

Police Detention Legal Assistance Service

Operational policy

28 June 2011

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Police Detention Legal Assistance Service

Introduction

1. This policy describes the operation of the Police Detention Legal Assistance Service.
2. The object of the PDLA Service is to ensure that a sufficient number of lawyers is available to provide legal advice, legal assistance, or both, to any unrepresented person who has been detained by the Police, with or without arrest; and:
 - is entitled under the New Zealand Bill of Rights Act 1990 to consult a lawyer;
 - is advised by Police that he or she may consult a lawyer; and
 - wishes to consult or instruct a lawyer about any matter relating to their detention.
3. The PDLA Service may be accessed only by persons being detained or questioned by the Police. The Service does not apply to persons detained by Customs Officers, Immigration Officers, or any other officer of the Crown with the power of detention.
4. Information on PDLA approval criteria can be found in the “Information for PDLA approval” section under www.justice.govt.nz/services/information-for-legal-professionals. Lawyers seeking PDLA approval listing should contact Provider and Community Contracts by email: provider@justice.govt.nz.
5. Approval for listing does not of right guarantee a place on a roster.
6. The Police are required to advise detained persons of the free service. Should the detained person wish to consult a lawyer, they then choose a lawyer from the list and Police facilitate contact with that lawyer.
7. The service is largely telephone based (over 95% of attendances). The listed lawyers are experienced criminal jury trial lawyers who are paid a flat fee for each telephone call or an hourly rate for face to face attendances.

Authority for the service

8. The Police Detention Legal Assistance Service operates under the authority of the Secretary for Justice as a specified legal service pursuant to s68(2)(b) of the Legal Services Act 2011.

Glossary

9. In this document, unless the context otherwise requires,
 - the PDLA Service means the Police Detention Legal Assistance Service
 - attendance means face to face (ie, in person) or by telephone
 - Secretary means the Secretary for Justice
 - ICLS means the Initial Criminal Legal Services unit, within the Legal Services and Treaty Group of the Ministry of Justice.

Responsibilities of PDLA lawyers

PDLA services

10. The PDLA Service provides free legal advice, legal assistance, or both, to any unrepresented person who has been detained by the Police and who chooses to access it. The service is provided free of charge 24 hours a day, 7 days a week by approved PDLA lawyers either by telephone or face to face.
11. The person being detained will receive, free of charge, the services of a lawyer who holds a Ministry PDLA approval. The Ministry expects that when a PDLA lawyer is available they will attend (either by phone or face to face) any eligible person.

Attendance

12. The PDLA lawyer makes the decision whether to attend the detained person by telephone or face to face. Guidelines on face to face attendance have been developed in conjunction with the profession (see appendix). The guidelines are intended to assist PDLA lawyers to:
 - deliver a legal service appropriate to the eligible person's circumstances and the circumstances of their alleged offending, and
 - as far as possible, provide the same level of service regardless of the locality where the eligible person is being detained and the particular PDLA lawyer they have contacted.
13. All attendances under the PDLA Service must be carried out by an approved PDLA lawyer in the area, not their agent or employee.
14. The services of a suitably qualified interpreter may be engaged to assist a PDLA lawyer to give legal advice or legal assistance, or both, to a person being detained by the Police.

Duties

15. The duties of PDLA lawyers approved to provide services under the PDLA Service include:

- Advising persons detained by the Police of their rights and obligations and the requirements of any enactment under which they are detained (if applicable);
 - Providing legal advice or legal assistance, or both, to detained persons, which may include attendance at the place where those persons are being detained;
 - Any other duties imposed by the Ministry from time to time in connection with the Service.
16. All PDLA lawyers should ensure that they are available, contactable and on time on the days or nights they are rostered.¹

Obtaining PDLA approval

Application

17. A lawyer must hold an approval to provide services under the PDLA Service before being included on a Roster or List.
18. The application form and information on criteria for listed provider approval are on the Ministry's website at www.justice.govt.nz or can be obtained by contacting the ICLS unit on:

Email: pdla@justice.govt.nz

Fax: 09 261 2646

Mail: Initial Criminal Legal Services Unit
Ministry of Justice
EX11066
Manukau 2241

19. When applying for approval as a PDLA lawyer, the application must include:
- telephone number/s to ensure 24-hour accessibility
 - description of the area or town/s where they are available to attend.

