Nothing in subclause (2) prevents a lawyer from returning a lawyer's copy to the police at any earlier time.

[32 Use of lawyer's copy by defendant's lawyer

- (1) A defendant's lawyer may use a lawyer's copy only for the following purposes:
 - (a) preparing a case for the person the defendant's lawyer is representing in the criminal proceedings to which the video record relates;
 - (b) obtaining advice from an expert in connection with the criminal proceedings;
 - (c) giving legal advice to the person he or she is representing in the criminal proceedings to which the video record relates.
- (2) If the lawyer's copy has been given to the lawyer under section 106(4) of the Act, the lawyer must not supply the lawyer's copy to any other person (other than an expert) without the permission of a Judge.
- (3) If the lawyer's copy has been given to the lawyer under section 106(4B) of the Act, the lawyer must not supply the lawyer's copy to any other person without the permission of a Judge.

- (4) *The lawyer must inform any expert who views a lawyer's copy that the expert must comply with regulation 20A.*
- (5) *A defendant may view the lawyer's copy only in the presence of a lawyer.*
- (6) *Nothing in this regulation prevents—*
 - (a) *the lawyer from returning the copy under regulation 31; or*
 - (b) *a Judge or judicial officer imposing conditions under regulation 20C.]*

33 Prohibition on copying lawyer's copy

No person may make any copies of a lawyer's copy without the permission of a Judge.

[34 Use of lawyer's copy by Crown lawyer

- (1) *A Crown lawyer may use a lawyer's copy only—*
 - (a) *in connection with instructions from the Police; or*
 - (b) *in connection with a Crown prosecution (including allowing an expert to view it or supplying it to an expert for that purpose);*
or
 - (c) *to discharge his or her duties under an enactment.*

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Non-expert witnesses - travel costs only

PDS is funded to pay for legal services and associated costs of a case. In some cases, the PDS will consider applications to pay for the travel costs for non-expert witnesses. Whether to approve those travel costs will include considerations of the merits of that application i.e. can the person afford to pay for their own travel costs and whether the witness is critical to the defence case. These will need to be approved by a Regional Public Defender

Defence witnesses who are subpoenaed will have their travel costs reimbursed. PDS will not pay any other fees or allowances, as we are funded to pay for the legal services and associated costs of a case and ensuring access to justice.

For clarity, defendant travel costs will not be covered by PDS.

The process

Where approval to pay for/reimburse the travel costs of the non-expert witness has been given, payment of those costs will be at the rates governed by the Witness and Interpreters Fees Regulations 1974.

<http://www.legislation.govt.nz/regulation/public/1974/0124/latest/DLM42612.html#DLM42612>

Any travel costs approved/reimbursed must be entered into Affinity on the client's matter as a disbursement and will form part of the total cost of services.

Requests for travel costs received by non-expert witness

Responsibility	Action	Action
Lawyer	Draft memo and send to the Regional Public Defender for consideration	Tell witness about decision
Regional Public Defender	Approve/decline memo	If air or car travel required, cc in Executive Assistant to the Business Manager
PDS Executive Assistant	Book air or car travel via tandem	
Non-expert witness	Submit a witness reimbursement form for travel including any receipts and/or agreed mileage	
Legal Support	Complete a Purchase Order where travel needs to be pre-paid	Enter into Affinity and enter into the Accounts Payable system

Subpoenaed non-expert witnesses

Responsibility	Action	Action
Lawyer	Notify witness that their travel costs will be covered	If air or car travel required, email Executive Assistant to the Business Manager
PDS Executive Assistant	Book air or car travel via tandem	
Non-expert witness	Submit a witness reimbursement form for travel including any receipts and/or agreed mileage	
Legal Support	Complete a Purchase Order referencing the relevant DC (r9.44) or HC rules (r9.53) where travel needs to be pre-paid	Enter into Affinity and enter into the Accounts Payable system

Court of Appeal and Supreme Court Appeals Guidelines

Overview

These guidelines outline the process for managing all PDS appeals to the Court of Appeal and Supreme Court. High Court appeals are subject to regional office policy.

The PDS receives Court of Appeal and Supreme Court assignments for

- existing clients, where we acted in the lower court and have filed the appeal on the client's behalf;
- new clients on rotation; and
- new clients where the PDS or a PDS lawyer has been nominated as preferred counsel.

Appeals relating to existing clients

Assessing whether an appeal should be taken

It is important to consider the possibility of appeal at several stages during a matter:

- when a bail decision is made;
- when a suppression order is made;
- whenever a pre-trial decision is made;
- upon conviction; and
- after sentence.

A pre-trial appeal requires leave of the Court of Appeal, but bail and name suppression, and appeals against conviction and sentence, are by right (conviction (generally) cannot be appealed until after sentencing).

If you consider that an appeal to the Court of Appeal or Supreme Court is warranted, or your client wishes to appeal, you need to contact the Appeals Team via appeals@pds.govt.nz before providing final advice to the client and filing a notice. Each PDS office has its own policy on whether someone in the office should first be consulted (e.g. CA/SC categorised lawyer; LTM; AOPD; OPD).

It is important that you contact the Appeals Team as soon as possible. We have 20 working days from the time of any pre-trial decision to file a notice seeking leave to appeal, and 20 working days from sentencing to file a notice appealing conviction and/or sentence. Time runs from the date the decision is made, not the date that a written copy of the decision is issued. However, if you are aware a conviction appeal is likely, please contact the Appeals Team prior to the sentencing date, so the team is aware of the matter.

Your referral email to appeals@pds.govt.nz does not need to be overly detailed and you do not need to do any research. Simply briefly outline your thoughts on why the decision is wrong. If the appeal is client driven, ensure that you include that in your email, and what your opinion of the merits of an appeal is.

Generally, when an appeal is being considered, an opinion will be provided by the Senior Lawyer (Appeals). Generally, an opinion on the merits of an appeal will be provided to trial counsel in writing, along with a draft notice of appeal.

Whilst there is always room for discussion, ultimately the opinion of the Senior Lawyer (Appeals) is the advice that should be passed on to the client. If there is an issue around timing, the Senior Lawyer (Appeals) will determine how and when the notice will be filed.

Notices of appeal must be signed by the client and a new legal aid application completed at the same time. Completing the legal aid application and getting the notice signed is the responsibility of trial counsel. The signed notice should be emailed to appeals@pds.govt.nz and the Appeals Team will file it with the relevant court. The notice must be filed prior to emailing the legal aid application and a copy of the notice of appeal sent with the legal aid application.

In the event you feel you have made a mistake during a trial, please do not be worried about contacting the Appeals Team about that. The reality is trials are fast paced and require quick decision making. We are all human and mistakes will happen, the most important thing is that we act in the interests of our client to address any potential errors as quickly as we can.

Appeals relating to new clients

Notification to the Appeals Team of all Court of Appeal and Supreme Court assignments

All appeals assigned to the PDS on rotation and those where the PDS is nominated by the appellant should come directly from Legal Aid to the Appeals Team.

In the event a Court of Appeal or Supreme Court assignment is received directly by a PDS office, or counsel, the Appeals Team must be notified immediately and before accepting the assignment.

In all cases where the PDS is to be assigned, the Senior Lawyer (Appeals) will determine which PDS office the appeal will be assigned to and notify that office about the assignment via the office's generic email.

All appeals

Interim grants – an assessment of the merits

When determining whether legal aid will be granted, Legal Aid Services is required to consider the proposed grounds of appeal under s 8(2) of the Legal Services Act 2011 (the Act); pursuant to *Marteley v Legal Services Commissioner* [2015] NZSC 127, [2016] 1 NZLR 633 this includes an assessment of the merits of the appeal.

Usually, Legal Aid Services will provide an interim grant to enable counsel to determine the merits of an appeal. While legal aid can be declined if an appeal has no merit, Legal Aid Services rarely does so, particularly when the appeal relates to serious charges and/or is an appeal as of right.

Legal Aid Services will provide a timeframe in the interim grant letter for the merits letter. Where that matter relates to an existing client, the opinion from the Senior Lawyer (Appeals) can be used as the basis for the letter. Where the appeal relates to a new client, it is unlikely an assessment of the merits will be able to be provided until we have received the Court of Appeal materials and the trial file.

The letter to Legal Aid Services should identify if any other considerations under s 8 of the Act are relevant to the assessment of whether a full grant of legal aid should be made, as these factors may not be immediately obvious to Legal Aid - for example, where the client has an intellectual disability

or English is their second language, meaning that legal representation is required to ensure the client's interests are protected.

The amount of work required under an interim grant can be significant. For internal appeals, a decision will be made by the Senior Lawyer (Appeals), whether trial counsel or the Appeals Team will draft the merits letter for Legal Aid Services.

The priority in respect of interim grants is to determine when the last day for filing a notice is and to ensure a notice is filed within time, to avoid the need for the client to obtain an extension of time for filing.

Allocation of Court of Appeal and Supreme Court matters

To appear as lead counsel in the Court of Appeal and Supreme Court for legally aided cases, lawyers must hold Court of Appeal and Supreme Court approval.

PDS has a group of lawyers with the appropriate categorisation and those lawyers undertake appeals in the Court of Appeal and the Supreme Court on behalf of the PDS. It is possible for lawyers of all levels of experience to become involved with Court of Appeal work, which could include research; drafting opinions on the merits of appeal; drafting submissions; and/or junioring in court.

If you have an interest in becoming involved with Court of Appeal work, please discuss this with your team leader and email appeals@pds.govt.nz to express your interest.

PDS appeal assignments will be allocated to the lawyers within the Appeals Team and the wider PDS, by the Senior Lawyer (Appeals). Where trial counsel is not categorised, the Senior Lawyer (Appeals) will ensure, wherever possible (and if trial counsel wishes), that there is the opportunity for trial counsel to junior with lead counsel. Where trial counsel has an appropriate level of appellate experience, it may be possible for trial counsel to appear under supervision.

Where a non-CA/SC categorised lawyer appears as junior or under supervision, the expectation is that person will work closely with the lead counsel or supervisor in the lead up to the hearing. Any oral submissions will need to be prepared in advance (in writing) and discussed with the lead counsel or supervisor.

Where an appeal is legally complex; involves a challenge to existing law; is high profile; or is to the Supreme Court, the Appeals Counsel will usually appear as lead counsel.

The exception to the process set out above is where the PDS has been assigned because preferred counsel has been requested by the appellant, the lawyer nominated will be assigned as lead counsel unless they do not hold approval to undertake Court of Appeal and Supreme Court matters. Where the necessary approval is not held, the preferred lawyer will be assigned as junior counsel.

Where you are assigned counsel on an appeal, please ensure that any correspondence with the court has appeals@pds.govt.nz copied in.

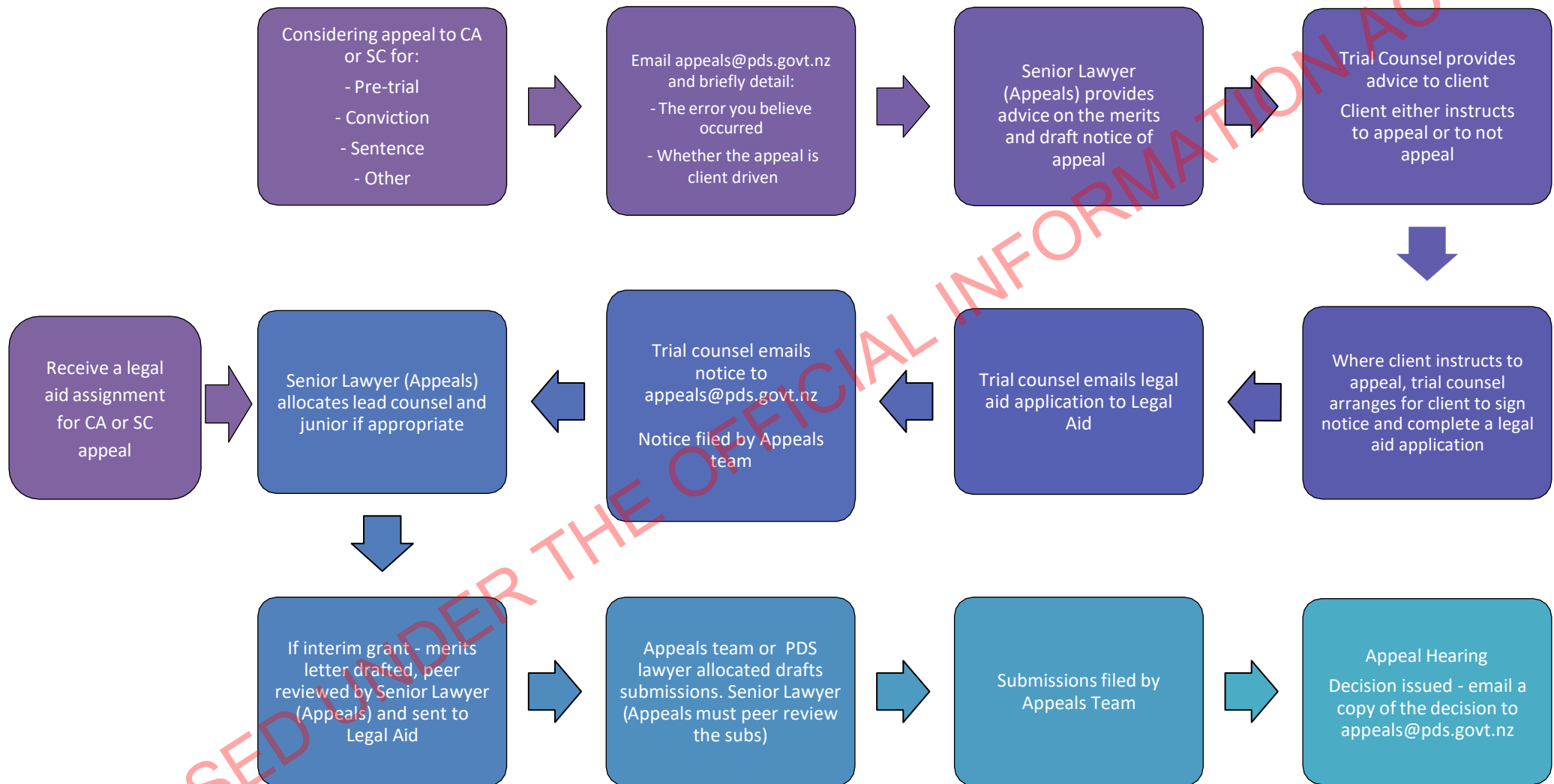
Appeal submissions and supporting materials

The Senior Lawyer (Appeals) must peer-review all submissions to the Court of Appeal and Supreme Court before they are filed. This is to ensure that PDS written materials are consistent in terms of style and quality. Submissions need to be provided to the Senior Lawyer (Appeals), via appeals@pds.govt.nz with plenty of time for review before they are due for filing.

Appeal Outcomes

Assigned counsel must send a copy of the judgment as soon as it becomes available to appeals@pds.govt.nz (if the inbox has not been copied in by the Court).

PDS Appeals Process





MINISTRY OF
JUSTICE
Tāhū o te Ture



Public Defence Service

Ratonga Wawao ā-Ture Tūmatanui

Public Defence Service Approvals Policy

October 2024

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

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Public Defence Service Approvals - Overview

Overview

Introduction

The Public Defence Service (PDS) Approvals Policy outlines the policy and process for lawyers to be approved to provide legal services under the Legal Services Act 2011, while employed by the PDS.

References

References to 'the Act', 'Regulations' or legislative provisions refer to the Legal Services Act 2011 and Legal Services (Quality Assurance) Regulations 2011. Any other Act mentioned is named in full.

Glossary of terms

A glossary of the key terms used in this policy can be found in **Appendix 1 – Glossary**.

Supporting documentation

- [Clarification material](#)
- [Approval forms](#)

In this part

Chapter	Title
1	Submitting an Application
2	Application Requirements
3	Application Assessment
Appendix 1	Glossary
Appendix 2	Relevant Courses

Chapter 1 - Submitting an Application

When to submit an application

About this chapter

This chapter explains:

- When to submit an application for approval as a provider of legal aid or specified legal services; and
- What information lawyers need to know before completing an application, including:
 - when to submit an application;
 - the different provider and approval types;
 - the duration and expiry of approval types; and
 - the roles and responsibilities of those involved in the process of applications for approval.

When to submit an application

A lawyer may submit an application for approval to provide legal aid or specified legal services in the following situations:

- a lawyer who has been offered a position with the PDS, and does not yet have an approval to provide legal aid or specified legal services; or
- a lawyer employed by the PDS seeking an advancement of approval level.

