



# Police Detention Legal Assistance Service

Operational policy

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Published by the Ministry of Justice  
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# Police Detention Legal Assistance Service

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## Introduction

This policy describes the operation of the Police Detention Legal Assistance (PDLA) service.

The object of the PDLA service is to ensure a sufficient number of lawyers are available, at any time of the day, 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 they may consult a lawyer
- wishes to consult or instruct a lawyer about any matter relating to their detention.

Lawyers must obtain approval from the Ministry of Justice (the Ministry) to provide this service.

The PDLA service may only be accessed 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.

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.

The service is largely phone based. The approved providers are experienced criminal jury trial lawyers who are paid a flat fee for each phone call or a half-hourly rate for face-to-face attendances.

### Authority for the service

The PDLA service operates under the authority of the Secretary for Justice as a specified legal service pursuant to s 68(2)(b) of the Legal Services Act 2011.

## Responsibilities of PDLA providers

### PDLA services

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 providers either by phone or face-to-face.

The person being detained will receive the services of a lawyer who holds PDLA approval from the Ministry. The Ministry expects that when a PDLA provider is available, they will attend.

### Attendance

The PDLA provider makes the decision whether to attend by phone or face-to-face. Guidelines on this assessment have been developed in conjunction with the profession (see [Appendix](#)). The guidelines are intended to assist PDLA providers to:

- deliver a legal service appropriate to the eligible person’s circumstances and the circumstances of their alleged offending
- as far as possible, provide the same level of service regardless of where the eligible person is being detained and which PDLA provider they have contacted.

All attendances under the PDLA scheme must be carried out by an approved PDLA provider in the area, not their agent or employee.

A suitably qualified interpreter may be engaged to assist a PDLA provider to give legal advice or legal assistance.

### **Duties**

The duties of PDLA providers include:

- advising detained persons 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 relating to the PDLA service.

All PDLA providers should ensure that they are available, contactable and on time on the days or nights they are rostered.<sup>1</sup>

## **Obtaining PDLA approval**

### **Application**

A lawyer must hold an approval to provide PDLA services before being included on a roster or list.

Provider Services manage the approvals and can be contacted at [legalaidthelper@justice.govt.nz](mailto:legalaidthelper@justice.govt.nz) or on (04) 918 8800. The application form is available on the Ministry’s [website](http://www.justice.govt.nz) at [www.justice.govt.nz](http://www.justice.govt.nz) and can be found by searching ‘application forms for approval’.

When applying for approval as a PDLA provider, the application must include:

- phone number(s) to ensure 24-hour accessibility
- description of the area or town(s) where the provider is available to attend.

### **Experience and competence requirements**

To be approved as a PDLA provider, the applicant must have:

- at least 24 months’ experience within the last five years working on criminal Provider Approval Level (PAL) 1 matters
- appeared as counsel with substantial and active involvement in at least 3 trials in proceedings that are Crown Prosecutions (see the Legal Services (Quality Assurance) Regulations 2011).

### **Approval**

Obtaining approval as a PDLA provider will not necessarily result in a place on a PDLA roster or list. Approved providers who wish to be placed on a PDLA roster or list must contact the Initial Criminal Legal Services (ICLS) unit at [PDLA@justice.govt.nz](mailto:PDLA@justice.govt.nz).

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<sup>1</sup> It is recognised, however, that as court lawyers they may not be fully available during court hours

## Rosters and lists

The ICLS unit administers both rosters and lists for the PDLA service as follows:

- a roster for greater Auckland, structured by legal matter
- rosters for Northland and Hamilton city, not structured by legal matter
- lists for all other areas.

The ICLS unit provides Police with up-to-date rosters or lists.

If the PDLA provider'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.

For locations where a roster is in place, providers must advise the ICLS unit as soon as possible if they are unable to attend any rostered session.

## Legal aid case assignment as a result of PDLA

### **An exception to PAL 1 and 2 rotational assignments**

PAL 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.

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.

Extra cases may be assigned to PDLA providers who have given advice to legally aided people through the PDLA service outside usual working hours. This includes Monday to Thursday evenings from 7:00pm to 8:00am, weekends from 5:00pm Friday to 8:00am Monday, and public holidays from 5:00pm the previous day to 8:00am the following day. These assignments will be in addition to the PDLA provider's rotational assignments.