Experience and competence requirements

20. To be approved as a PDLA lawyer, the applicant must have:
- at least 24 months' experience within the last five years working on category 1 proceedings, *and*
 - appeared as counsel with substantial and active involvement in at least three trials on indictment (either jury trials or Judge alone). (See Legal Services (Quality Assurance) Regulations 2011, Schedule, CI 7)

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

Approval

21. Obtaining approval as a PDLA lawyer will not necessarily result in a place on a PDLA roster or list being offered. Lawyers who have obtained a PDLA approval and who wish to be placed on a PDLA roster or list will need to contact the ICLS unit.

Rosters/Lists

22. The Initial Criminal Legal Services unit administers both rosters and lists for the PDLA Service:
 - A roster for greater Auckland, which is structured by type of legal matter
 - Rosters for Northland and Hamilton city, which are not structured by type of legal matter
 - Lists for the remaining areas.
23. The ICLS unit provides Police with the most up-to-date rosters or lists.
24. If the PDLA lawyer's name is on a list rather than a roster, they will in principle be available as needed. However, it is recognised that there may be times when the lawyer cannot be available.
25. For locations where a roster is in place, a PDLA lawyer must advise the ICLS unit as soon as possible if he or she is unable to attend any rostered session.

Assignment as a result of PDLA

An exception to category 1 and 2 rotational assignment

26. Category 1 and 2 cases are assigned on a rotational basis to appropriately categorised lawyers on assignment lists. In these cases, legally aided clients are not able to nominate a preferred lawyer.
27. Cases can only be assigned to an individual lead provider and not to a firm. The lawyer must be approved for the category type of the case being assigned, and be on the assignment list for the court where the case has been laid.
28. Extra cases will be assigned to listed PDLA providers giving advice to legally aided people through that service outside usual working hours. This includes evenings from 7pm to 8am, weekends from 5pm Friday to 8am Monday, and public holidays from 5pm the previous day until 8am the following day. These assignments will be in addition to the PDLA provider's rotational assignments.
29. Where a PDLA provider wants to be assigned a particular case, they should submit the PDLA notification form to The Ministry along with the client's application for legal aid. The case will usually be assigned to the PDLA provider if:
 - the client does not already have an assigned provider (i.e. where there is an open case), and

- the PDLA provider has the appropriate categorisation, and is based in the location where proceedings are to be held, and
 - there are no travel costs.
30. Where a client has been held in custody and is due in court and the PDLA provider wants the assignment, they must send the PDLA notification form to the local Legal Aid Office by 9am the following work day. This is to avoid that client being assigned to another provider. The case will be assigned to the PDLA provider as long as the client does not already have an assigned provider (i.e. where there is an open case), and the PDLA provider has the appropriate categorisation, and is based in the location where proceedings are to be held, and there are no travel costs.
31. In all other cases the PDLA notification form should be sent to the local Legal Aid office within three working days of the PDLA provider giving after hours advice to the legally aided person.
32. Where Legal Aid is unable to assign the initial case to the PDLA provider (e.g. because of an existing open case,) or the application form could not be matched with the PDLA notification, an alternative case will be assigned to the PDLA provider.
33. The inclusion of a person's name in any tax invoice tendered for the purposes of payment under the PDLA Service will not constitute sufficient notice for the purposes of assignment as preferred lawyer.
34. If it is not clear whether the aided person received legal advice or legal assistance, or both, from the PDLA lawyer making the application, the application for assignment may be declined.