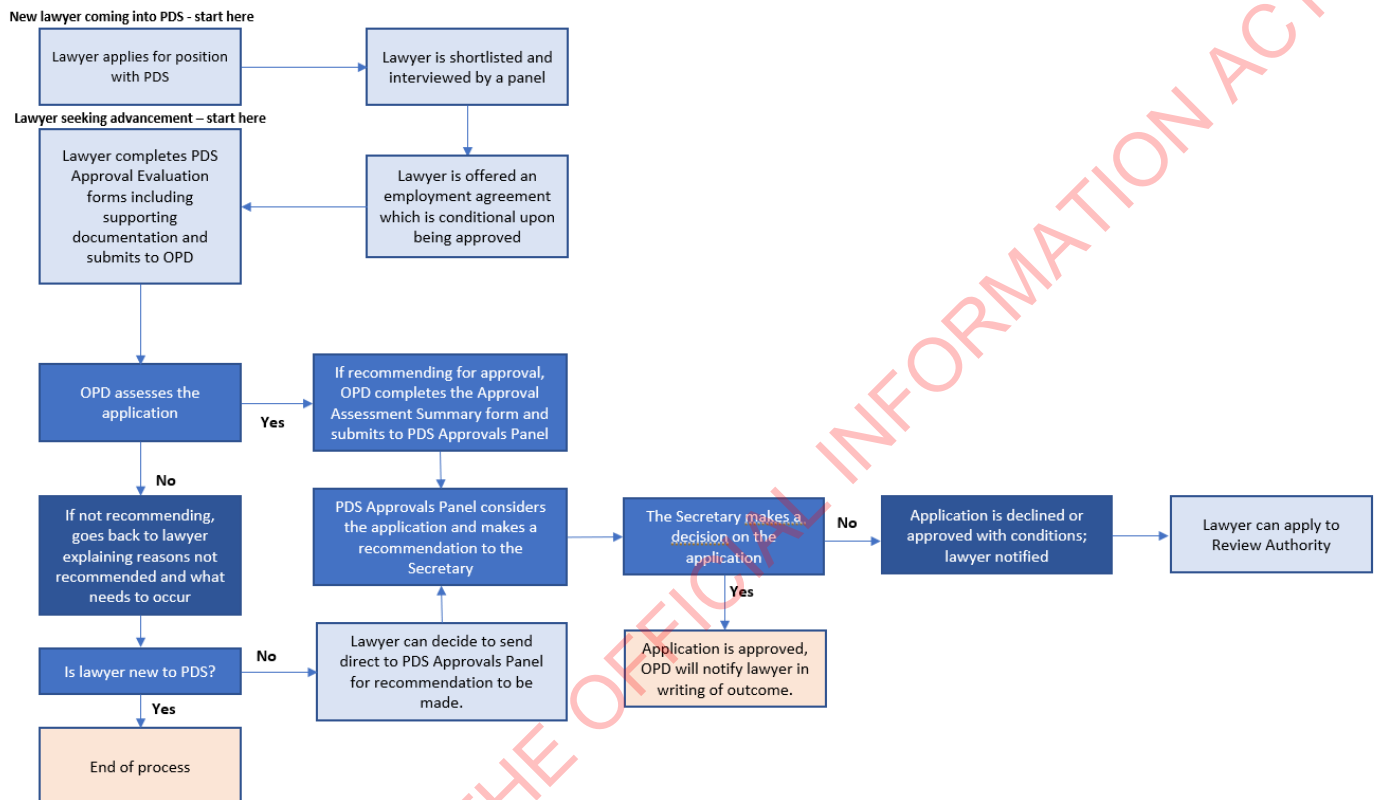
A lawyer who has an existing legal aid provider approval and wishes to be employed by the PDS does not need to apply for approval under the PDS approvals 'process. Following the recruitment process, a successful candidate is required to complete the *Change of Details Form*¹ available on the Ministry of Justice website. The completed form must be emailed to the Provider Services team who will update the lawyer's contact details.

¹ [Legal-Aid-Provider-Change-of-Details-V-5_2023.pdf \(justice.govt.nz\)](#)

The process

The diagram below illustrates the process for assessing applications for approval where:

- a lawyer has been offered a position with the PDS and does not yet have an approval to provide legal aid or specified legal services, or
- a lawyer is already employed by the PDS and is seeking an advancement of their approval level.



Provider and approval types

Introduction

This section describes:

- the three types of providers of legal services for lawyers employed by the PDS; and
- the areas of law that lawyers employed by the PDS can be approved for.

Provider types

Lead providers

Lead providers are lawyers who have demonstrated that they meet the criteria for approval, and therefore have been approved in one or more areas of law. A lead provider may have matters assigned to them and are responsible for the overall management and conduct of any assigned legal aid case.

Reference: Regulation 4

Providers of specified legal services

Providers of specified legal services are lawyers who have demonstrated that they meet the criteria for approval for Duty Lawyer and/or Police Detention Legal Assistance Scheme.

Reference: Regulation 4

Providers other than lead (supervised providers)

Supervised Providers are lawyers who may not have matters assigned to them as the lead provider on the file, and who do not have the necessary experience or competence to be responsible for the overall management and conduct of any legal aid case. Supervised Providers are required to be supervised by a lead provider.

Reference: Regulation 7

Approval types

PDS lawyers can be approved in the following areas of law:

- Criminal Provider Approval Level 1 – 4;
- Duty Lawyer; and
- Court of Appeal and Supreme Court.

Each area of law has specific criteria set out in the Regulations that PDS lawyers must meet when applying for approval to provide legal aid or specified legal services (see Chapter 2).

Roles and responsibilities

The table below outlines the roles and responsibilities in the process for assessment of applications by lawyers for approval.

Role	Responsibility
Secretary for Justice	• Approves or declines recommendations for PDS lawyer approvals
PDS Approvals Panel	• Evaluates the merits of an application and the initial assessment made by the Office Public Defender • May verify information made in the application • Makes a recommendation to the Secretary to approve or decline
Office Public Defender	• Assesses a lawyer's application and completes the Approval Assessment Summary Form • May verify information made in the application • Informs lawyer of the outcome of their application
PDS National Office staff	• Maintain systems that record PDS lawyer approval details
Provider Services	• Ensures alignment and consistency of the assessment and approval of private legal aid lawyers and the assessment and approval of lawyers employed by the PDS

Chapter 2 – Application Requirements

About this chapter

This chapter explains what information lawyers need to know when completing an application for approval including:

- the general approval criteria for all lawyers
- the approval criteria for lawyers seeking an advancement of their approvals
- an explanation of some of the terminology relating to the approval criteria, and
- the specific approval criteria for each area of law that lawyers can seek approval in.

Completion of application forms

PDS lawyers must complete all relevant PDS Approval Evaluation forms and submit them to their Office Public Defender with supporting documentation. These forms are used to gather relevant information about a lawyer's competence and experience in respect of the criteria set out in the Regulations.

Approval criteria - General

General criteria for approval

All PDS lawyers must meet the general criteria for approval set out in the Regulations.

Professional entry requirements

Lawyers applying for approval (as defined by Section 6 of the Lawyers and Conveyancers Act 2008) for the first time must provide a Certificate of Standing from the New Zealand Law Society.

Reference: Regulation 5

Practising certificates

Lawyers must not, at any time over the previous five years, have:

- had their practising certificate suspended;
- been struck off; or
- been declared bankrupt.

The PDS may consult with the New Zealand Law Society and will take into consideration whether any circumstances documented should affect the lawyer's fitness to practise as a lawyer employed by the PDS.

Service delivery systems

All non-PDS lawyers applying for Legal Aid approvals must have satisfactory service delivery systems that enable them to carry out quality legal services and account for their legal aid work effectively, efficiently and ethically. PDS lawyers do not need to provide this information as the PDS has provided detailed information to the Secretary about its service delivery systems and this was approved by the Secretary on 27 September 2011.

Reference: Regulation 9

Fit and proper person

All lawyers applying for approval must provide information to satisfy the Secretary that they are a fit and proper person to provide legal aid services or specified legal services. This is a separate requirement to the New Zealand Law Society's requirement that a person must be a 'fit and proper person' in order to be admitted to the bar.

The Secretary can consider the following information to determine if a lawyer is a fit and proper person to provide legal aid or specified legal services:

- details of any conviction of the applicant for an offence punishable by imprisonment;
- details of any complaint upheld against the applicant under the Lawyers and Conveyancers Act 2006; and
- details of any complaint upheld against the applicant under the Act or the former Act.

The Secretary may however give written notice that a lawyer is not required to provide details of convictions and/or upheld complaints.

Reference: Regulation 9C

Criminal offences

All lawyers must provide information about any criminal convictions other than convictions for minor traffic offences, or offences covered by the Criminal Records (Clean Slate) Act 2004. Consideration will be given to whether any criminal conviction(s) might adversely affect the lawyer's relationship with their legal aid clients or affect the integrity and credibility of the PDS and the legal aid services or specified legal services provided.

Reference: Regulation 9C

Complaints

All lawyers must provide information about any upheld or substantiated complaints against them made under the Lawyers and Conveyancers Act 2008, the former Legal Services Agency, the Ministry of Justice or any other body. Consideration will be given to whether any upheld or substantiated complaints contravene the PDS or MOJ Code of Conduct or might affect the integrity and credibility of the PDS and the legal aid services or specified legal services provided.

Reference: Regulation 9C

Supervision arrangements (Supervised Providers only)

Supervised Providers are lawyers who cannot have matters assigned to them as lead providers, and who do not have the necessary experience or competence to be responsible for the overall

management and conduct of any legal aid case, including substantive hearings. PDS lawyers do not need to provide this information as the PDS has provided detailed information to the Secretary about the supervision arrangements they have in place and this was approved by the Secretary on 27 September 2011.

Reference: Regulation 7

References

All lawyers must provide completed referee declaration forms from at least two referees if they have not previously been approved as a legal aid provider by the PDS Approvals' Panel. The referees should have observed the lawyer's work in the relevant area of law in the previous three years.

If the lawyer is seeking approval in more than one area of law, the lawyer must provide at least one referee declaration for each area of law.

Lawyers seeking approval as a lead provider or as a provider of specified legal services must ensure the referees:

- are experienced in the area of law for which the lawyer is seeking approval;
- have direct experience and recent knowledge of the lawyer's skill in the relevant area;
- don't have any potential conflicts of interest; and
- have a higher criminal approval than the PAL level the lawyer is applying for. Where a lawyer is applying for Criminal PAL 4, a referee should have Criminal PAL 4 experience.

For lawyers seeking approval as a Supervised Provider, the OPD may submit one of the referee check forms completed during the recruitment of the lawyer, provided the reference check was completed within three months of the application for approval. In addition, the Team Leader/Supervised Provider Agreement form² must be completed by both the Supervised Provider and their Manager and submitted with the application for approval. This form replaces the second referee.

Referee declaration

Referees must not be related to the lawyer. If the referee is providing a reference in respect of more than one area of law, they must complete a separate declaration for each area.

It is expected that referees will have observed the lawyer undertaking a substantial and active role and can comment on the lawyer's skills and knowledge in most, if not all, of the following activities:

- providing advice and information to clients;
- preparation of cases;
- undertaking court proceedings;
- producing documents/correspondence;
- communication with Judges, other lawyers, experts and court staff;
- working with people from different cultural backgrounds; and
- engaging in peer review discussions.

Referees will be expected to comment on the lawyer's written abilities and advocacy skills.

² [Team-leader-SP-agreement.pdf \(justice.govt.nz\)](#)

Note: The Secretary may give written notice that a lawyer is not required to provide references but may require other proof of the lawyer's competence and experience.

Reference: Regulation 9 and 9B

Applications for advancement

PDS lawyers seeking advancement of their current approvals, (for example an increase from Criminal Provider Approval Level 1 to 2), must complete the relevant PDS Approval Evaluation forms³ for the area of law they are seeking advancement in.

Lawyers applying for advancement must provide the following information:

- information about any convictions and any upheld or substantiated complaints;
- their experience and competence including:
 - case examples; and
 - work samples
- relevant courses.

Lawyers seeking to advance do not need to provide references, unless they are applying for a Provider Approval from the PDS Approvals' Panel for the first time. The Office Public Defender (OPD) will be able to speak with the applicant's reporting manager who will have direct knowledge of the applicant's skill in the area of law they are seeking advancement in and will address this in the PDS Assessment Summary Form⁴. The OPD is not the decision maker and a lawyer can submit an advancement application to the Approvals Panel when an OPD does not support the application.

Approval criteria - Terminology

Terminology

Guidance on the terminology for the specific criteria outlined above is as follows.

Experience and competence

All lawyers applying for approval as a lead provider or provider of specified legal services must demonstrate experience and competence by providing case examples and work samples as evidence of their experience in the area of law for which they are seeking approval. Case examples and work samples can include experience gained in the public sector, private sector, as a legal aid provider and overseas.

Case examples must generally be recent (within the last five years) and demonstrate that the lawyer played a substantial and active role in accordance with the specific criteria for each area of law. However, the lawyer may provide case examples from outside this period.

Reference: Regulation 6(1) and (2)(a)-(c)

Work samples should be recent and can include:

³ [Get approval or re-approval with PDS as a legal aid lawyer | JET — Ministry of Justice Intranet](#)

⁴ <https://jet.justice.govt.nz/assets/Office-of-Legal-Counsel/Public-Defence-Service/Approvals/Forms/PDS-Approval-Assessment-Summary-Form-Dec-2022.doc>

- submissions to the court;
- correspondence to or on behalf of a client;
- opening and closing addresses; or
- examination notes.

Note: The Secretary may give written notice that a lawyer is not required to provide work samples, but may require other proof of the lawyer's recent experience.

Reference: Regulation 9A

Recent experience

The Secretary considers recent experience to be relevant post-admission legal experience gained in the last five years.

If the lawyer does not satisfy the requirement that his or her relevant experience is recent, the Secretary may give written notice that the lawyer is not required to provide recent case examples, but may require other proof of experience. The Secretary must still be satisfied that the lawyer meets the relevant experience and competence requirements in all other respects and is satisfied that the lawyer has the appropriate level of knowledge and skill.

Reference: Regulation 6 and the Schedule

Substantial and active

The Secretary considers that a substantial and active role involves undertaking tasks a lead provider must carry out on a legal aid assignment. In most cases, this would be interpreted as considerable input into the court or informal proceedings. Substantial preparation and pre-trial contributions are considered on an individual basis.

The Secretary considers that demonstration of a substantial and active role would include:

- pre-court or preparation tasks. This includes research, client consent, liaising with opposing counsel, drafting submissions and court documents; and
- appearances in court or proceedings. This includes appearances at trial, hearings (where relevant), experience and attendance at court, making opening address, leading evidence, examining and cross-examining witnesses and experts, addressing the court, closing addresses and presenting submissions.

Lawyers do not have to demonstrate all the tasks in every example provided but, do need to demonstrate that a case can be managed from start to finish as sole counsel. While some case examples may not demonstrate the entire range of involvement compared to others, each case example must demonstrate 'active and substantial involvement'.

Reference: Schedule to the Regulations

Approval criteria - Specific

Specific criteria for approval

PDS lawyers must meet the following criteria for approval in the following areas of law.

Note: *Appendix 3 includes the PAL progression experience and competency criteria for PDS and the private bar, including the average lawyer progression time at PDS (in months) as at June 2024.*

Criminal matters

Criminal approval is divided into four approval levels outlined in the table below:

Criminal Provider Approval Level	Lawyer must have
1	- at least 12 months' recent experience in criminal law practice; and - appeared as counsel with substantial and active involvement in at least 3 trials in criminal proceedings. <i>Reference:</i> Schedule clause 2
2	- at least 24 months' recent experience working on Criminal PAL 1 proceedings; and - appeared as counsel with substantial and active involvement in at least 3 trials in proceedings that are Crown prosecutions. <i>Reference:</i> Schedule clause 3
3	- at least 36 months' recent experience working on Criminal PAL 2 proceedings; and - appeared as counsel with substantial and active involvement in at least 4 Criminal PAL 3 or 4 proceedings where: - at least 1 charge carrying a maximum penalty of 10 years' imprisonment or more; or - the defendant is likely to face cumulative sentences of more than 10 years' imprisonment. <i>Reference:</i> Schedule clause 4 Note: <i>Due to the nature of disturbing material and the potential for psychological impact of cases at this PAL level, applicants must confirm they understand the requirements of dealing with such cases and acknowledge the requirement of a continuing willingness and ability to operate in this area. Applicants must also confirm they understand the importance of, and will attend, professional supervision.</i>
4	- at least 24 months' recent experience working on Criminal PAL 3 proceedings; and - appeared as counsel with substantial and active involvement in at least 4 Criminal PAL 3 or 4 proceedings where at least 1 of those proceedings is a PAL 4 proceeding. <i>Reference:</i> Schedule clause 5 Note: <i>Due to the nature of disturbing material and the potential for psychological impact of cases at this PAL level, applicants must confirm they understand the requirements of dealing with such cases and acknowledge the requirement of a continuing willingness and ability to operate in this area. Applicants must also confirm they understand the importance of, and will attend, professional supervision.</i>

Court of Appeal and Supreme Court

The lawyer must have:

- at least 5 years' recent experience in criminal litigation work; and
- had substantial and active involvement in 5 appeal proceedings of various types (including, without limitation, pre-trial hearings, Solicitor-General's appeal and appeal by way of case stated) in the High Court or another higher court.

