



18 April 2023

I Brown
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Our ref: OIA 102998

Tēnā koe I Brown

Official Information Act request: Duty lawyer operational policy

Thank you for your email of 1 March 2023 to the Ministry of Justice (the Ministry), in which you request for information about the revised duty lawyer operational policy as part of a pilot under the Criminal Process Improvement Programme (CPIP).

Your request has been referred to me as it falls within my responsibilities as Legal Services Commissioner and is being managed in accordance with the provisions of the Official Information Act 1982 (the Act).

On 30 March 2023, the Ministry sent you a decision letter granting your request. I would like to acknowledge that due to an administrative error, that letter was sent to you a day after the final day for responding under the Act.

I have set out and responded to each part of your request in turn below.

On 18 October last, the Legal Services Commissioner, Tracey Baguley, wrote to legal associations in relation to the above policy, specifically about "recent media reporting of concerns around the additional payments to duty lawyers for advancing specific criminal proceedings."

The letter then said that "(a)fter seeking further feedback from the profession, I have decided to undertake a review to develop options for addressing the concerns while still delivering improvements in access to justice from more meaningful court events and less delay. The review will be assisted by a working group of senior members of the legal profession, Ministry officials and representatives of the Public Defence Service."

- 1. Copies of the communication/s seeking feedback from the profession as referred to by the Commissioner*
- 2. Copies of the feedback provided by the profession, whether by groups, associations, societies, or individuals*
- 3. All internal correspondence relating to each of the above, including but not limited to internal emails, reports, minutes, or discussions*

I requested the feedback in a discussion at the CPIP Steering Group (which includes representatives from the legal profession) on 18 October 2022. This was a conversation at the Steering Group and no minutes were taken. Following the discussion with the Steering Group, I made the decision to suspend the additional payments to duty lawyers for advancing specific criminal proceedings. That decision was captured in the letter to the legal professional bodies the same day. There was no internal correspondence relating to the decision.

I am therefore refusing these parts of your request under section 18(e) of the Act, as the document alleged to contain the information does not exist.

4. *The names of all members of the working group;*
5. *Records of the appointment of those members, any meetings (and minutes thereof), discussions (however conducted), research, analysis, or other documentation created by or provided to the working group*

In response to part 4, the following table outlines the names of the working group members. I am withholding the names of the 4 representatives from the legal profession under section 9(2)(ba) to protect information that is subject to an obligation of confidence.

Name	Role
Tracey Baguley (Chair)	Legal Services Commissioner
Marie Shields	Programme Manager, Criminal Process Improvement Programme
Harsahiba Kaur	Workstream Lead, Criminal Process Improvement Programme
Robert Ives	Manager Legal Aid Services
Peter Hutchinson	Director, Public Defence Service
Sarah McPearson	Secretariat, Criminal Process Improvement Programme

Records of appointment of those members do not exist as the working group members were appointed at the Steering Group meeting on 18 October 2022 from its membership and from the CPIP team. I am therefore refusing part 5 of your request under section 18(e) of the Act, as the document alleged to contain the information does not exist.

Although there have been offline discussions, the working group has met formally once, on 19 October 2022. The list of documents created by or provided to the working group, and my decisions on their release is appended to this letter. Copies of the documents are enclosed.

6. *Any reports, whether interim or final, of the working group to any person;*

There were no reports created by the working group. I am refusing this part of your request under section 18(e) as the information sought does not exist.

7. *Any correspondence to any minister or ministerial office in relation to any of the above.*

I have interpreted this question as relating to the decision to pause the additional payments to duty lawyers and convene the working group, the proceedings of the working group, and documents created by or for it.

Enclosed to this letter is the briefing *Changes to the Duty Lawyer Operational Policy Pilot* provided to the Minister of Justice. These documents have been partially released to you as some information has been marked out of the scope.

I am satisfied there are no other public interest considerations that render it desirable to make the information withheld under section 9 of the Act available at this time.

This response, with your personal details removed, may be published on the Ministry website at: justice.govt.nz/about/official-information-act-requests/. If you require any further information, please contact Ministry of Justice Media and Social Media Manager, Joe Locke, at media@justice.govt.nz.

You have a right under section 28(3) of the Act to raise any concerns with the Office of the Ombudsman. The Ombudsman may be contacted by email to: info@ombudsman.parliament.nz

I trust you find this information useful.