Travel

35. Travel under the PDLA Service will be in accordance with the travel policy. The Ministry will reimburse the actual and reasonable travel costs, including time, of a PDLA lawyer, where:
- the detained person is being held in a place of detention, including prisons, mental health institutions, refugee detention centres;
 - the travel destination is not 'local' for the provider – for example, travel to a court in another centre (High Court, Court of Appeal), the matter is moved to another court by the Judiciary/Courts²; or where
 - exceptional circumstances require a PDLA lawyer attend a place of detention outside their area. In such circumstances, the Ministry will consider payment of travel on receipt of a full explanation of the reasons for the attendance.

² As a guide, distances less than 25 kilometres and/or travel time less than 30 minutes would be considered 'local' and travel costs will not be generally be reimbursed.

Submitting Invoices

Forms

36. The Ministry requires PDLA tax invoices to be submitted monthly, or when each tax invoice is fully complete, whichever is the earlier.
37. All claims for remuneration are to be made on the appropriate PDLA Tax Invoice:
 - form 13a for Auckland
 - form 13 for all locations other than Auckland.
38. PDLA lawyers are expected to progressively record on the tax invoice all telephone calls and visits to the Police Station. This is required to provide information about the operation of the Service and to support the Ministry's periodic validation of claims.
39. Justification for multiple attendances on the same person on the same occasion must be provided.
40. Up to 10 telephone attendances and one face to face attendance may be entered on each PDLA tax invoice. A separate tax invoice will need to be submitted for a subsequent claim for a face to face attendance, or if telephone attendances total more than 10 for the billing period.
41. Forms are available on the Ministry's website (www.justice.govt.nz) or from Baseline - see the website for ordering details.

Telephone attendances

42. For telephone attendances, the details to be entered on the PDLA tax invoice are:
 - Date and time of attendance
 - Detained person's name
 - Place of detention
 - Disbursements, such as any cost associated with receiving the call
 - Signature and date – certification the telephone attendances took place at dates and times described on the tax invoice.
43. Auckland PDLA lawyers must also include the following on the PDLA tax invoice (form 13a):
 - a brief description of the type of offence – e.g. assault, EBA
 - approximate duration of call and
 - whether the detained person is the PDLA lawyer's own client and/or youth.

Face to face attendances

44. Details to be entered on the PDLA tax invoice are:

- Date and time
 - Duration of visit
 - Detained person's name
 - Place of detention
 - Disbursements, if any
 - Full details if claiming for multiple attendances for the same person on the same occasion
 - Written explanation if claim includes a face to face attendance outside the PDLA lawyer's area
 - Signature and date – that is, certification that the face to face attendances took place at dates and times described on the tax invoice.
45. Auckland PDLA lawyers must also include the following on the PDLA tax invoice (form 13a):
- a brief description of the type of offence – e.g. assault, EBA
 - whether the detained person is the PDLA lawyer's own client or is a youth.
46. If the PDLA lawyer attends a client by telephone and a face to face attendance is subsequently required, the Ministry will consider remunerating for both attendances provided the PDLA lawyer advises the reasons on the tax invoice.

Disbursements

47. Interpreters/translators will be paid by the PDLA lawyer and invoiced to Legal Aid as a disbursement. Actual and reasonable interpreter/translator fees will be paid.
48. The Ministry will pay the PDLA lawyer's telephone charges as a disbursement.
49. All travel claims associated with a face to face attendance at a place of detention to provide legal advice or legal assistance, or both, to a person being detained or questioned by the Police will be in accordance with the travel policy (see 'Travel' above).
50. If for exceptional reasons a PDLA lawyer attends at a place of detention outside their area, the Ministry will consider payment of travel on receipt of a full explanation of the reasons.

Payment

51. Payments for attendances under the PDLA Service will be made only to lawyers:
- who have a current approval as a PDLA lawyer; and
 - who have a place on a PDLA roster or list and are therefore entitled to claim for PDLA work.
52. The Ministry is under no obligation to pay for the legal advice or legal assistance, or both, given to a person being detained by the Police by a lawyer who is not listed with the Ministry to provide services under the PDLA Service.