Reference: Schedule clause 14

Duty lawyer

The lawyer must have:

- at least 6 months' recent experience in criminal law practice;
- appeared as counsel with substantial and active involvement in:
 - 1 pre-trial hearing
 - 1 hearing at which an opposed bail application was made
 - 1 trial conducted by or on behalf of the New Zealand Police before a Judge alone
 - 1 sentencing hearing at which a plea of mitigation was made; and
- have successfully completed a duty lawyers' training course that is conducted by the New Zealand Law Society, unless the Secretary has given written notice to the applicant that the applicant is not required to complete such a course of training.

Reference: Schedule clause 6

Completion of relevant courses

As part of the requirement to show evidence of competence and experience in the relevant area of law, the Secretary may take into account any relevant courses successfully completed. Completion of relevant courses can include where the lawyer has been a faculty member, presenter or facilitated the course.

A list of the relevant courses can be found in [Appendix 2 – Relevant courses](#).

Chapter 3 - Application Assessment

About this chapter

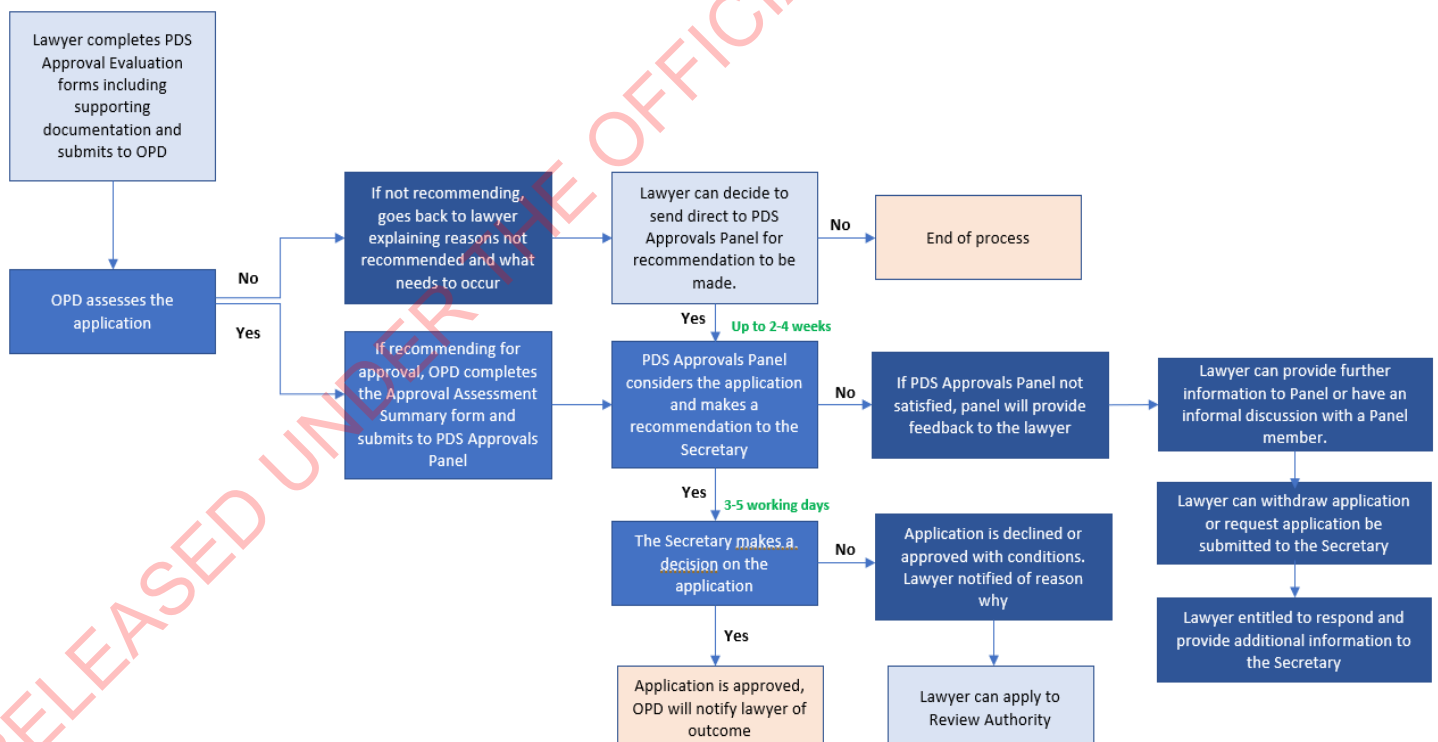
This chapter explains:

- The process for how applications for approval are assessed and how the decisions are made;
- The timeframes; and
- The review process.

Application assessment

The process

The diagram below illustrates how applications for approval are assessed.



Assessment

The Office Public Defender (OPD) will:

- complete the PDS Assessment Summary Form by assessing the information in the PDS lawyer's application forms in respect of the criteria set out in the Regulations; and
- inform the lawyer about the outcome of their application for approval.

Recommendation

The PDS Approvals Panel (Panel):

- evaluates the merits of an application and the initial assessment made by the OPD, and
- may make its own enquiries with the PDS, the NZLS, any judge, the applicant's peers, or any other person that the Panel considers relevant to the application before making a recommendation, and
- makes a recommendation in writing, to the Secretary, on the PDS Assessment Summary form, to approve or decline a lawyer's application for approval.

The Panel's membership is as follows:

- for the purposes of approving Supervised Provider applications, the panel will consist of two members made up of two OPDs on a rotational panel approved by the NPD, and where there is disagreement in approving the application, the NPD or DDL shall make the final decision.
- for the purposes of approving PAL 1 applications, the panel will consist of two members made up of the NPD or DDL, and a rotating OPD panellist (note, the recommending OPD cannot be part of the panel) and where there is disagreement in approving the application, the Director shall make the final decision.
- for PAL 2 and above applications, the panel will consist of the NPD and DDL, and where there is any disagreement in approving the application, the Director shall make the final decision.

Recommendations for approvals must be made by at least two members of the Panel.

(a) if for any reason a delegated OPD on the panel, is unable to fulfil their duties:

- a. the next OPD on the approved rotational panel, shall become a member of the panel, or
- b. if necessary the NPD or DDL may approve an alternative rotational OPD to become a member of the panel.

(b) if for any reason the NPD and/or the DDL are unable to fulfil their duties, the Director may approve OPDs to become members of the panel, for a set period of time, to take up duties and delegations as required.

When making a recommendation, the Panel will apply the relevant Regulations and in particular Regulation 6 (2). Regulation 6 (2) requires the Panel to:

- (a) apply the relevant experience and competence requirements set out in the Schedule;
- (b) take into account the applicant's experience as a lawyer; and
- (c) be satisfied that the applicant has the **appropriate level of knowledge and skill** to provide legal aid services or specified legal services in each area of law to which the application relates.

When assessing the appropriate level of knowledge and skill, the panel will consider the information provided in the application including any relevant courses undertaken by the applicant and the Panel's own knowledge of the applicant (if any). This is a time and competency-based assessment, combined

with an overarching requirement that the Panel, based on all information before it, is satisfied that the lawyer is ready to undertake work at the relevant level.

Where the Panel has recommended that an application for approval be declined, the lawyer will be given a chance to respond to the reasons for the recommendation. This response will be given to the Secretary for consideration.

PDS lawyer employment relationship

PDS lawyers are employed by the Ministry of Justice and are subject to both the Ministry of Justice and PDS Codes of Conduct. PDS lawyers are also subject to the PDS Performance Management and Professional Development frameworks.

PDS documents demonstrating PDS lawyer performance and/or professional development may be submitted to the Panel as supporting documentation for an approval application.

Approval decision

The Secretary's decision

The Secretary decides whether to approve or decline a lawyer's application for approval after consideration of the lawyer's application form, the Assessment Summary form, relevant supporting documentation and the Panel's recommendation.

The Secretary can:

- approve;
- decline; or
- impose conditions on a lawyer's approval.

The Secretary must provide reasons for the decision, and where approved, state the type and duration of the approval and any conditions to be imposed.

Reference: Section 77

Delegation of the Secretary's decision

Decisions made by the Secretary in respect of applications for approval may be delegated from the Secretary to the Chief Legal Counsel, pursuant to clause 2, Schedule 6 of the Public Service Act 2020.

Imposition of conditions

The Secretary may impose conditions on an approval to provide legal services. The approved lawyer must provide the legal services in accordance with the conditions. Conditions may include:

- supervision;
- training;
- mentoring; and
- restrictions on the types of proceedings in which the lawyer may provide services. Conditions on approval may be imposed for a specific time period.

Reference: Section 77(2) and Regulation 10

Notification

The OPD will notify the lawyer in writing of the Secretary's decision.

The Secretary is required to notify the New Zealand Law Society of an approval or temporary approval.

Reference: Section 77(3) and 77(7)

Contract

An approved lawyer must enter into an employment agreement/contract with the PDS before providing legal services.

Reference: Section 69(c)

Approvals for the Director, Deputy Director Legal and National Public Defender of PDS

The Director of PDS, Deputy Director Legal and National Public Defender will submit applications for approval to the Provider Services team for their consideration. Such applications will be subject to the same process and consideration given to private lawyer applications.

Timeframes

The Approvals process generally takes up to 2-4 weeks from the time the OPD submits the application to the Panel for a recommendation. Where further information is sought from the applicant or where there are issues with the availability of the Panel members, this time period may be extended.

There should be no expectation of backdating an approval and any relevant pay increase to any particular date that the lawyer considers should have been the date of approval. Any consideration to backdate an approval or a remuneration increase would require exceptional circumstances.

Review of the Secretary's decision

The Review Authority

A lawyer may request a review of the Secretary's decision to decline or impose conditions on their approval. An application to review the Secretary's decision is made to the Review Authority.

The scope of any review is limited to the information originally submitted in the application and assessed in making the decision.

Where new information is provided, it is considered to be a new application. In this case, the OPD will, in the Assessment Summary form, outline the original decision, identify the new information and provide a new assessment to the Panel along with relevant supporting documentation for their consideration.

The Review Authority's decision is binding on the Secretary and the person to whom the decision applies.

An application for review must be lodged with the Review Authority within 20 working days from the

date of notice of the Secretary's decision.

For further information see the Ministry of Justice website at www.justice.govt.nz.

Reference: Section 82(1), 85, 86

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Chapter 5 – Limited Approval

All applications for limited approval by PDS lawyers must be made to the Ministry's Legal Aid Providers business unit who will manage and assess those applications in line with their policy. The policy and forms are on the Ministry's website and can be found [here](#).

PDS lawyers considering making an application for limited approval should first discuss this with their Office Public Defender as applications for limited approval should only be sought in exceptional circumstances.

Purpose

A PDS lawyer may apply for a limited approval in one or more areas of law where he/she is not currently approved in that area of law and there is a need for those services.

Limited approvals are client focused, granted to ensure continuity of services with minimal disruption to clients, the court process and the provision of legal aid services or specified legal services.

A limited approval may be granted for a specific case or an area of law where there may be coverage issues for the provision of legal aid services or specified legal services in a particular region.

Approval criteria

PDS lawyers can apply for limited approval under section 77(5) of the Legal Services Act 2011. The Ministry has developed a policy to enable the Secretary for Justice to give limited approval to lawyers to undertake specific legal aid cases or provide legal aid services in specific areas of law.

Under the limited approvals policy, limited approval may be given where there is a specific need for the service. When deciding whether there is a need for the service, the Ministry will take into consideration whether the lawyer has relevant legal experience, a prior relationship with the legal aid client and the availability of other approved lawyers.

When to apply

Applications for limited approval should be made as soon as the need becomes apparent and before any legal aid or specified legal services are provided. This ensures that there is adequate time to assess the application with minimal disruption to clients and the court process.

Retrospective limited approvals will only be considered in exceptional circumstances, for example, to cover on the day issues such as unexpected illness.

Legal aid eligibility

Applications for limited approval in specific matters will only be considered where the client is eligible for legal aid or where there is an existing grant of legal aid. The PDS lawyer must advise the legal aid office that is managing the application that they are applying for a limited approval.

Special circumstances for limited approval

A limited approval may be granted where there is a need for those services. The list below outlines the circumstances which limited approvals were designed to address. It is not an exhaustive list. Applications for limited approval are considered on a case by case basis. The Secretary may grant a limited approval in other circumstances if satisfied that there is a need for those services.

A limited approval may be granted to an existing PDS lawyer in the following circumstances:

- where the categorisation of a criminal legal aid matter changes – this only applies to increases in Criminal Provider Approval Level (PAL) 2 to PAL 3 or PAL 3 to PAL 4. Increases from PAL 1 to PAL 2 will not be considered, as assignments at these levels are made by rotation through a roster and are therefore subject to the Legal Aid Granting Decisions Policy;
- where a full application for a new area of law has been submitted but work needs to commence immediately; or
- where a PDS lawyer has acted for a client who wants to file an appeal with the Court of Appeal or Supreme Court and the PDS lawyer does not have a Court of Appeal or Supreme Court approval.

PDS lawyers seeking a limited approval for Court of Appeal or Supreme Court proceedings must have appeal experience in the High Court or a higher court.

A limited approval may also be granted to a PDS lawyer where there is a general need in a particular area of law or specified legal service. PDS lawyers can be approved in the following areas of law:

- Criminal Provider Approval Level 1 – 4;
- Duty Lawyer;
- Police Detention Legal Assistance (PDLA);
- Court of Appeal and Supreme Court; and
- Mental Health.

How to apply?

If you wish to apply for a limited approval, you should complete in full all relevant sections of the application form. You will also need to include the following information in the *Additional information* section of the application form or in a covering email/letter:

- Information about the case for which you are seeking limited approval, including a description of the relevant issues, your contemplated involvement, and any applicable legal aid grant number and/or application for legal aid.
- Information about your relevant experience. If you cannot provide the required number of case examples, provide as many as you can.
- Whether the matter is urgent, especially if the client has a hearing within the next 15 working days.

Limited approvals take up to 15 working days to assess. While urgent applications are prioritised where possible, the Ministry's ability to prioritise applications is dependent on the availability of the Selection Committees and the number of applications on hand⁵.

You can either complete these application forms online or print and complete by hand.

All completed forms should be emailed to legalaidtheprovider@justice.govt.nz.

⁵ [Applying-be-a-Legal-Aid-Provider-Step-by-Step-Guide-July-2023.pdf \(justice.govt.nz\)](#)

If you need further assistance or have any questions about the policy or the application forms, please email legalaidprovider@justice.govt.nz.

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Appendix One – Glossary of Terms

Act

Means the Legal Services Act 2011.

Advancement

Means a PDS lawyer currently approved to provide legal aid or specified legal services applies for an increase in their criminal Provider Approval Level or an additional approval in a new area of law for which they do not have approval.

Application

Means an application for approval made under the Act and in accordance with the Regulations.

Case examples

Means examples of cases that demonstrate experience and competence, and the substantial and active involvement of an applicant in a case.

Competence

Means a demonstrated ability that the applicant can undertake the work involved successfully and efficiently in the area of law for which he or she has applied for approval.

Complete application

Means an application that contains all the relevant and required information in the form prescribed by the Ministry.

Condition on an approval

Means an approval to provide legal services that is subject to conditions imposed by the Secretary in accordance with section 77(2) and Regulation 10.

Criteria for approval

In accordance with section 77(1) of the Act, criteria developed by the Ministry for determining when a person may be approved to provide legal services and included in the Regulations.

Experience

Includes detailed dates and examples of matters which demonstrate particular skills, knowledge and practice in an area of law.

Lawyer

In accordance with section 6 of the Lawyers and Conveyancers Act 2006 means a person that has been admitted to the roll of barristers and solicitors of the High Court of New Zealand and holds a current practising certificate.

Lead provider

In relation to a grant of legal aid, means the provider identified in the grant as the lead provider for that matter.

Legal Aid Services

Means legal advice and representation in relation to legal aid described in the definition of legal services.

Legal services

In relation to legal aid (or specified legal services) means legal advice and representation and includes assistance with:

- resolving disputes other than by legal proceedings
- taking steps that are preliminary or incidental to any proceedings, or
- arriving at or giving effect to any out-of-court settlement that avoids or brings to an end any proceedings.
- In relation to anything other than legal aid, includes:
- legal advice and representation and includes assistance (as above), and
- the provision of legal information and law-related education.

Ministry

Means the Ministry of Justice.

Provider

Means a person who is approved by the Secretary to provide legal aid services or specified legal services, or both.

Recent experience

Means relevant post-admission legal experience gained in the last five years.

Restriction on practice

Means any restriction imposed that limits the applicant's ability to provide services that the applicant has applied to provide under the Regulations.

Specified legal services

Includes duty lawyer, Court of Appeal and Supreme Court, Police Detention Legal Assistance (PDLA) or Mental Health.

Substantial and active involvement

Means considerable input into the court or informal proceedings, such as mediation, negotiation, examination or cross examination of witnesses, leading evidence, delivering opening and/or closing addresses, and presenting submissions. Substantial preparation and pre-trial contributions will be considered on an individual basis.

Work samples

Means documents prepared by the applicant which demonstrate their experience and competence in a particular area of law.

Appendix Two – Relevant Courses

Criminal Provider Approval Level 1

For Criminal Provider Approval Level 1, relevant courses include:

- Introduction to Criminal Law Practice
- PDS Criminal Law Workshop
- the Litigation Skills Programme, or
- another equivalent course.