Nāku iti noa, nā



Tracey Baguley
Legal Services Commissioner

Appendix: Documents attached

Date	Document Type	Document Title	Decision on release
19 October 2022	Minute	Criminal Process Improvement Programme (CPIP) – Duty Lawyer Policy Working Group meeting	Released in part, with some information withheld under section 9(2)(ba)
11 November 2022 – 24 February 2023	Justice topic notes	Justice Topic Notes for the Minister of Justice	Withheld in full under section 9(2)(f)(iv).
11 November 2022	Letter	Feedback from the legal associations about Duty Solicitor work	Withheld in full under section 9(2)(ba)
19 October 2022	Spreadsheet	Spreadsheet collating the feedback at the Working Group and from the legal associations	Withheld in full under section 9(2)(ba)
20 October 2022	Briefing	Changes to the Duty Lawyer Operational Policy Pilot	Released in full

Criminal Process Improvement Programme (CPIP)

Duty Lawyer Policy Working Group meeting

Date: Wednesday, 19 October 2022, 8.30am

Attendance

Ministry of Justice	
Tracey Baguley (Chair)	Legal Services Commissioner
Marie Shields	Programme Manager, CPIP
Sahiba Kaur	Workstream Lead, CPIP
Steve Owen	Principal Advisor, CPIP
Robert Ives	Acting Group Manager, NSD MOJ
Peter Hutchinson	Director, Public Defence Service
Sarah McPearson	(Secretariat) Programme Coordinator, CPIP, Ministry of Justice
Legal Profession	

s9(2)(ba)

Purpose of the meeting

Following recent media and ministerial activities regarding the Duty Lawyer Operational Policy, the Chief District Court Judge called a steering group meeting on Tuesday, 18 October to discuss the concerns raised regarding the policy and determine a way forward.

It was agreed at that meeting that a small working group would be established involving programme representatives, the Legal Services Commissioner and representatives from the legal profession.

The purpose of the working group is to consider alternate options to support the Duty Lawyer Operational Policy objective which is to reduce delays and progress cases as much as possible in the early stages.

Summary of the current concerns

As discussed at the steering group meeting on 18 October, the incentivised payment at the plea, sentencing and bail stage is not working and the legal profession in attendance at this meeting were in agreeance.

Points noted during this discussion:

s9(2)(ba)

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Summary of the meeting

Marie Shields summarised the meeting into two categories - what can be done in the short-term and the long-term.

Short-term

- Consider appropriate remuneration (hourly rate, not event based)
- Consider flexibility with the duty lawyer roster, balanced against the need to deliver a service
- Ensure capacity for duty lawyers to be able to take the time to get to know their clients and make appropriate decisions around case progressions.

Long-term

- Training/upskilling sessions to be considered, along with offering CPD points and/or payment for attendance to retain and attract duty lawyers
- Access to appropriate comms/ICT in the court
- Discussion about counsel of choice, if on the roster and assignment.

Meeting agreed these were the main points for consideration. Nothing further was raised.

Next Steps

Tracey Baguley would like to hear initiatives that could assist with the efficient running of the duty lawyer roster. The legal profession was invited to ask their members for their top three suggestions for the duty lawyer role and roster.

This group will reconvene next week to hear the responses from the legal profession and discuss further options based on today's discussion and other feedback.

Meeting closed at 9.30am

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Changes to the Duty Lawyer Operational Policy Pilot

Hon Kiri Allan, Minister of Justice

20 October 2022

Purpose

1. The purpose of this paper is to provide information on the changes to the Duty Lawyer Operational Policy being piloted as part of the Criminal Process Improvement Programme (CPIP).

Background

2. As a result of the increasing complexity of criminal cases, the Criminal Process Steering Committee was established in late 2020 by Chief District Court Judge Taumaunu and the Ministry as a Justice Sector initiative, to determine a sector response. As a result, CPIP was formed to develop more efficient ways for the criminal jurisdiction of the District Court system to operate.
3. The objective of CPIP is to reduce pressure on the criminal jurisdiction of the District Court through better utilisation of court time and resources so that cases can be resolved earlier and with fewer court hearings.

Duty Lawyer Operational Policy

4. CPIP is made up of nine workstreams with each workstream focusing on a different stage of the criminal process. The Duty Lawyer Operational Policy only forms part of the changes developed within Workstream 1 (Bail Applications) and Workstream 2 (Duty Lawyer Scope and Admin).