53. Rates of payment for attendance under the PDLA Service are as follows:

Type of attendance	Rate
Telephone Attendance	
at any time of the day or night, irrespective of the length of the call	\$35 per call (excluding GST) ³
Face to face Attendance	
Day Time Rate – Mon to Thurs between 8.00am and 7.00pm	\$98 per hour (\$49 per half hour or part thereof)
Night Time Rate – Mon to Thurs between 7.00pm and 8.00am	\$147 per hour (\$73.50 per half hour or part thereof)
Fridays, Saturdays, Sundays – from 5.00pm Friday until 8.00am Monday, and Public Holidays – from 5.00pm the previous day until 8.00am the following day	\$73.50 per half hour or part thereof ⁴

³ The rate for a telephone attendance is a fixed fee irrespective of the duration of the call.

⁴ Lawyers should record under night rate on PDLA tax invoice.

Appendix – guidelines for when face to face attendance may be desirable

Introduction

1. These guidelines are intended to assist Police Detention Legal Assistance (PDLA) lawyers in determining whether legal advice or assistance under the PDLA Service should be provided over the telephone or face to face.
2. In many situations legal advice or assistance can be effectively provided over the telephone. However, in some situations, the circumstances of the case, or the characteristics of the person make face to face attendance desirable. This is because a face to face attendance:
 - Allows a more in-depth assessment of the situation through obtaining more detailed and/or reliable information from the police and/or the person
 - Affords greater protection and safeguards for the person when they are particularly vulnerable, and/or
 - Better assures optimal outcomes for the person because of greater opportunity to fully engage with the Police and/or the person about options.

Assessing whether to attend face to face

Having sufficient information

3. The PDLA lawyer should obtain sufficient information about the circumstances of each case they are contacted about. This is desirable in order to not only provide appropriate legal advice or assistance, but also to assess whether advice or assistance can be delivered effectively over the telephone or whether it should be delivered face to face at the police station or other place of questioning or detention.
4. The PDLA lawyer's initial questions should gather enough information for the lawyer to assess whether a face to face attendance is desirable.⁵ An initial assessment may need to be revised subsequently as the circumstances of the case and the person become clearer.
5. In order to assess whether or not to attend face to face, the lawyer should establish:
 - The nature and seriousness of alleged offences, including charge or possible charges and any factors that may impact on gravity, including the condition of any victim and previous convictions

⁵ It is noted that necessary and relevant information may not be obtainable from the Police for a variety of reasons, including that the Officer in Charge is not available.

- The weight of evidence to date and intended, including
 - any statements made, particularly any admissions
 - statements from others
 - exhibits seized
 - any injuries to the complainant
 - any intentions police have concerning further evidence - e.g., an interview, obtaining bodily samples, a doctor's examination, an identification parade, a voice identification procedure or execution of any search warrants
- The vulnerability of the person, including whether a young person or child or whether they have any disabilities such as mental health issues or intellectual disability or language difficulties
- The person's resilience and likelihood that they will follow advice, and whether they seek the lawyer's attendance
- Whether there are any issues in regard to Police conduct or whether adherence to correct procedure needs to be checked or overseen.

Factors relevant to attendance

6. The PDLA lawyer will need to weigh up a number of factors in determining whether legal advice or assistance is provided face to face or by telephone. As far as possible, the PDLA lawyer should exclude considerations of convenience and proximity to the place of detention in determining whether face to face attendance is desirable.⁶
7. Factors relevant to the PDLA lawyer's assessment of whether or not to attend face to face are outlined in the table below.

⁶ If attendance is deemed desirable and the PDLA lawyer who has taken the initial call cannot attend, the lawyer will need to advise Police that they must contact another PDLA lawyer (see 'Obligation to refer case on' below). It is noted that mileage is paid for face to face attendance under the Service.