Criminal Provider Approval Level 2

For Criminal Provider Approval Level 2, relevant courses include:

- How to Run a District Court Jury Trial
- the Litigation Skills Programme
- PDS Jury Trial Workshop, or
- an equivalent course.

Criminal Provider Approval Level 3

For Criminal Provider Approval Level 3, relevant courses include:

- the Litigation Skills Programme, or
- another equivalent course.

Duty lawyer

For duty lawyer relevant courses include:

- the Duty Lawyer Training Programme, or
- another equivalent course.

Appendix Three – PAL Progression – Experience & Competency Criteria – PDS & Private Bar

PAL	Minimum criteria - Private Bar (Legal Aid) and PDS	Indicative number of cases – Private Bar (Legal Aid) ⁶	Ave. lawyer progression time at PDS in months as at June 2024
1	- At least 12 months' recent experience in criminal law practice. - Appeared as counsel with substantial and active involvement in at least 3 trials.	Appeared as counsel with substantial and active involvement in 5 trials that have progressed to at least the close of the prosecution case.	SP - PAL 1 13.6
2	- At least 24 months' recent experience working on PAL 1 proceedings. - Appeared as counsel with substantive and active involvement in at least 3 trials that are Crown prosecutions.	Appeared as counsel with substantive and active involvement in 5 Crown prosecution trials that have progressed to at least the close of the Crown case.	PAL 1 - PAL 2 14.0
3	- At least 36 months' recent experience working on PAL 2 proceedings. - Appeared as counsel with substantial and active involvement in at least 4 PAL 3 or 4 proceedings where at least 1 charge carried a maximum penalty of 10 years' imprisonment or more or the defendant is likely to face cumulative sentences of more than 10 years' imprisonment.	Appeared as counsel with substantive and active involvement in 10 Criminal PAL 3 or 4 proceedings that have progressed to at least the close of the Crown case, including at least 3 proceedings where at least 1 charge was for a sexual offence carrying a maximum penalty of 14 years' imprisonment or more.	PAL 2 - PAL 3 29.0
4	- At least 24 months' recent experience working on PAL3 proceedings. - Appeared as counsel with substantial and active involvement in at least 4 Criminal PAL 3 or 4 proceedings where at least 1 of those proceedings is a PAL 4 proceeding.	- Appeared as counsel with substantial and active involvement in 10 Criminal PAL 3 or 4 proceedings that progressed to at least the close of the Crown case where at least: 3 were Criminal PAL 4 proceedings, and	PAL 3 – PAL 4 17.0

⁶ The indicative number of cases provides a general guide about the level the Secretary is likely to be satisfied that a typical applicant has the necessary practical experience to be approved. However, this is only a guide. The applicant isn't required to have completed this number of cases or proceedings for approval. Provided an applicant satisfies the minimum requirements, the key question is whether the applicant is sufficiently experienced and competent to provide the relevant services, which is determined on the merits of the application.

PAL	Minimum criteria - Private Bar (Legal Aid) and PDS	Indicative number of cases – Private Bar (Legal Aid) ⁶	Ave. lawyer progression time at PDS in months as at June 2024
		where at least 1 charge was for a sexual offence carrying a maximum penalty of 14 years' imprisonment or more.	
Duty Lawyer	- At least 6 months' recent experience in criminal law practice. - Appeared as counsel with substantial and active involvement in at least: 1 pre-trial hearing 1 hearing at which an opposed bail application was made 1 trial conducted by or on behalf of Police before a Judge alone, and 1 sentencing hearing at which a plea of mitigation was made. - Have successfully completed a course of training for duty lawyers that is conducted by the New Zealand Law Society, unless the Secretary has given written notice to the applicant that the applicant is not required to complete such a course.	Appeared as counsel with substantial and active involvement in 10 criminal proceedings.	
Court of Appeal and Supreme Court	- At least 5 years' recent experience in litigation work. - Had substantial and active involvement in 5 appeal proceedings of various types including: - Pre-trial hearings; - Solicitor-General's appeal; and - Appeal by way of case stated. Note, all proceedings must have been held in the High Court or in another higher court.	Substantial and active involvement in 5 appeal proceedings of various types in the High Court or another higher court, at least 3 of which have been in the Court of Appeal or Supreme Court.	

Public Defence Service

Complaints Management Policy for Legal Services

November 2025

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Policy Review

This Policy must be reviewed at least every two years.

Reviewed	Completed by	Issue date	Next review date
PDS Complaints Management Policy	PDS Leadership Team	November 2025	November 2028

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

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Introduction

This policy provides guidance on the process for managing, investigating and resolving complaints made to the Public Defence Service (PDS) in relation to PDS legal services.

The Ministry of Justice (the Ministry) employs salaried criminal lawyers to accept assignments of criminal legal aid cases and provide legal services through the PDS.

Legal services include Duty Lawyer services in courts where PDS operates.

All complaints received must be sent through to the [PDS National Office](#) inbox.

References

References to the Act, Regulations or legislative provisions refer to the Legal Services Act 2011, the Legal Services (Quality Assurance) Regulations 2011 and subsequent amendments. Any other Act mentioned is named in full.

References to PDS staff includes all fixed term, temporary and permanent legal staff members as well as contractors.

Glossary of terms

A glossary of the key terms used in this policy can be found in Appendix One – Glossary.

Expectation of PDS in relation to complaints regarding private Duty Lawyers

Complaints about private Duty Lawyers providing duty lawyer services in the Courts where PDS operate have a separate complaints management process as they are contracted and approved by Legal Aid Services.

Where a complaint is received or generated about legal services delivered by a private Duty Lawyer in a PDS court, the expectation is that in the first instance, the Duty Lawyer Supervisor will attempt to resolve the complaint directly with the person concerned. Any verbal communication should be followed up with an email confirming the details discussed and the remedy sought to resolve the issue with a timeline for completion.

Following the initial step, if the complaint remains unresolved or the behaviour complained of continues or is deemed to be of a sufficiently serious nature at the outset, they must be escalated to the Office Public Defender who will decide whether to refer the matter to Legal Aid Services for formal investigation under the Legal Aid Services Complaints Management Policy. If the matter remains unresolved, then it should be further escalated to the National Public Defender.

Complaints forwarded to Legal Aid Services must include documentation from the local level engagement to evidence non-compliance.

Following an investigation by Legal Aid Providers, PDS will be notified of the outcome.

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Chapter 1 – Complaints Management

What is a complaint?

A complaint is any expression of dissatisfaction with services provided by PDS legal staff. This includes all complaints regardless of their origin.

Complaints can arise in two ways:

1. Internally – concerns, issues or recommendations raised by Legal Aid Services (LAS), PDS or other Ministry staff, including as a result of an audit; or
2. Externally – complaints that come from people outside of the PDS/Ministry, such as clients, the judiciary, lawyers, service providers or other persons.

Complaints received by the PDS in relation to legal services

Guiding Principles

Natural justice

PDS will conduct its processes in accordance with the principles of natural justice (fairness, transparency and consistency). The complaints process uses best endeavours:

- **Be efficient and effective**
 - is timely
 - deals with complaints at the lowest level possible unless deemed to be of a serious nature
 - thoroughly investigates all matters
 - ensures complainants are informed of progress and outcomes (except sanctions imposed on the legal staff members or contractors)
 - has a flexible range of sanctions, remedies and guidance; and
 - coordinates appropriately with the various agencies responsible for regulating the conduct of lawyers.
- **Give recognition to multiple aims**
 - addresses complaints of clients or other persons where possible and/or appropriate
 - ensures PDS lawyers maintain the quality of services at a high level
 - ensures that lawyers and contractors maintain the quality of legal aid and legal services at a high level; and
 - Ensures that lawyers meet expected standards of behaviour.

- **Be independent, impartial and fair**

- transparent
- fair
- confidential (including considerations of privacy); and
- free from:
 - bias
 - external influence
 - conflicts of interest; and
 - impropriety.

Note: Fairness includes:

- ensuring that all parties to a complaint know what to expect during the complaints process
- providing reasons for decisions; and
- ensuring that all participants in the process are given the opportunity to respond.

- **Open, accessible and accountable**

- is easily accessible to potential complainants
- provides clear and simple guidance on complainants' rights
- is open and accountable; and
- allows participants to assess whether the process works effectively.

- **Reporting on complaints includes the publication of details of activities and data concerning:**

- the source of the complaint
- a brief description of the complaint
- the time taken
- whether the complaint was substantiated; and
- the outcome of the investigation and the reasons for the decision.

Details of all complaints must be sent to the [PDS National Office inbox](#) and are to be recorded in the PDS Complaints Register held at National Office. All PDS offices must also keep a separate Complaints Register which the Support Services Manager is responsible for maintaining. The Support Services Manager is also responsible for liaising with National Office and following up with OPDs in relation to any complaint received.

Complaints received by the New Zealand Law Society

Written complaints made to NZLS about PDS lawyers will be managed and investigated by the NZLS.

However, the PDS may also choose to investigate if possible with the complainant's consent any complaint made to the NZLS about a PDS lawyer.

The NZLS must notify PDS lawyers of any complaints made about them. Those PDS lawyers must immediately notify their immediate senior manager (Office Public Defender (OPD), Senior Lawyer (Appeals) (SLA), National Public Defender (NPD) or Director, PDS) about the complaint. Details of the

complaint are to be recorded in the Complaints Register held at National Office. It is the responsibility of the aforementioned senior managers to ensure this occurs.

Responding to an NZLS complaint

When responding to a complaint, the PDS lawyer must provide a copy of:

- all relevant documentation if requested or required
- a description of the matter and how it was managed; and
- a response to the specific issues raised.

PDS lawyers must provide their OPD and NPD with a draft response for their review before sending their response to the NZLS. The OPD will consult with the NPD before approving the response and will provide support to a PDS lawyer, where possible, in responding to complaints made to the NZLS. The OPD will ensure that the NPD is kept informed regarding the complaint and its progress.

PDS lawyers must advise their OPD immediately of the outcome of any complaint managed by the NZLS with the OPD advising NPD, DDL and National Office.

Scope of the complaints process

The complaints process refers to complaints about PDS and PDS lawyers' conduct when providing legal services. This includes PDS lawyers' obligations set out in the:

- Act, Regulations and associated amendments
- PDS lawyers' professional and legislative obligations
- PDS policies; and
- PDS Code of Conduct and the Ministry's Code of Conduct.

All complaints regardless of their source must be addressed. The degree of formality and process required should be consistent with the nature and seriousness of the complaint. A less formal process can be followed where a complaint can be responded to substantively and all issues may be resolved without the need for a formal investigation process.

Complaints that (if upheld) may potentially lead to formal disciplinary action being taken against a PDS employee are not included in the scope of this policy. Disciplinary processes and employment investigations must be undertaken in accordance with the Ministry of Justice's "Disciplinary Process Policy".

Complaint management timeframes

The PDS guideline timeframes for managing complaints are shown in the table below:

Step	Timeframe	Action(s) taken
Receive complaint and acknowledge	Within 2 working days of complaint being received	• The lawyer (or whomever receives the complaint) contacts the Operations & Performance Manager (OPM) who: • acknowledges receipt of the complaint to the complainant; • logs the complaint in the Complaints Register held at National Office; and

Step	Timeframe	Action(s) taken
		advises the lawyer's immediate senior manager (OPD, SLA, NPD or Director) of the complaint and provides a copy.
Triage process (Page 10)	Within 7 working days of the complaint being received	- The senior manager (or another manager at a similar or higher level) undertakes the triage process and determines whether the complaint is suitable for the Early Resolution Process. - If the complaint is not suitable for the Early Resolution Process the senior manager in consultation with the NPD or DDOP assigns a Complaint Investigator (CI) (if required) and provides them with the complaint details; and - OPM updates the Complaints Register.
Early Resolution Process (Page 12)	Within 20 working days of the complaint being received	- The senior manager manages the complaint pursuant to the Early Resolution Process and, if possible, resolves the complaint; and - Notifies the complainant, the lawyer and the OPM of the outcome of the complaint; and - OPM updates the Complaints Register.
Full Investigation Process (if the senior manager decides a formal process is required)	Within 7 working days of receiving the complaint	The senior manager notifies the lawyer of the complaint and seeks submissions.
Response to complaint	Within 10 working days of the lawyer receiving notice of the complaint	The lawyer provides his or her response to the complaint.
Full Investigation process (Page 14)	Within 6 weeks of the Complaints Investigator (CI) receiving the complaint Note: This timeframe may be extended if additional investigation is required.	- The CI investigates the complaint and prepares a draft decision and recommendations. - The draft decision and recommendations are provided to the senior manager and the lawyer for comment. - The CI receives any comments and completes a final decision and recommendations which are provided to the NPD, DDOP or other decision maker for appropriate action (if any). - The NPD, DDOP or other decision maker advises the lawyer of the final decision and any actions and of the opportunity to request a review of the decision and actions; and - The Complaints Register is updated.

Step	Timeframe	Action(s) taken
Review of decision - Submissions	Within 10 working days of the lawyer receiving the decision	The lawyer may request a review of the decision and provide submissions.
Final decision	After 10 working days of the NPD, DDOP or other decision maker notifying the lawyer of the decision	- If a review is not requested, the complainant is advised of the decision by the senior manager and the reasons for the decision. - The complainant will be advised of any remedial actions that directly affect the complainant but will not be advised of any sanctions imposed on the lawyer. - Updates Complaint Register.
Request for review	Within 10 working days of PDS receiving the request for a review	- The decision is referred to the Director for review. - A decision is made by the Director and any appropriate action is taken. - The lawyer is notified of the final decision including the reasons for that decision. - The complainant is advised of the decision, including the reasons for that decision, by the senior manager. - The complainant will be advised of any remedial actions that directly affect the complainant but will not be advised of any sanctions imposed on the lawyer; and - The Complaints Register will be updated.

Chapter 2 – Triage process

Receipt of complaint

Once a complaint has been received, an email or letter is sent to the complainant acknowledging receipt of the complaint within two working days.

Triage process

The triage process aims to establish which complaints can be resolved early and which issues are more complex and require a full investigation.



Review complaint

Step one of the triage process is the initial review of the information that has been provided with the complaint. The senior manager who is conducting the triage is to work through a variety of questions to capture a high-level picture of the complaint.

There will often be questions arising from the initial triage. It may not be clear what outcome the complainant is seeking or exactly what they are alleging has occurred. There may also be questions about what evidence the complainant has, to support their allegations.

An example of the questions the person completing Step One will need to consider in their initial review are noted in the table below:

Review complaint	
Step One	• The review may consider: • Has consent to release the complaint been received? • What information is provided with the complaint? • What outcome does the complainant want? • Is the outcome the complainant wants a possible outcome? • Has any evidence been provided in support of the complaint? • What other information does the senior manager need?

If consent to release the complaint to the lawyer has not been provided, it needs to be obtained from the complainant in Step Two. If consent cannot be obtained over the phone, it should be asked for in writing.

Phone interview

From completion of Step One, it may be clearer what the complainant is seeking or aims to achieve from the complaint.

Step Two of the triage process is a phone interview where appropriate. This step will be used in most circumstances and will be particularly useful when the complainant has previously been a PDS client.

This step allows PDS to manage expectations, discuss desired outcomes and clearly set out the complaints process. Useful information can also be obtained.

If a complaint is received from a third party, a phone interview can assist with explaining third party consent and legal privilege to the complainant. A second phone call will also be necessary to ensure the client provides consent for the third party to continue with the complaint on their behalf.

Note: In some instances, a phone call will not be necessary, for example if a complaint came directly from the judiciary or if the complaint has adequate information to make an immediate assessment.

Phone interview

Step Two

- The phone interview aims to:
 - Obtain consent to provide the complaint to the lawyer if not already obtained
 - Manage expectations
 - If other persons complaint, establish if the complaint is on the client's behalf
 - Highlight policy, processes and timeframes; and
 - Obtain missing information.

Assessment

Step Three

The information gained in Step One and Two is assessed.

- The person undertaking the triage process determines if a complaint:
 - can be resolved early, or if not;
 - which category the complaint falls into based on the potential outcome of the investigation; or
 - falls under the full investigation process.

Note: If the complainant refuses to provide consent to release the complaint in Step Two, in most cases the complaint will not proceed. This will need to be explained to the complainant and the complaint will be closed. If the senior manager believes that the matter is so serious that release may be necessary against the complainant's wishes, further advice should be sought from the Director, DDOP or NPD.

Reference: Section 6 of the Privacy Act 2020, the Official Information Act 1982 and the Lawyers and clause 8.4 of the Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008

Chapter 3 – Quick action/Early resolution (Minor)

General approach

Early resolution of complaints is recommended preferably through a conciliation/relationship-based approach. If appropriate, the PDS will coordinate communication between the parties to encourage early resolution.

This approach might be appropriate in instances where an ongoing relationship needs to be maintained, or if the use of a conciliation/relationship-based approach might lead to a more equitable and mutually beneficial outcome for the parties.

Early resolution process

It may also become clear from the triage process that the complainant desires a specific outcome. In some instances, the complainant may be seeking an outcome that is not within the possible outcomes of the complaints process (for example, having their conviction quashed). This should be communicated to the complainant in Step Two of the triage. The complainant may not wish to continue with their complaint as a result. If the complaint is serious, the senior manager can choose to proceed to an investigation even if the complainant wants early resolution.