Current state (in all courts not operating under the CPIP pilot)

5. Under the current Duty Lawyer Operational Policy, for matters that qualify for legal aid, the duty lawyer will usually help the defendant to prepare an application for legal aid, request a remand for legal aid to be granted and a lawyer assigned.
6. A lawyer is assigned, usually within 24 hours, however contact between the defendant and their lawyer often occurs for the first time at the defendant's second appearance which is between two to three weeks after first appearance. At that appearance, the lawyer may seek a further adjournment, a further two or three weeks, so that full instructions can be given.
7. If the defendant is in custody at their first appearance, the legal aid application will be submitted more promptly to arrange for a legal aid lawyer to be assigned urgently. An application for bail may then be made on the same day. However, once they arrive at

court the assigned lawyer may not have sufficient time to undertake all necessary enquiries and may seek a remand in custody to prepare a bail application.

8. Increasingly high adjournment rates contribute significantly to the current delays and backlog in New Zealand's biggest court, the District Court. Under the current system, a plea is not usually made for moderate to serious offending until after a defendant has appeared in court four times.

Outline of CPIP duty lawyer pilot policy

9. The aim of this pilot policy was to provide flexibility for duty lawyers to do more to assist defendants at their first court appearance and removes barriers to advance more bail applications where appropriate. These changes were implemented as a pilot in December 2021, at the Hamilton District Court and were further extended to the Hutt Valley and Christchurch District Courts.
10. The payments related to this pilot were not intended as an incentive to fast-track cases. The pilot included a higher hourly rate and a reimbursement for their additional workload and responsibility involved with progressing or resolving a defendant's case. The extra work could involve obtaining and reviewing more information from the Police, Corrections, and a court victim advisor, as well as interviewing the defendant, in order to appropriately advise and represent the defendant.
11. This pilot was part of a wider set of initiatives to improve processes. Better information sharing between agencies and the court would mean the duty lawyer can provide firmer advice earlier and the Judge would be better placed to reach a decision without delay and the need to adjourn. Equally defendants given more detail earlier in the process about the case police are alleging may also be better placed to make a well-informed decision about entering a plea, or alternatively to seek more time to consider it.

Key benefits from the changes in the *Duty Lawyer Operational Policy*

Benefits to victims

12. This policy pilot may have resulted in fewer court appearances. The longer the disposal time of cases, the longer the stress of the crime continues for all parties, the victim, any witnesses, and the defendant and their whānau.
13. Greater emphasis on richer information provided at the earliest opportunity will mean Police are putting further efforts in ensuring victim views on bail are available by the first appearance.

Benefits to defendants

14. Defendants could spend less time in the court system and can finalise cases with same day sentencing where appropriate.
15. Participants are provided with timely information to make informed decisions.

16. Allowing continuity of lawyer from a first appearance bail application, can increase the engagement between defendant and counsel thereby reducing the number of unnecessary events from first appearance to plea.
17. If the matter was progressed by the duty lawyer service then the defendant incurs no debt, and the overall reduction in court events to case disposal also leads to an overall reduction in legal aid debt for the defendants.

Safeguards – Quality Assurance

18. The pilot Duty Lawyer Operational Policy included additional guidance for duty lawyers when determining whether it would be appropriate to progress applicable proceedings, or whether a legal aid application is required.
19. The Public Defence Service duty lawyer supervisor is in place to provide direction to duty lawyers. Their responsibilities include:
 - 19.1. ensuring that any complex matters are allocated to a duty lawyer with appropriate experience
 - 19.2. ensuring that coverage by the duty lawyers attending on the day is appropriate in terms of their skill and experience
 - 19.3. monitoring the performance of duty lawyers and responding to poor performance.

Legal Services Commissioner

20. In light of concerns raised by yourself as well as members of the profession, I have made the following decisions:
 - 20.1. The additional payments for these specific activities in the duty lawyer pilot policy are suspended from the 18th of October 2022.
 - 20.2. A review will be undertaken to develop options for addressing the concerns while still delivering improvements in access to justice. The review will be assisted by a working group of senior members of the legal profession, Ministry officials and representatives of the Public Defence Service.
 - 20.3. The first meeting of the working group was held 19 October 2022 and analysis of the resulting potential changes to the pilot policy is underway.
 - 20.4. I will discuss the findings of the review with you and keep you updated as the work progresses.