	Factors tending towards face to face attendance	Factors tending towards telephone attendance only
Seriousness of offence(s)	<ul style="list-style-type: none"> • Most PC3 and 4 matters and some PC2 matters • If convicted, the consequences for the person are likely to be substantial - e.g. a prison sentence • Where the matter may become more serious – e.g. because of the condition of any victim or where other charges are in prospect 	<ul style="list-style-type: none"> • Solely drink-drive offences and offences where, if convicted, not imprisonable • Situation is clear and no value from attendance – e.g. statement(s) already given; charges settled and no others pending, and/or bail determined • Resilience of person so lawyer assured will follow advice, because: <ul style="list-style-type: none"> - familiar with police procedure - confidence to follow advice, including remaining silent if appropriate
Person's vulnerability	<ul style="list-style-type: none"> • Person has especial need for protection – e.g. child or young person, intellectual disability or mental health or language issues • Police appear unwilling to meet special requirements that lawyer perceives case requires • Person does not understand their situation, particularly its seriousness⁷ 	<ul style="list-style-type: none"> • Other arrangements can be put in place, such as attendance of Mental Health Team • Drink-driving or other matters where person will not be held in custody
Sufficiency of information about circumstances	<ul style="list-style-type: none"> • Cannot obtain enough detail or cannot assess reliability to determine appropriate advice or assistance • Peculiar circumstances of case suggest a fuller assessment of the situation is desirable e.g. <ul style="list-style-type: none"> – when person's role in relation to co-offenders is unclear – when person has injuries which should be seen – recent sexual offences where issues of consent – when suitability for videotape interview needs to be assessed 	<ul style="list-style-type: none"> • The circumstances of the case are able to be ascertained over the telephone

⁷This does not include an obligation to always attend if the person is drunk or under the influence of drugs.

	Factors tending towards face to face attendance	Factors tending towards telephone attendance only
	<ul style="list-style-type: none"> – when other defences available which can be articulated at the Police station 	
Potential to improve outcome	<ul style="list-style-type: none"> • Assessment suggests that attendance may result in an improved outcome for person, including: <ul style="list-style-type: none"> – possibility of lesser charges or release – a potential defence, or – advancing matters relevant to mitigation 	<ul style="list-style-type: none"> • Objectives can be achieved by telephone • Police position is clear and is unlikely to alter – e.g. bail for DV cases
Monitoring police conduct	<ul style="list-style-type: none"> • Allegations about Police misconduct or mistreatment have been raised by person • Lawyer has concerns about Police actions • Next stage of Police evidence gathering is desirably overseen to safeguard person's rights 	<ul style="list-style-type: none"> • Lawyer can adequately assess Police behaviour by telephone • Rights of person are able to be safeguarded through advice to them by telephone
Attendance requested⁸	Other factors, as listed above, are evident	No other circumstances in the case suggest face to face attendance is necessary

Timing of attendance

8. In general, a PDLA lawyer is expected to arrive at the Police station as soon as possible after the completion of the telephone contact.
9. It is recognised that it may be possible for the lawyer to negotiate with Police about the timing of their attendance at the Police station, especially at night. However, in considering the urgency of attending, the lawyer needs to take account of the overall circumstances of the case.

Obligation to refer case on

10. If a face to face attendance is required, a PDLA lawyer should refer a case on if he/she is:
 - not sufficiently experienced to deal with the seriousness or complexity of the case⁹

⁸ Requested attendance is not an absolute obligation but is a factor that may alter the balance towards face to face attendance. The lawyer should assess any such request after initial advice has been provided.

- unable to attend themselves, whether because of geographic distance or personal commitments.
11. In the above situations, the PDLA lawyer who has taken the call should advise the Police that they must make contact with another PDLA lawyer and also advise the person that another lawyer is to be accessed.

⁹ For instance, a case should be referred on if the matter is equivalent to a legal aid proceedings category (PC) 3 and the lawyer's listing category is PC 2.