Early resolution

- **Can frontline action satisfy the complainant?**

If yes, the appropriate staff member should be contacted to assist the senior manager resolve the complaint.

- **Does the complainant understand the policy and processes of a complaint's investigation?**

Managing the expectations of possible outcomes may result in the complainant not wishing to proceed.

- **Would the complainant be satisfied with an apology?**

If yes, the senior manager contacts the lawyer to discuss the complaint and proceed with a reconciliation/relationship-based result if agreed.

Is it a matter that does not warrant the full investigation process?

If yes, the senior manager may proceed to determine the complaint.

Chapter 4 – Full investigation process

Authorisations for disclosure of information

The PDS should obtain authorisation to disclose information about complaints from the complainant. If a third party has made the complaint, consent should also be obtained from the client that the complaint is about or on behalf of. The client should also confirm that the third party is authorised to act on the client's behalf in relation to the complaint, and that the PDS is authorised to release confidential information about the client and the client's case to the third party.

In some circumstances a lawyer is entitled to respond to a complainant by disclosing confidential information without the prior consent of the client or the third-party complainant. If consent is not forthcoming the senior manager should discuss the matter with the NPD or Chairman of the PDS Ethics Committee before proceeding.

Reference: Rule 8.4 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008

Decisions to investigate a complaint without authorisation from the complainant or consent to disclosure of confidential information must be approved by the Director.

Note: PDS may collect or disclose personal information about clients to meet its responsibilities under the Legal Services Act, associated regulations, or any other relevant statute or court order.

Complainant details

Where the complaint is external, the complainant's name and the details of their complaint should not be disclosed to the lawyer without the complainant's written authorisation.

Investigation of a complaint

Purpose

The purpose of the investigation is to gather all relevant information about a complaint.

In carrying out an investigation, the senior manager may request supporting documents or information in any other form from any relevant source.

Approach

Decisions on complaints are made on the balance of probabilities (for example, whether on all the evidence, it is more likely than not that the act or omission complained about occurred). This is a lower threshold than the criminal standard of proof beyond reasonable doubt.

Multiple complaints

The PDS may investigate multiple complaints relating to the same lawyer at the same time.

Assessment of a complaint

Considerations

In assessing the complaint, the senior manager or CI takes into consideration whether:

- a response has been received from the lawyer
- the lawyer:
 - confirms that the facts of the complaint are correct
 - gives a reasonable explanation, or
 - outlines mitigating factors
- the lawyer has taken steps to remedy the situation and avoid the same issue arising again; and
- any further information is required (from the complainant, lawyer or PDS/Ministry staff or external source) before PDS can make a decision on the complaint.

Assessing the evidence

When assessing the evidence, the senior manager or CI takes into account its credibility and cogency. Credibility is how reliable the evidence is. Cogency is how relevant the evidence is to determine the matter at hand.

An example of this is CCTV evidence. This is likely to be very credible evidence, but its cogency depends on whether it shows what happened.

Opportunity to respond to further information

Natural justice requires that the lawyer is provided with any material or new information that comes to light during the investigation and is given the opportunity to respond.

Failure to respond

Where the lawyer does not respond to PDS requests for information or provides insufficient information, and there are no other mitigating circumstances, PDS will proceed with the assessment based on the available information.

If the lawyer fails to respond or provide information requested by PDS, the DM may proceed to consider a recommendation made by the investigating party.

Chapter 5 – Complaint outcomes process

Consequences – PDS staff

The consequences of substantiated complaints may include:

- advise lawyer of any remedial action that may be required
- other actions deemed appropriate by PDS
- recommendation to Legal Aid Services to reassign the legal aid matter to another provider
- quality assurance checks under PDS Quality Assurance framework and/or under section 88 of the Legal Services Act; or
- referral to PDS Approvals Panel.

Factors impacting outcome

In deciding on the appropriate outcome for a substantiated complaint, the DM will consider a number of factors in making their decision. These will include:

- the nature and seriousness of the conduct
- the extent of the impact on the complainant, client or any other person; and
- any previous record of similar conduct by the lawyer.

An identified pattern of concerning behaviour and non-compliance may be reflected in a more serious outcome for the lawyer.

PDS obligation

PDS is obliged to exercise objective judgment and apply a consistent approach, appropriate to the nature and seriousness of the conduct.

Serious complaints

If the substantiated complaint is serious, and the complaint relates to compliance with PDS/Ministry obligations, PDS may issue a notice and/or note and close the complaint.

Advice will be sought from the Ministry's People and Experience team.

PDS will take into consideration the seriousness of the complaint, nature of the complaint and history of the PDS legal staff member/lawyer.

Where the lawyer has received multiple complaints, PDS may consider other appropriate action, depending on the nature of the complaints.

Very serious complaints

If the substantiated complaint is very serious and the lawyer has failed to comply with PDS/Ministry's policies, standards, legislative or professional obligations, the PDS may refer the PDS legal staff member for an audit or special audit, to the Legal Aid Performance Review Committee.

Note: Where the concerns are very serious, and relate to the obligations as a lawyer PDS may refer the complaint to the NZLS.

New Zealand Law Society

Most substantiated complaints that are very serious will be referred to the NZLS. However, referral of a complaint depends on the seriousness of the complaint, its nature and the history of the lawyer.

Remedies for complaints

PDS commitment

PDS is committed to ensuring a range of options are available to clients and other complainants if a complaint is substantiated.

Remedy options – Early resolution

If a complaint progresses through the quick action process, PDS determines the appropriate remedy for each complaint. Options available include but are not limited to:

- recommending to Legal Aid Services that the legal aid matter be reassigned to another lawyer; or
- an admission of fault or an explanation or apology from the lawyer.

Note: More than one remedy may be applied to a case if the circumstances justify that course of action.

Notification to PDS lawyer and complainant

Notification to PDS lawyer

PDS will advise:

- whether the complaint was substantiated
- if substantiated, the reasons for the decision
- of any remedial action considered necessary; and
- of any sanctions as a result of the complaint.

Notification to the complainant

PDS will inform the complainant whether the complaint was substantiated or not, and the reasons for the decision. The complainant will be advised of any remedial actions that directly affect the complainant, but not of any sanctions imposed on the lawyer.

Other notifications

On completion of the investigation, PDS informs the complainant, relevant Ministry staff and NZLS (where appropriate), whether the complaint was substantiated.

In most cases it is not necessary to release specific details of decisions. However, if requested, any relevant and necessary details, including the remedial action(s) taken (or to be taken) by the lawyer, may be provided to the complainant.

The senior manager will use discretion to determine what the necessary and relevant information is, and what may require an assessment under the appropriate legislation.

Reference: Section 7(2) of the Privacy Act 2020 and section 9(2)(a) of the Official Information Act 1982

Further information

Where further information is requested by the complainant and the complaint is not substantiated, PDS may outline the reasons for its decision.

Review of complaint outcomes

PDS lawyer's right to seek a review

When a lawyer has been notified of the PDS/Ministry's decision on the outcome and consequences of a complaint investigation, they can request a review of the decision.

Complainant's right to seek a review

When a complainant has been notified of the PDS decision on the outcome and consequences of a complaint investigation, the complainant can request a review of the decision.

Timeframe for seeking a review

A request for a review must be submitted to PDS in writing within 10 working days of the notification of the decision.

Scope of review

Reviews of complaint investigation decisions are based on the original allegations. Some new information may be reviewed. However, this is at the Director's discretion with consideration to relevance.

Process for review

The PDS Director will review and reassess the complaint investigation and decision according to PDS standard processes and procedures.

The Director may confirm, modify or reverse the original decision. Reviewed decisions are authorised according to the relevant approval levels and depending on the severity of the consequences.

Timeframe for review

PDS will review a complaint and make a final decision within 15 working days of receiving the request to review.

Notification of review outcome

On completion of the review, PDS will notify the lawyer and the complainant of the outcome of the review and the reasons for its decision.

Referral to the NZLS

What complaints should be referred to the NZLS?

Under Rule 2.8 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules), all lawyers have an obligation to report, subject to certain exclusions, someone whom they have reasonable grounds to suspect may have engaged in misconduct. In addition, under Rule 2.9 a lawyer may report another lawyer if they have reasonable grounds to suspect someone may have engaged in unsatisfactory conduct.

If a complaint is serious or very serious and relates to duties and obligations as a lawyer generally it may be referred to the NZLS.

Process

The senior manager will seek advice from the NPD and Director to determine whether the matter should be referred to the NZLS.

Legal Aid must be contacted advising of the potential NZLS referral prior to the referral taking place.

If the senior manager refers the complaint, all parties will be notified of this action within five working days.

When PDS refers a complaint to the NZLS, PDS will take on the role of a complainant so that the NZLS can keep PDS informed of the progress of its investigation.

Reference: Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008

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Chapter 6 – Document and reporting on complaints

Documentation

The CI must record details of complaints including the PDS decision and actions taken into the Complaints Register held at National Office for analysis, reporting and auditing purposes.

A copy of all the information (including all correspondence, recommendations, decisions and actions taken relating to the complaint) is kept on the lawyer's file and, where appropriate advised to Legal Aid Services.

Scheduled reporting

The OPM will provide a summary of all complaints and actions taken to the DDOP on a monthly basis and as appropriate.

The DDOP reports substantiated complaints to the PDS Director or delegated person on a monthly basis.

Reporting of trends

Quarterly reports regarding legal services complaints and trends will be provided to Legal Aid Services.

Appendix 1 – Glossary of terms

Authorisation

Written permission from external complainants and/or clients for the PDS to make their name and complaint available to the lawyer and any other necessary persons and disclose any relevant information, including any confidential information in relation to the client and his/her case.

Commissioner

Means the Legal Services Commissioner appointed under section 70 of the Act.

Compliance

There is sufficient and appropriate evidence to demonstrate a particular requirement has been complied with.

Complaint

An expression of dissatisfaction with the legal services provided. This includes all complaints regardless of their origin. Complaints are categorised by the PDS/Ministry as PDS/Ministry concerns or external complaints.

Complaints Investigator (CI)

The person responsible for gathering and assessing all the information and providing a recommendation to the Decision Maker about whether a complaint should be upheld or not upheld and where applicable, a recommended course(s) of action.

Complaints Register

A central register where all complaints are recorded. The Complaints Register is an internal monitoring and reporting tool for the PDS.

Decision Maker (DM)

Makes a decision about complaints and where applicable, appropriate course(s) of action.

Deputy Director Operations & Performance (DDOP)

Means the position of Deputy Director Operations & Performance within the PDS.

Director

Means the position of Director within the PDS.

Duty lawyer

PDS lawyer with Duty Lawyer approval.

External complaint

A grievance, allegation or concern received from a source outside the Ministry about a lawyer's conduct, which may indicate that the lawyer has failed to comply with their obligations while providing legal aid or legal services.

Lawyer

Means a person who is qualified as a lawyer and holds a current practising certificate but includes, for the purposes of this Policy, any person employed or contracted by the PDS and includes a person undertaking a course of study to become a lawyer who has not yet graduated or been admitted to the Bar.

Legal Aid Services

Means legal advice and representation in relation to legal aid assignments described in the definition of legal services.

Legal services

Means services that a person provides by carrying out legal work for any other person and includes assistance with:

- resolving disputes other than by legal proceedings;
- taking steps that are preliminary or incidental to any proceedings;
- legal advice and representation; and
- the provision of legal information and law-related education.

Ministry

Means the Ministry of Justice.

Ministry's disciplinary process

The formal process when misconduct or serious misconduct is alleged against a Ministry/PDS legal staff member.

Ministry/PDS staff

A person employed or contracted by the Ministry/PDS under an employment agreement of contract for services.

New Zealand Law Society

The national regulator of the legal profession.

Non-compliance

There is sufficient and appropriate evidence to establish a particular requirement has not been complied with.

Obligations

A lawyer's obligations as outlined in the Act and Regulations, the contract, the PDS Code of Conduct, professional obligations provided for in any other Act or Regulations and any relevant policies and procedures.

Office Public Defender (OPD)

The role of Office Public Defender within the PDS.

Operations & Performance Manager (OPM)

A member of the PDS National Office team who performs the role of Operations & Performance Manager.

PDS court

Means a court where the PDS operates.

PDS/Ministry concern

Where the PDS/Ministry has concerns regarding a lawyer's conduct, which may indicate that the lawyer has failed to comply with legislative, contractual or professional obligations or practice standards while providing legal services.

Practice standards

Means standards approved by the Secretary that relate to the delivery and provision of legal aid services and legal services.

Public Defence Service (PDS)

The business unit within the Ministry that employs lawyer to provide legal services to legally aided clients.

National Public Defender (NPD)

The role of National Public Defender within the PDS.

Resolution

A satisfactory outcome, which protects and meets the interests of PDS/Legal Aid Services, the client and any other affected person.

Secretary

Means the Secretary for Justice.

Services

Legal services, includes legal services.

Substantiated/Upheld complaint

Where an investigation establishes that the lawyer has failed to comply with their obligations while providing legal services.

Public Defence Service

Conflicts of Interest Policy

November 2023

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Policy Review

This Policy must be reviewed at least every two years.

Reviewed	Completed by	Issue date	Next review date
Conflicts of Interest Policy – October 2014	Rob Stevens / PDS Leadership Team	November 2023	November 2025

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Introduction

This policy provides guidance and process for identifying and managing conflicts of interest within the Public Defence Service (PDS).

The Ministry of Justice (Ministry) employs salaried criminal lawyers to conduct criminal legal aid cases and provide specified legal services through the Public Defence Service (PDS).

The process and guidance set out in this policy should provide a better understanding of how to identify and manage conflicts of interest, and the considerations to be taken into account before having a case reassigned.

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The Policy

What is a conflict of interest?

A conflict of interest is “Any situation where there is a risk that professional obligations will be improperly divided” *Russell McVeagh McKenzie Bartlett & Co v Tower Corporation* [1998] 3 NZLR 641. It means that a lawyer’s independence, objectivity or impartiality can be called into question. **A risk means more than a fanciful or negligible risk.**

A conflict of interest can be:

- **Actual:** where the conflict already exists;
- **Potential:** where the conflict is about to happen or could happen; or
- **Perceived:** where other people might reasonably think that a person has been compromised.

The rules for lawyers in relation to conduct and client care are in the schedule to the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 and provide the following with respect to conflicts of interests:

Conflicting duties:

- 6.1 *A lawyer must not act for more than 1 client on a matter in any circumstances where there is a more than negligible risk that the lawyer may be unable to discharge the obligations owed to 1 or more of the clients.*
- 6.2 *Rule 6.1 applies with any necessary modifications whenever lawyers who are members of the same practice act for more than 1 party.*

Use of confidential information prohibited:

- 8.7.1 *A lawyer must not act for a client against a former client of the lawyer or of any other member of the lawyer's practice where—*
- (a) the practice or a lawyer in the practice holds information confidential to the former client; and*
 - (b) disclosure of the confidential information would be likely to affect the interests of the former client adversely; and*
 - (c) there is a more than negligible risk of disclosure of the confidential information; and*
 - (d) the fiduciary obligation owed to the former client would be undermined.*
- 8.7.2 *Rule 8.7.1 is not breached where there is an effective information barrier between the lawyer who holds the confidential information of the former client and the lawyer who proposes to act for the new client.*
- 8.7.3 *An information barrier is effective when, in all the circumstances, there is a negligible risk that the confidential information in respect of the former client will be or has been disclosed to the new client or to any lawyer acting for the new client.*

- 8.7.4 *Unless the lawyer is unable to contact the former client, particulars of any information barrier must be disclosed to the former client prior to the lawyer commencing to act for the new client.*

The PDS falls within the meaning of “practice” in Rule 1.2 where practice means a law practice, whether conducted by one lawyer, a partnership of lawyers, or an incorporated law firm.

All PDS lawyers must make themselves familiar with the conflicts provisions outlined in the rules. To view the rules, click [here](#).

In addition to the rules relating specifically to conflicts of interest, there are other rules which are important in the context of the consideration of conflicts of interest within the PDS:

7. *A lawyer must promptly disclose to a client all information that the lawyer has or acquires that is relevant to the matter in respect of which the lawyer is engaged by the client.*
8. *A lawyer has a duty to protect and to hold in strict confidence all information concerning a client, the retainer, and the client’s business and affairs acquired during the course of the professional relationship.*

Conflict of Interest examples

Here are some examples of situations where there may be a conflict of interest:

- Where the PDS has acted for the complainant and/or a witness before and holds confidential information in relation to that former client which we are under an obligation to disclose to the current client.
- Where the PDS has acted for the complainant and/or a witness before and there is a need to cross-examine the complainant and/or the witness at a trial or a hearing.
- Where the PDS has acted for a co-defendant before and there is more than a negligible risk that the interests of the co-defendant and the current client will be in conflict.
- Where the PDS acts for more than one defendant at a single trial (see Appendix A for guidance).
- Where a lawyer has a personal relationship with a complainant or a witness.
- Where a lawyer is unable to follow a client’s instructions because of a material change in instructions.

This list is not exhaustive and conflicts of interest that arise must be dealt with on a case by case basis.

When must a conflict check be completed?

Assignment

As part of the CMS check for new assignments, support staff must check if there are any co-defendants listed against the CRI. If there are, then a conflict check must be completed.

Case Review

A conflict check must be undertaken at least five days before the Case Review hearing for all matters proceeding to a judge-alone trial.

Callover

A conflict check must be undertaken upon receipt of the Crown's formal statements prior to the first jury trial callover for all matters proceeding to a jury trial.

Additional checks

Additional conflict checks can be undertaken at any stage and should be undertaken if there is reason to believe a conflict of interest may have arisen.

All lawyers should use their judgement and undertake further conflict checks as the matter progresses, for example when an updated witness list is issued or there is a lengthy wait for a trial to start. Lawyers should also be aware of the possibility of a witness becoming a client of the PDS subsequent to the Case Review hearing and/or trial callover, and prior to trial.

How to check for a conflict of interest

The lawyer will send an email to the generic office inbox with a list of the names of any possible witnesses and/or co-defendants (with DOBs if they have them), to be conflict checked.

The support staff member will then:

- Conduct a conflict check using the PhoneBook search in Affinity.
- Send an email to the lawyer with the result of the check. If the check identifies any current or former clients from the list provided by the lawyer, the response to the lawyer will include the following information:
 - Name
 - DOB
 - Date file was closed and/or whether the file is open
 - Name of the assigned lawyer.
- The original request for a conflict check and the response outlining the results will be saved against the matter in Affinity and attached to the physical file.

If there are multiple returns for the same name and no DOB has been provided by the lawyer, the conflict results will include the relevant information for all records, including the DOB for each person.

The lawyer will also be informed if the check did not identify any current or former clients from the list.

Based on the results, if a conflict is found the assigned lawyer should discuss the conflict with their Office Public Defender, Team Leader or Legal Team Manager and undertake a conflict analysis as explained below to consider whether information barriers are possible or a reassignment is necessary.

Undertaking a conflict analysis

The Court of Appeal in *Russell McVeagh McKenzie Bartlett & Co v Tower Corporation* decided that, when a conflict of interest was claimed, the first inquiry was to determine the duties owed by the lawyer to the respective clients and then see whether they were likely to conflict. In the absence of

any risk of disclosure of confidential information, it was difficult to identify any other duty likely to lead to a conflict.

However “confidential information” extends beyond merely the documentation contained in the hardcopy or electronic files held by the PDS.

In *Hana New Zealand Ltd v Stephens* [2006] 1 NZLR 833, Asher J considered the confidential information included knowledge of the client’s affairs and character gained while acting for the client. “A barrister in acting for a client ... will quickly develop some appreciation of the client’s personal strengths and weaknesses, and an assessment of how the client will perform as a witness”. Thus, careful thought needs to be given to this aspect when considering a potential conflict of interest where the former client has been represented by the same office as the current client.

All lawyers when undertaking a conflict analysis must consider the following:

- Is there a conflict of interest i.e. is there a risk that professional obligations will be improperly divided?
- Can we limit or mitigate the risk? Will an information barrier and/or an undertaking assist with mitigating any identified risk?
- What does the client say? Disclosure of the nature of the conflict should be made to all affected clients, including any former clients where relevant, although privacy issues must be considered before disclosing any information about another client to a former or current client. This includes the fact that the former or current client was or is represented by the PDS.
- What is the risk should the lawyer (and the PDS) continue to act? If there appears to be more than a negligible risk of a conflict of interest the lawyer should discuss the case with their OPD, Team Leader or Legal Team Manager.

What to do if a conflict of interest has been identified

Once a lawyer has undertaken a conflict analysis:

- If a conflict of interest has been identified the lawyer must notify their OPD.
- If the matter is proceeding to trial, and the former client is to give viva voce evidence the lawyer and the OPD must consider whether information barriers will be effective in managing the risk. If information barriers are appropriate the OPD should take steps to put these in place.
- The current client’s informed consent to non-disclosure of any information held in relation to the former client must be obtained (see Appendix B for a template consent form).
- Where possible, the former client should be advised of the particular of any information barrier (see Appendix C for a template letter). Contact should be made with the prosecutor with a view to having the prosecutor provide the letter to the former client.
- If the lawyer and the OPD are unsure of what action to take a referral should be made to the PDS Ethics Committee.
- If information barriers will not mitigate the risk the OPD will arrange for the case to be re-assigned through Legal Aid. Leave to withdraw should be formally sought from the court.
- As a general rule, if the witness is an active client or has been a client within the past five years in the same office as the current client, it is likely the case will need to be reassigned. This should, however, be discussed with the OPD before any decision to reassign is made.

The PDS Ethics Committee

The PDS Ethics Committee's (Committee) primary function will be to consider the management and resolution of conflicts of interest and ethical issues as and when they arise. The Committee's functions are to:

- (a) consider conflicts of interest that are referred to the Committee;
- (b) provide advice immediately (by phone) for conflicts of interest that require urgent consideration;
- (c) consider ethical issues (for example, when a lawyer needs advice regarding some information the client has given them);
- (d) engage with the Judiciary and the NZLS about the PDS conflicts management policy and processes when required;
- (e) be the PDS spokespeople on conflicts and provide submissions on conflicts e.g to the NZLS etc;
- (f) update and clarify the PDS conflicts of interest policy as and when required; and
- (g) provide training and information sharing to all PDS staff.

The Committee is comprised of no less than six members including the Chairperson who are all employed by the PDS, hold a current practising certificate and hold a valid approval to provide legal aid services at PAL 2 or above.

Ethics Committee members are subject to the PDS Ethics Committee Terms of Reference.

Referrals to the Committee

Referrals to the Committee must be submitted to the PDS Support Services inbox (PDSSupportServices@pds.govt.nz) on the [PDS Ethics Committee Referral Form](#) (Form) unless the referral is urgent. The form must provide as much detail as possible, including the conflict analysis.

For urgent referrals, lawyers can receive advice from a committee member over the phone. Any advice provided must be followed up in writing on the Form and sent to the lawyer, the lawyer's OPD and the Chairperson of the Committee.

Committee meetings

When a form is submitted for consideration the Chairperson must arrange for a discussion involving not less than two members (including the Chairperson). Discussions can be held in person, by teleconference, by telephone or by email.

Committee decisions

Decisions, other than urgent decisions, must be made by no less than two members (including the Chairperson).

Decisions must be made in writing on the form. The Chairperson is responsible for providing the completed decision form to the person who made the referral. Where the Committee cannot agree

on an outcome, the final decision will be made by the majority and the dissenting member's reasons must be noted on the form.

Lawyers must keep a copy of the completed form on the client file and in Affinity.

A copy of the completed form will be kept by the Chairperson in a designated folder alongside a conflicts of interest register in the W-drive.

A decision made by the Committee is binding on all lawyers acting in the matter the subject of the referral.

If any action is taken by the New Zealand Law Society or civilly, the Committee members will take responsibility for the decision, and if necessary appear with the lawyer before the relevant body.

Timeframes

For standard referrals made to the Committee, decisions by the Committee should be made and communicated to the lawyer within 48 hours.

Urgent referrals to the Committee are dealt with by phone, however any advice given must be recorded in writing with written confirmation being sent to the person seeking advice within 48 hours of the phone call.

Managing conflicts of interest – information barriers

If a conflict of interest is identified but re-assignment of the matter is not required, the following actions and precautions should be taken:

- the client must sign a waiver confirming that the conflict of interest has been explained to them and they agree that the lawyer can continue to act for them (see Appendix B); and
- disclosure of the nature of the conflict should be made to all affected clients, including any former clients where relevant (see Appendix C), although privacy issues must be considered before disclosing any information about another client to a former or current client. This includes the fact that the former or current client was or is represented by the PDS.
- information barriers must be set up to ensure the protection of any confidential information. Information barriers can include:
 - (a) a lawyer undertaking not to discuss the case/and or previous client or look at the previous client's file in Affinity; and
 - (b) the hard copy of the previous client's file being removed from accessible storage by the OPD in the office in which it is held.

Ethical issues

The Committee can consider other ethical issues, for example a lawyer needs advice regarding information the client has given them. Referrals can be made on the Ethics Committee Referral Form or by telephone if urgent.

Identifying conflicts after the fact

If a conflict of interest is identified during a trial, the lawyer must speak with their OPD immediately. Consideration will need to be given to whether an application for leave to withdraw should be made, or whether another PDS lawyer can reasonably manage the case going forward.

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Appendix A: Multi-defendant assignments guidance

Multi-defendant trials – the issue

The PDS should not act for more than one client in a proceeding. Taking on a second client in a multi-defendant case, where the risk of conflict is unknown, is not in the first client's best interests because the outcome, if a conflict is later identified, is that both clients must be reassigned. This can be unfair to the first client if work has already been done because the work will probably need to be repeated by the new lawyer. It can also potentially add to the client's costs if he or she is required to repay the legal aid grant.¹

The approach

Legal Aid has been asked not to assign the PDS more than one defendant where it is aware that the client's matter is a multi-defendant case.

However, there will be times when the PDS is assigned to act for more than one defendant in a multi-defendant case. If the PDS, at the time it receives an assignment, is aware that it already acts for a defendant in the same multi-defendant case (the first client), then it will decline the assignment and only act for the first client. For the sake of clarity, this rule will apply regardless of whether the first client intends to plead guilty, or has already pleaded guilty, to the charges.

If the PDS only becomes aware of the issue after the assignment of the second or subsequent client has been made, and disclosure has been received, it will be necessary for the lawyers acting for each client to immediately and independently determine whether there is a potential conflict of interest. If there is a potential conflict of interest, then all matters will need to be reassigned. If there is no conflict of interest then only the second client will need to be reassigned.

¹ Depending on when the conflict is identified, reassigning both matters will potentially cause the same issues for the second client.

Appendix B: Waiver template for current client

To: [Current client]

From: [Lawyer acting]

Date:

Subject: **Waiver of duty of disclosure in relation to previous client's information**

1. The Public Defence Service ("PDS") has previously acted for one (or more) of the people who may be involved in your case.
2. Because the PDS holds confidential information about former clients there might be a conflict of interest:
 - (i) Rule 7 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules) means a lawyer must disclose to a client all information that the lawyer has, or can get, that is relevant to their case. This duty is owed to you as our current client.
 - (ii) Rule 8 of the Rules says a lawyer must protect and hold in total confidence all information they get about a client while acting for them on their case. That duty is owed to any former clients.
3. Because of these ethical rules I cannot give you any information the PDS has about any former clients who are involved in your case. If you would like the PDS to continue to act for you, you need to agree to PDS not giving you the information we hold about our former client(s).
4. Before you decide whether to agree to that, it is important that you understand the following things:
 - (i) The PDS has confidential information about one (or more) of the witnesses or co-defendants in your case;
 - (ii) I do not know what all of that information is, but some of it might be relevant to your case e.g the PDS might have a list of previous convictions for any former client;
 - (iii) If you want the PDS to continue to act for you, you must waive your right, under Rule 7 of the Rules, to be given any information that the PDS has in relation to the former client(s) involved in your case;
 - (iv) By waiving your right to have this information you will be no worse-off than you would be if you decide not to sign this waiver. If you do not sign this waiver the PDS will have no choice but to have your case reassigned to another lawyer outside the PDS. That new lawyer cannot get the information the PDS has about our former clients;
 - (v) The prosecutor has to give you all of the information they have that is relevant to the charge(s) you are facing. This includes any information about the former PDS client(s) that is relevant to your case;
 - (vi) If you agree to waive your right to have the information about our former client(s), I can continue to act for you;

- (vii) If you agree to waive your right to have the information about our former client(s), you can change your mind at any time and have your case assigned to another lawyer outside the PDS.
5. Please sign below to confirm that you understand this information and that you also agree to me continuing to act for you. This will confirm that you are waiving your right to have the information the PDS has about any former client(s) involved in your case.

[Current client]

Date:

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Appendix C: Letter to former client

[Date]

Reference: [Matter number]

[Insert former client's name]

Dear [Insert former client's name]

Re: [Insert client name]

We have been told that you are to be called as a witness by the prosecution in the case against [insert current client name].

The PDS office in [office where file is held] is acting for [insert current client name]. It is important to tell you this because you used to be a client of the PDS.

Because you used to be a PDS client, we still have information about you and your old case(s). This information is confidential to you and the PDS is not allowed to give any information to anyone else unless you agree to it. This includes the fact that the PDS has acted for you in the past and so [insert name of current client] has not been told your name, or that you are a previous client of the PDS. [Insert name of current client] has simply been told that the PDS has acted for one of the witnesses and/or co-defendants in this case.

Because we now act for [insert current client name], we usually have to give all information to him/her that is relevant to the charge(s) he/she is facing. It is possible that the PDS holds information about you that might be relevant to [insert current client name]'s defence.

This is called a conflict of interest.

PDS has dealt with this conflict of interest in the following way:

1. [Insert current client name] has signed a form agreeing that PDS will not give him/her any confidential information we have about you. [Insert current client name] will only be given the information we get from the prosecutor about his/her current charge(s).
2. I have signed an undertaking that means I will not look at any information the PDS has about you from when you were a PDS client or speak to any other PDS lawyer who dealt with you.
3. Any other lawyer who appears for [insert current client name] on his/her current charge(s) will also sign the same undertaking.
4. If a lawyer breaches an undertaking, this is a very serious matter which can lead to charges being filed against the lawyer by the New Zealand Law Society.

5. Any paper files about your old case(s) with the PDS that are still at a PDS office have been put into secure storage with the Office Public Defender to make sure no one has access to any information about you.

The PDS takes keeping your information confidential very seriously and you can be sure that the information the PDS has about you from when you were a PDS client is protected and will not be looked at by myself or any other lawyer acting for [insert current client name].

Yours faithfully

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Lawyer's Undertaking Not to Access Information Held by The Public Defence Service

- ## Conflict of Interest

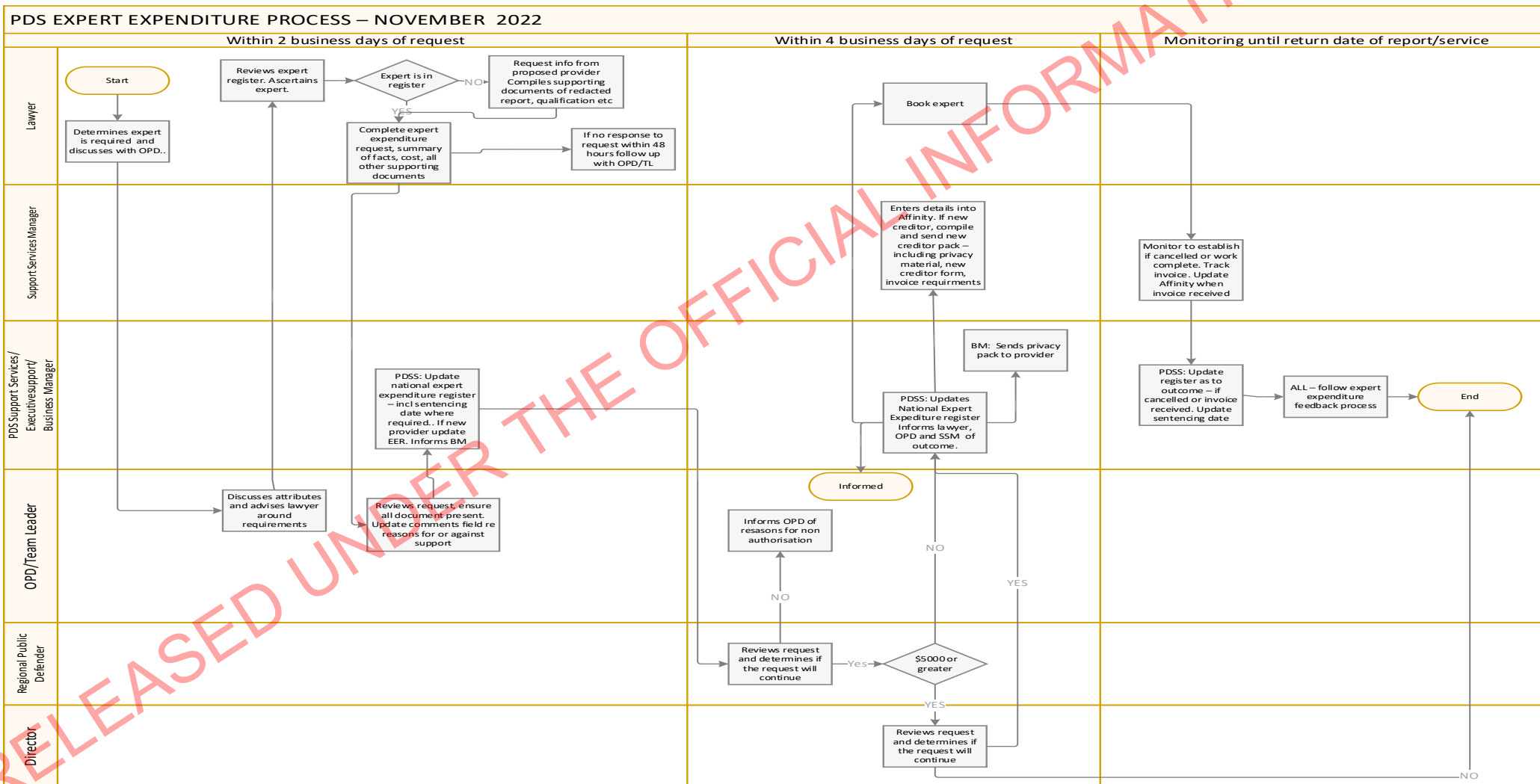
- ## Undertaking

- [Lawyer's name]**

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PDS EXPERT EXPENDITURE PROCESS - GUIDELINES

Date: 21 November 2022



Timeframes:	Person Responsible:	Task:
<i>Within 2 business days</i>	Lawyer	Reviews case requirement and establishes their belief, that an expert is required for best representation of their client. The lawyer should discuss with the Office Public Defender (OPD) prior to completing the Expert Expenditure Request form. This will establish if the OPD supports the request, prior to moving into the formal process If OPD verbally supports request: Review PDS Expert Register: Establish there is an expert in register that can complete the task to a high degree with best possible outcomes for client: • YES: Continue to next step • No: Source an expert outside Register and ensure the following is met: When engaging with a provider outside of the register the request for expert expenditure must be supported by the following written documentation: • Where recommendation of this provider has come from/how you heard about the provider • Detailed reason this provider is being selected and is ideal to complete the report • Detailed background of the provider, including qualifications • For those instances where there is a formal written report, such as S27, psychologists, psychiatrists, social workers: A current redacted report must be requested and included. • For forensic, medical, legal experts and private investigators - a redacted report is not required. In depth details of qualifications and expertise will be the core focus. These documents must be compiled and support any Expert Expenditure request made to the OPD and RPD. Continue to next step.
	Lawyer	Complete an Expert Expenditure Request form electronically (also available in Affinity), this allows for all dropdown boxes to be available and completed – including highlighting both experts who are not currently within the PDS Expert Register and sentencing date. Attaching:

		• All communications with the expert • Summary of Facts • Quote • In the case of new providers attach all documents noted in step above including: Redacted report, reasons for using provider, qualifications etc; and • Any further relevant documentation – such as sentencing indication etc. Send email to OPD – with the matter number in the subject line.
	Office Public Defender (OPD) / Team Leader	Review the formal request – the OPD should have prior knowledge of the case and can, therefore, ensure all relevant details are present. Ensures Expert Expenditure Request form is complete and all required supporting documentation, that will assist in supporting the decision making, is present. • OPD/TL reviews the request and makes comments as to the reason for supporting or not supporting. • supporting documentation is forwarded to PDSSupportServices cc'ing in SSM, with the matter number in the subject line. Note: If OPD is not available within a suitable timeframe to recommend, then forward request directly to PDSSupportServices (copying in SSM) explaining why no recommendation.
With two workings day of request	Lawyer	Checks with OPD progress of report, ensuring request has been actioned by OPD and forwarded to PDSSS.
Within four working days of request	PDSSupportServices	Reviews documents, ensuring complete, accurate and authorised, and if new provider, all supporting documentation, including redacted report is present. Enters into National Expert Register. Updates Register for sentencing date as per form, if present: If new provider: • email National Business Manager Send Expert Expenditure Request, with supporting documentation, to Regional Public Defender (RPD) and cc in SSM and NBM for reference purposes. Note: PDS Support Services must ensure that the request once with the

		RPD or Director for sign-off, is reviewed and signed within two working days. If this is not the case, follow up directly with the RPD or Director. If still not actioned within a day of follow-up, escalate to the Deputy Director Operations (DDO).
	Regional Public Defender (RPD)	Ensures request received is authorised. Checks all supporting documentation is present. Ascertains overall cost – excluding GST If \$5000 or less: • Reviews documentation for approval, including any new Provider requests and details • Discusses any concerns with Lawyer or OPD Approves or declines request: based on either: • Provider selected • Requirement for expert If approved, return signed form to PDSSupportServices – with the matter number in the subject line of the email. Costs >\$5000: Review all documentation. Discusses any concerns with lawyer or OPD. If in agreement – forwards to Director for review and authorisation, ccing PDSSupportServices – with the matter number in the subject line of the email.
	Director	Review all requests reviewed and approved in principle by RPD, that are >\$5000. Discuss any issues or concerns with RPD. If approved return signed form to PDSSupportServices, cc in RPD with the matter number in the subject line of the email.
	Deputy Director Operations (DDO)	If PDS Support Services indicate an issue with timeliness of documents, follow up directly with relevant RPD or Director to ensure documents are processed.
New Provider:		
Within 24 hours	National Business Manager	Receives information of new provider Forwards a Privacy pack

		Updates Expert Expenditure Register
	SSM	Completes new Creditor form
Monitoring until return date of report/service	PDSSupportServices	Receives approved/declined Expert Expenditure Request form, completed with all documentation. Updates National Expert Expenditure Register with the outcome. Informs lawyer, OPD and SSM of outcome. Ensures sentencing date is in register and diarised.
	Support Services Manager (SSM)	Updates Affinity as per details on Expert Expenditure form.
	Lawyer	Contact provider and formally engages, at costs and conditions as per Expert expenditure form.
	Support Services Manager (SSM)	Reviews final document. Filing a copy of the formal completed request – and all supporting documents, to be matched with the invoice once received. Track's invoice and updates Affinity once received. Forwards invoice to Accounts Payable, copying in PDSSupportServices. Affinity must be updated when the formal request for service has been made and accepted by the supplier.
	Executive support/Business Manager	Update National Expert Register once invoice has been received, at time of coding of the invoice. Send a copy of invoice to SSM for entering Affinity.
	Expert expenditure feedback process	All parties follow expert expenditure feedback process
	Support Services Manager	Receive a copy of invoice from PDSSupport services. Enter affinity

Public Defence Service

Fixed Fee Policy

Criminal Procedure Act 2011
July 2018

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

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Introduction

This Fixed Fee Policy and procedures apply to applications for criminal legal aid received on or after 2 July 2018.

The [3 July 2017 policy](#) applies to applications for criminal legal aid for charges filed on or after 3 July 2017 and on or before 1 July 2018.

The [4 July 2016 policy](#) applies to applications for criminal legal aid for charges filed on or after 4 July 2016 and on or before 2 July 2017.

The [1 July 2013 policy](#) applies to applications for criminal legal aid for charges filed on or after 1 July 2013 and on or before 3 July 2016.

While the Public Defence Service (PDS) does not invoice clients or Legal Aid Services (LAS) directly, it is important that the cost of services for cases completed by the PDS aligns with the fixed fee framework applied to private providers.

Fixed Fees

Approach

The fixed fee approach recognises that while few cases are identical, they all progress through well-defined stages of preparation. Fixed fee payments for private providers are made for an activity or group of activities according to schedules of fixed fees covering each of the legal aid categories. These activities relate to the stages in criminal proceedings under the Criminal Procedure Act 2011.

The Fixed Fee Policy is part of a range of initiatives to deliver savings, agreed to by Cabinet in February 2011.

The fixed fee framework incentivises lawyers to work in the most efficient way possible.

Where cases are complex, either overall or in some particular aspect, lawyers may seek to treat a case as [fixed fee plus](#). Fixed fee plus cases must be identified as early as possible, discussed with, and approved by the Office Public Defender (OPD).

When a case becomes fixed fee plus, it may be managed through a mixture of fixed fees and guideline hourly rates.

Fixed fees do not differentiate between providers' levels of experience.

Fixed Fee Schedules

Overview

Different fixed fee schedules apply depending on the seriousness of the charges faced by the legally aided client.

There are ten fixed fee schedules which set out the applicable fixed fees for cases ranging from those with a maximum penalty of less than two years imprisonment to proceedings before the Supreme Court. A matrix of these schedules is in [Appendix A](#).

If a legal aid grant covers multiple charges, the applicable fixed fee schedule will be based on the most serious charge.

Cost of Services

Cost of services under the fixed fee framework may comprise of:

- fees for activities carried out on a case;

- hearing time and court waiting time;
- chargeable travel time; and
- approved disbursements.

Policy Notes

Repeatable activities

A number of fees can be claimed more than once. There are different rules in relation to different fees. Repeatable fees are as follows.

Schedules A-C and D-F

- If there are multiple charges in a grant (either from the outset of the grant or if new charges are added to the grant) that share one or more appearances BUT are then separate with respect to their substance and how they are treated by the court, then repeatable fees can be claimed for each relevant activity, where work for those activities is undertaken. This applies whether or not the fees in the schedule are shown as repeatable.
- Preliminary work (where additional charges are added to the legal aid grant) is repeatable each time a new charge is added to the grant.
- Case management memorandum (CMM)/Case Review (preparation) is a repeatable activity if the CMM requires revision in preparation for a second or subsequent case review hearing for reasons of, for example, other charges being added or if there is a significant change in circumstances.
- Opposed applications and variations (preparation) relate to – bail; bail breaches; name suppression; electronic bail monitoring; media coverage; and vacating a plea. These are repeatable activities and can be claimed per occurrence, up to four times per ‘type’ (e.g. Bail). Other applications that can be claimed once (if pre-trial, and not encompassed within a hearing) are s18, 23, and 25 applications Criminal Procedure (Mentally Impaired Persons) Act 2003.
- Unopposed applications and variations (preparation) – as above, but repeatable only twice per type.
- Section 38 forensic reports – two s38 reports are required by legislation. A fee for each of these reports can be claimed.
- Re-preparation fee – repeatable where a trial or sentencing hearing has been adjourned for a month or more, or where a second or subsequent appearance occurs following restorative justice investigations.

Schedules D-F only

- Preparation for subsequent callover memoranda – this is repeatable and can be claimed per occurrence, up to four times.

Hearing time and waiting time

Hearing time can be claimed for attending any hearing, before a registrar, community magistrate, or a judge.

Waiting time begins when a lawyer is required to be in the courtroom and includes waiting time for a jury to deliver a verdict. Waiting time excludes time where a Judge has excused counsel.

If a client fails to attend a scheduled appearance, reasonable and actual time for waiting for the client may be claimed, up to one hour.

Any waiting time claimed should be clearly explained in the Affinity fee sheet description. See the [PDS Time Recording policy](#) for guidance on when waiting time should be recorded.

If chargeable waiting time exceeds one hour in any one circumstance then an explanation is required in the Affinity fee sheet description.

When completing the file closing sheet, hearing and waiting time must first be totalled for each activity type and then rounded up to the nearest half hour, hour or two hours depending on the schedule and activity.

Preliminary work – disclosure by defendant

Receiving, reviewing and/or preparing disclosure may include preparing the disclosure package e.g. disclosure by defendant.

Disclosure by prosecutor

Disclosure by the prosecutor can occur at many points in proceedings for schedules A-F. Where the schedules refer to 'receiving and reviewing disclosure', this includes any or all of the following tasks, unless a separate fixed fee is otherwise specified:

- requests for further initial disclosure from prosecution (after commencement of proceedings)
- receiving and reviewing further initial disclosure
- receiving and reviewing full disclosure (after not guilty plea, election, or first appearance)
- requesting additional disclosure
- interlocutory applications:
 - address of witness or informant
 - disclosure of information – s30
 - order setting conditions for viewing exhibit – s31
 - timetabling order – s32

Interlocutories

The fee for interlocutories does not include interlocutories relating to disclosure by prosecutor.

Examples of interlocutories that can be claimed relate to appeal against pre-trial decisions relating to, for example (s215):

- admissibility of evidence;
- permission to cross examine a complainant;
- witness identity/anonymity;
- disclosure decision (s33(3)(b) Criminal Disclosure Act 2008);
- bail or media coverage; and
- name suppression.

Substantially progressed

Where a stage of a case has not been completed for reasons outside of the lawyer's control, and the lawyer can demonstrate that s/he substantially progressed the case in good faith, then the fee for completing that stage may be claimed.

Reassigned or transferred cases

If the PDS receives a reassigned case that a private provider has claimed fees on, the PDS lawyer may claim fees for any activities required to be completed on the file, even if these might have been completed by the first lawyer. This applies if the case is transferred from one PDS office to another. The full schedule, assuming the work needs to be done, is available to the new lawyer. If a file is being transferred between PDS offices the lawyer transferring the file must complete the file closing sheet for the activities they have completed prior to transferring the file to ensure all work completed is claimed upon closing.

Schedules A-C (Police Prosecutions)

The fixed fee rates are set out in the [Fee Schedules July 2018](#) and detailed on the PDS file closing sheets.

A fixed fee may be claimed for any of the following activities.

Administration / Case Review

Preliminary work – new legal aid grant

- Includes initial work involved for a new legal aid grant.

Preliminary work – when additional charges are added to the legal aid grant

- Repeatable each time a new charge is added to the grant. If all charges are treated together from that point, then no additional fees are required.

Charge discussions

- Applicable for charge discussions held outside of CMM/CRH discussions. This includes engaging in discussions about resolution, including diversion and charges withdrawn.

Case Management Memorandum (CMM)/Case Review preparation

- Repeatable if the CMM requires revisions in preparation for a second or subsequent case review hearing.

Other matters

Sentencing Indications (only available for written sentencing indication submissions)

Applications and variations (opposed)

- Relates to – bail; bail breaches; name suppression; electronic bail monitoring; media coverage; and vacating a plea.
- Repeatable and can be claimed per occurrence, up to four times per 'type' (e.g. Bail).

Applications and variations (unopposed)

- Relates to – bail; bail breaches; name suppression; electronic bail monitoring; media coverage; and vacating a plea.

- Repeatable and can be claimed per occurrence, up to two times per 'type' (e.g. Bail).

Written sentencing reports

- Includes:
 - written expert witness/reports;
 - restorative justice reports;
 - alcohol and drug reports;
 - s38 forensic reports;
 - Two s38 reports are required by legislation. A fee for each of these reports can be claimed.
 - and any other court-ordered reports.
- Repeatable per type (except for s38 reports which are repeatable up to two times).

Written sentencing submissions

Fitness to Plead/Stand Trial

Referral to the Alcohol and Other Drug Treatment Court (AODTC)

Pre-trial activities

Pre-trial admissibility

Trial and Sentencing

Disputed Facts

Trial preparation (part) – if case resolves prior to trial but a significant amount of work has been carried out

Trial preparation (full) – if case proceeds to a hearing

Sentencing (when remanded off for sentencing)

Re-preparation – prior to an adjourned or subsequent trial/sentencing hearing

- Repeatable where the hearing has been adjourned for a month or more, or where a second or subsequent appearance occurs following restorative justice investigations.

Interlocutory Appeals to the High Court

Interlocutory appeal

- Repeatable and can be claimed per occurrence.

Schedules D-F (Crown Prosecutions)

Fee schedules

The fixed fee rates are set out in the [Fee Schedules July 2018](#) and detailed on the PDS file closing sheets.

A fixed fee may be claimed for any of the following activities.

Administration / Case Review

Preliminary work – new legal aid grant

- Includes initial work involved for a new legal aid grant.

Preliminary work – when additional charges are added to the legal aid grant

- Repeatable each time a new charge is added to the grant. If all charges are treated together from that point, then no additional fees are required.

Case Management Memorandum (CMM)/Case Review preparation

- Repeatable if the CMM requires revision in preparation for a second or subsequent case review hearing.

Other matters

Sentencing Indications (only available for written sentencing indication submissions)

Applications and variations (opposed)

- Relates to – bail; bail breaches; name suppression; electronic bail monitoring; media coverage; and vacating a plea.
- Repeatable and can be claimed per occurrence, up to four times per 'type' (e.g. Bail).

Applications and variations (unopposed)

- Relates to – bail; bail breaches; name suppression; electronic bail monitoring; media coverage; and vacating a plea.
- Repeatable and can be claimed per occurrence, up to two times per 'type' (e.g. Bail).

Written sentencing reports

- Includes:
 - written expert witness/reports;
 - restorative justice reports;
 - alcohol and drug reports;
 - s38 forensic reports.
 - Two s38 reports are required by legislation. A fee for each of these reports can be claimed.
 - and any other court-ordered report.
- Repeatable per type (except for s38 reports which are repeatable up to two times).

Fitness to Plead/Stand Trial

Referral to Alcohol and Other Drug Treatment Court (AODTC)

Pre-Trial activities

Trial Callover Memorandum (TCM)

Subsequent callover memoranda

- Repeatable and can be claimed per occurrence, up to four times.

Disclosure (Criminal Disclosure Act 2008)

- Includes:

- disclosure by defendant;
- application for disclosure of information; and
- other applications for disclosure.
- Repeatable and can be claimed per occurrence.

Non-party disclosure

Pre-trial applications (including responding to Crown applications)

Trial and Sentencing

Disputed Facts

Trial preparation (part) – when election for trial by jury is reversed OR client pleads guilty

Trial preparation (full) – if case proceeds to a full hearing

Sentencing

Re-preparation – prior to an adjourned or subsequent trial/sentencing hearing

- Repeatable where the hearing has been adjourned for a month or more, or where a second or subsequent appearance occurs following restorative justice investigations.

Interlocutory Appeals to the High Court

Interlocutory appeal

- Repeatable and can be claimed per occurrence.

Schedule G (appeals to the High Court)

The fixed fee rates are set out in the [Fee Schedules July 2018](#) and detailed on the PDS file closing sheets.

A fee may be claimed for any of the following activities:

Pre-proceedings

Grounds of appeal (interim grants only)

Preparation of appeals

Appeal against sentence

Appeal against conviction

Appeal against conviction and sentence

Application for admitting fresh evidence

- Repeatable and can be claimed per occurrence.

Leave to appeal to Court of Appeal

Leave to appeal to Court of Appeal

Termination of assignment fee

Where a PDS case is reassigned to a private provider, a termination of assignment fee may be claimed, provided the matter has been substantially progressed prior to reassignment.

Different amounts may apply depending on the type of appeal (see Schedule G file closing sheet).

Schedule H (appeals to the Court of Appeal)

The fixed fee rates are set out in the [Fee Schedules July 2018](#) and detailed on the PDS file closing sheets.

A fee may be claimed for any of the following activities:

Preparation of summary of issues to be raised on appeal

Preparation of issues (by trial counsel) (interim grant only)

Preparation of issues (by new counsel) (interim grant only)

Preparation of appeals

Appeal against interlocutory decision (e.g disclosure, pre-trial rulings, admissibility of evidence, name suppression, media coverage etc.)

Appeal against sentence

Appeal against conviction

Appeal against conviction and sentence

Schedule I (appeals to the Supreme Court)

The fixed fee rates are set out in the [Fee Schedules July 2018](#) and detailed on the PDS file closing sheets.

A fee may be claimed for any of the following activities:

Preparation of application for leave to appeal

Application (by trial or prior appeal counsel) (interim grant only)

Application (by new counsel) (interim grant only)

Preparation of response to application for leave to appeal

Response (by trial or prior appeal counsel)

Response (by new counsel)

Substantive appeal (following the granting of leave)

Appeal

Schedule J (parole — criminal matters)

The fixed fee rates are set out in the [Fee Schedules July 2018](#) and detailed on the PDS file closing sheets.

A fee may be claimed for any of the following activities:

Proceedings before the NZ Parole Board

Parole:

- Postponement order
- Recall
- Non-release orders
- Other proceedings entitled to counsel under s49(3)(c)

Parole - extended supervision orders

Specialist reports

Parole Appeals – Grounds for appeal

Grounds of Appeal (interim grants only)

Parole Appeals – Substantive Appeal

Appeals to High Court from certain decisions of the Parole Board (postponements, non-release orders, recalls)

Appeals to Court of Appeal from sentencing court (extended supervision)

Other matters

- This is a one-off fee to compensate for time taken to attend reintegration hui and/or liaise with family members and other parties.

Termination of assignment fee

Where a PDS case is reassigned to a private provider, a termination of assignment fee may be claimed, provided that the matter has been substantially progressed prior to reassignment.

Additional Counsel

For particularly complex trial cases, two lead lawyers may be assigned to a case if approval for an additional counsel is given by the Regional Public Defenders (Regional PDs).

Regional PDs may approve any additional counsel and consider the following circumstances:

- Whether additional counsel is sought in relation to the completion of a specific task (i.e., as an agent to appear in relation to a specific event), and if so what the specific breadth of tasks proposed will be.
- Whether additional counsel is sought in relation to the completion of specific tasks (i.e., a division of labour within the overall preparation funding sought) and if so what the specific breadth of tasks proposed will be.

- Whether such counsel is sought to assist with the presentation of the defence case before the court, and if so what the specific breadth of tasks will be, along with their proposed level of involvement in the case.

All requests for additional counsel must be made in writing by the lead provider or their supervising lawyer to the OPD. Once a request for second counsel is accepted by the OPD, approval should be sought from the Regional PDs. A record of this approval should be kept on the hard copy client file, in Affinity, and noted on the file closing sheet.

Changes to Charges or Grants

One client and multiple files

Fees can be claimed across multiple files if separate pieces of work are being completed, in instances where PDS hold more than one file for a client and each file is heading down the same track at the court.

For example, if PDS are assigned to a client on two separate files and one file contains police charges and the other contains probation charges and discussions take place between both prosecuting agencies as an attempt to resolve the charges, the charge discussion fee can be claimed against each individual file.

Although preparation fees can be claimed for preparation on multiple files, all hearing time must only be claimed on one file.

Reduction in charge

If a lead charge is reduced to a lesser charge which is in a different schedule to the original charge, the fees in the higher schedule will continue to apply.

Review of sentence

A review of sentence takes place after a matter has been finalised and disposed of, and therefore requires a new application for legal aid.

The applicable fee schedule under the new grant will be the schedule that would have applied to the original charge, but the only fee applicable is sentencing.

Additional fees and hearing time may also be claimed.

Leave to apply for home detention

Leave to apply for home detentions takes place after a matter has been finalised and disposed of, and therefore requires a new application for legal aid. These applications are made using the Crown prosecution form.

Appeals

A matter can be appealed within 20 working days of a case being sentenced. An appeal requires a new application for legal aid.

An interim grant of legal aid may be made to assess the merits of a legal aid application for an appeal, before a final grant may be approved under schedules G, H or I.

Preventive detention

Where preventive detention is intimated for sentencing, the Provider Approval Level (PAL) of the case becomes PAL4. See [Appendix A](#) for table. Sentencing fees can then be recorded from schedule F, in recognition of the additional work required in respect of sentencing. All other fees for work completed prior to the case becoming PAL4 must be recorded from the previously applicable schedule.

A PAL4 lawyer will need to be assigned to preventive detention cases for sentencing.

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Fixed Fee Plus

Fixed fee plus cases are to be managed as exceptions to the fixed fee schedules because the fixed fee is either significantly inadequate or not available for a particular activity.

Overview

Lead providers seeking to claim a fixed fee plus fee are required to complete the fixed fee plus case criteria on the dataform in Affinity. The lead provider must advise how the criteria apply to the case and how the fixed fee is significantly inadequate (see the criteria below).

This should be done as early as possible and discussed with the OPD. The OPD will then consider whether the case should be managed as a fixed fee plus case and record their decision in the complex cases dataform in Affinity.

All cases identified as fixed fee plus must be added to the complex case schedule.

Monitoring fixed fee plus cases

The OPDs are responsible for the overall active management of fixed fee plus cases in their office. Time spent on these cases should be reviewed on a monthly basis.

If the OPD is not available via email for more than one week (either because of leave or long trials etc), the OPD should nominate a senior lawyer in the office to approve or decline fixed fee plus matters for a specified period of time.

If an OPD is a lead lawyer on a matter and requires it to be made a fixed fees plus case, a Regional PD must approve or decline the request.

A case may be made fixed fees plus in relation to:

- A fixed fee; or
- Any [disbursement](#) requiring prior approval (including where an interpreter is required).

Exceptions to fixed fees

A case may be fixed fee plus if one of the following criteria is met:

- Two or more case specific criteria apply;
- One or more client specific criteria apply; or
- There are other special circumstances requiring significant additional work.

Cost of services for fixed fees plus cases

Where an activity or fee has been approved as fixed fee plus:

- the fixed fee is replaced by the hourly rate applicable to the approval level of the matter;
- all hearing time for each stage or activity can continue to be claimed;
- the half hourly rate for hearing time provided on the file closing sheet still applies; and
- chargeable travel time is still claimed at the rate provided on the file closing sheet.

Case specific criteria schedules A-C

For matters in schedules A–C, the fixed fee may be replaced with an hourly charge if the case is characterised by **two or more** of the following:

- disclosure index more than three pages long and more than 100 full pages of disclosure;
- more than 60 pages of disclosure and more than half of this text transcription, photocopied hand-written material, or interviews on DVD;
- more than five charges to be defended, especially where these are serious and there are complexities;
- significant points of law to be researched;
- co-accused/defendants;
- five or more witnesses, regardless of whether they are to appear or be read;
- three or more prosecution interviews with the defendant or with a witness; or
- the trial is set down for more than a full day.

Case specific criteria - schedules D-F

For matters in schedules D–F, the fixed fee may be replaced with an hourly charge if the case is characterised by **two or more** of the following:

- more than 200 full pages of disclosure;
- more than 100 pages of disclosure and more than half of this text transcription, photocopied hand-written material, or interviews on DVD;
- more than five charges to be defended;
- significant points of law to be researched;
- co-accused/defendants;
- five or more witnesses, regardless of whether they are to appear or be read;
- three or more prosecution interviews with the defendant or with a witness; or
- the trial set down for more than three days.

Client specific criteria

For all cases, the following client specific situations may result in the case being considered as an exception to the fixed fee:

- highly vulnerable defendant or complainants, such as children;
- the defendant is subject to treatment orders (serious mental health problems or a serious intellectual disability); or
- the defendant has significant barriers to communication throughout preparation, including those that require an interpreter/translator (e.g., significant sensory impairment or English as a second language).

Special circumstances

A case may also be considered as an exception to the fixed fee if it does not meet the client specific or case specific criteria, but there are special circumstances of the case which result in significant additional preparation time for the relevant activity. Each case will be considered on a case by case basis at the discretion of the OPD.

- Some examples of special circumstances are: police prosecution case has 200 pages of disclosure, four witnesses and four charges to be defended;
- parole proceeding where the client displays aggressive, abusive or obstructive behaviour;
- police prosecution case has 4 charges being defended and a disclosure index more than three pages long and 900 full pages of disclosure;
- police prosecution case has 110 pages of disclosure; however additional is required because an expert is required to be engaged regarding the evidence; or
- Repeatable activities that are not covered by the fixed fee (e.g. a further submission for an electronically monitored sentence required by the court after a sentencing indication is accepted by the client).

Significantly inadequate

The fixed fee must be significantly inadequate, even if the case or activity has been identified as fixed fee plus in accordance with the criteria above, for the case or activity to be claimed at the hourly rate. A fixed fee will generally be regarded as significantly inadequate if the cost of completing activities covered by the fixed fee (based on the guideline hourly rates in [Appendix B](#)) exceeds the fixed fee payable by more than 25%.

This assessment should be made before the case is closed.

Activities not covered by fixed fees

Fixed fees do not apply to some activities under the fixed fee schedules such as:

- Schedule F — trial preparation;
- Schedule I (appeals to the Supreme Court) — preparation for substantive appeal hearing following the granting of leave;
- Schedule J (parole) — appeals to the High Court from certain decisions of the Parole Board (ss 68–70: postponements, extended supervision orders and recalls) and appeals to the Court of Appeal from the sentencing court (s 107R: extended supervision); and
- Proceeds of crime applications.

The OPDs may approve all reasonable chargeable time spent on these activities before the final cost of services is entered into Affinity.

Cost of services for activities not covered by fixed fees

Where an activity or fee is not covered by a fixed fee:

- The hourly rate applicable to the approval level of the matter and the lawyer's level of experience is used (see Appendix B).
- All hearing time for the activity can be claimed. The total hearing time for each activity should be calculated and then rounded up to the nearest half hour. The half hourly rate provided on the file closing sheet applies.
- Chargeable travel time is still claimed at the rate provided on the file closing sheet.

Calculating the cost of services for fixed fee plus cases

Lead provider role

Once a lead provider has completed the entire time recording on a case, and the matter is ready to be closed, they must fill out the file closing sheet.

The lead provider must be available to assist the administrator to calculate the cost of service.

Office Public Defender role – write offs

If an OPD considers the cost of a fixed fee plus case or an appeal or parole proceeding case to be excessive in the circumstances and not all the time recorded should have been chargeable, then the OPD has the discretion to review the final cost and adjust the cost of service to what was reasonable in the circumstances.

Legal support team

If a case is approved as a fixed fee plus case, the administrator will determine the cost of services as follows:

- If an exception to the fixed fee applies, the number of hours for completing the activity will be multiplied by the lawyer's hourly rate applicable to the approval level of the matter.
- All hearing time for the activity can be claimed. The total hearing time for each activity should be calculated and then rounded up to the nearest half hour. The half hourly rate provided on the file closing sheet applies. For schedules H-I, the rate for hearing time will be specified on a per hourly or two hourly basis as provided on the file closing sheet.
- Chargeable travel time is claimed at the rate provided on the file closing sheet.

The number of hours for completing each activity will be calculated from the *Time Recorded Cost Detail Report* or the *WIP report* in Affinity.

Roles and Responsibilities

Role	Responsibilities
Lawyer	Accurately record time in Affinity, using the fee types outlined in the PDS Time Recording policy and descriptions that outline the fixed fee activity.
Lead Provider	- Accurately record time in Affinity, using the fee types outlined in the PDS Time Recording policy and descriptions that outline the fixed fee activity. - Accurately complete the file closing sheet. - Identify fixed fees plus cases as early as possible. - Complete the criteria on the Affinity Complex/High Cost dataform when appropriate.
Team Leader	- Identify fixed fees plus cases as early as possible. - Support team members to complete the fixed fees plus criteria in Affinity. - Support the active management of all fixed fees plus cases for members of their team.
Office Public Defender	- Approve all fixed fees plus cases and activities not covered by fixed fees. - Actively manage all fixed fees plus and activities not covered by fixed fees. - Review fixed fees plus cases on a monthly basis. - Recommend second counsel. - Approve disbursements that require prior approval (up to \$1000 and excluding expert witnesses).
Regional Public Defender	- Approve all fixed fees plus cases and activities not covered by fixed fees for files assigned to OPDs. - Approve disbursements that require prior approval (up to \$5000). - Approve additional counsel required for cases.
Director	Approve disbursements that require prior approval.
Legal support team	- Accurately update all disbursements in Affinity and the purchase order spreadsheet. - Accurately calculate the cost of services on each file closing sheet in accordance with this policy. - Close the file. - Report cost to Legal Aid Services.

Appendix A – Schedules (CPA)

Fixed Fee Schedule	Case Type and Maximum Penalty	Offence Category	Prosecution Type	Trial Track	Approval level of the case
A	Non-imprisonment	OC1	Police Prosecution	Judge Alone	PAL 1
A	Less than 2 years and community based sentences	OC2	Police Prosecution	Judge alone District Court	PAL 1
B	2 years to less than 7 years	OC3a	Police Prosecution	Judge alone District Court	PAL 1
C	7 years to 10 years	OC3a	Police Prosecution	Judge alone District Court	PAL 1
D	2 years to 10 years	OC3b	Police or Crown Prosecution	Jury Trial (elected only) Judge alone District or High Court	PAL 2
E	10+ years (excluding life)	OC3c	Crown Prosecution	Jury Trial (elected only) Judge alone District or High Court	PAL 3
F	Life / liable for preventive detention	OC3d	Crown Prosecution	Jury Trial (elected only) Judge alone High Court	PAL 4
F	Schedule 1 CPA 2011 charges	OC4	Crown Prosecution	Jury trial High Court	PAL 4
G	High Court appeals for sentence and conviction	N/A	N/A	N/A	Same as substantive matter
H	Appeals to the Court of Appeal	N/A	N/A	N/A	Supreme Court and Court of Appeal
I	Appeals to the Supreme Court	N/A	N/A	N/A	Supreme Court and Court of Appeal
J	Parole matters	N/A	N/A	N/A	PAL 2

Appendix B – Criminal Fee Rates (CPA)

The following hourly rates apply to legal aid services performed in criminal law proceedings [Legal Services Act 2011 s6] for fixed fee plus cases and activities not covered by fixed fees. These rates were effective from 1 July 2009 (GST Exclusive).

Approval level of the case (see below for full explanation of categories)	Other (\$/hr)	Level of Experience		
		Level 1 (\$/hr)	Level 2 (\$/hr)	Level 3 (\$/hr)
PAL 1 – D/HC: non-jury trials		92	96	106
PAL 2 – DC/HC: judge-alone or jury trial elected, < 10 years		96	120	124
PAL 3 – DC/HC: judge-alone or jury trial, >10 years		116	124	134
PAL 4 – DC/HC: judge-alone or jury trial, life imprisonment		130	144	159
Court of Appeal/Supreme Court		130	144	159
Travel time (pre 5 November 2012)		48	58	68
Travel time (post 5 November 2012)	63			
Supervised Providers	92			
Qualified legal executives	82			
Non-qualified legal executives / paralegals	72			
Law clerks	72			

Level of Experience

Level	Description
Level 1	A person with up to 4 complete years of litigation experience
Level 2	A person with at least 4 and up to 9 complete years of litigation experience
Level 3	A person with at least 9 complete years of litigation experience

Appendix C - Other related documents

Fixed Fee Schedules

The [fixed fee schedules](#) can be found on the Ministry of Justice website.

These schedules provide information on the tasks covered by each fee.

PDS File Closing Sheets

- [Police Prosecutions \(Schedules A-C\) July 2018](#)
- [Crown Prosecutions \(Schedules D-F\) July 2018](#)
- [Appeals to the High Court \(Schedules G\) July 2018](#)
- [Appeals to the Court of Appeal & Supreme Court \(Schedules H-I\) July 2018](#)
- [Parole \(Schedule J\) July 2018](#)

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