Where a PDLA provider wants to be assigned a particular case, they should submit the PDLA notification form to Legal Aid Services (LAS) by 9:00am the following work day if the person is in custody, or within 3 working days if the person is not in custody. The case will usually be assigned to the PDLA provider if:

- the client does not already have an assigned provider (ie an open case)
- the PDLA provider has the appropriate approval level
- the PDLA provider is based in the location where proceedings are to be held
- there are no travel costs.

Where LAS is unable to assign the initial case to the PDLA provider (eg 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.

The inclusion of a person's name on any tax invoice tendered for the purposes of payment under the PDLA scheme will not constitute sufficient notice for the purposes of assignment.

If it is not clear whether the aided person received PDLA services from the provider making the application, the application for assignment may be declined.

# Travel

Travel under the PDLA scheme will be claimed in accordance with the travel policy. The Ministry will reimburse the actual and reasonable travel costs, including time, where:

- the detained person is being held in a place of detention, including prisons and mental health institutions
- the travel destination is 'non-local' for the provider<sup>2</sup>
- exceptional circumstances require a PDLA provider to attend a place of detention outside their area.

In such circumstances, a full explanation of the reasons for the attendance is required with the claim.

## Submitting invoices

### Forms

The Ministry requires PDLA tax invoices to be submitted monthly, or when each tax invoice is completed, whichever is the earlier. All claims for remuneration must be made on invoice form 13.

PDLA providers are expected to progressively record on each tax invoice up to 10 phone attendances and 1 face-to-face attendance. A separate invoice form will be required if either of these thresholds are exceeded in the billing period. This is required to provide information about the operation of the service and to support the Ministry's periodic validation of claims.

Justification for multiple attendances on the same person on the same occasion must be provided.

The form can be downloaded from the Ministry's website at [www.justice.govt.nz/about/lawyers-and-service-providers/legal-aid-lawyers/forms/](http://www.justice.govt.nz/about/lawyers-and-service-providers/legal-aid-lawyers/forms/).

The details required on the invoice form for all attendances are:

- name of person assisted
- place of detention
- type of offence
- date and time of attendance
- duration of attendance
- whether the person is their own client and/or a youth
- any disbursements
- total amount (incl GST)
- provider signature and date of the claim.

If the PDLA provider attends a client by phone and a face-to-face attendance is subsequently required, the Ministry will consider remunerating for both attendances if the provider advises the reasons on the tax invoice.

### Disbursements

Interpreters/translators will be paid by the PDLA provider and then invoiced as a disbursement. Actual and reasonable interpreter/translator fees will be reimbursed.

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<sup>2</sup> 'Non-local' travel is defined as travel involving a return trip from the provider's place of work or home to the place of detention where the return distance is greater than 50 km and/or the return travel time is greater than 1 hour.

The Ministry will pay the PDLA provider's phone charges as a disbursement.

All travel claims will be considered in accordance with the travel policy as outlined above.

If for exceptional reasons a PDLA provider 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

Payments for attendances under the PDLA scheme will be made to lawyers who have:

- current approval as a PDLA provider
- a place on a PDLA roster or list and are therefore entitled to claim for PDLA services.

The Ministry is under no obligation to pay for services provided by a lawyer who is not listed to provide PDLA services.

Rates of payment for attendances are as follows:

Type of attendance	Coverage	Rate (excl. GST)
Phone	Any time of the day or night, irrespective of the length of the call	\$75 per call
Face-to-face	Day-time rate – Monday to Thursday from 8:00am to 7:00pm and Friday 8:00am to 5:00pm	\$53 per half hour or part thereof
	Night-time rate – Monday to Thursday from 7:00pm to 8:00am	\$79.50 per half hour or part thereof
	Weekends – from 5:00pm Friday to 8:00am Monday	
	Public holidays – from 5:00pm the day before to 8:00am the day after	



# Appendix: guidelines for when to make face-to-face attendances

## Introduction

These guidelines are intended to assist PDLA providers in determining whether PDLA services should be provided over the phone or in person.

Usually, legal advice or assistance can be effectively provided over the phone. 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
- 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

The provider should obtain sufficient information about the circumstances of each case they are contacted about. This is necessary not only to provide appropriate legal services, but also to assess whether advice or assistance can be delivered effectively over the phone, or whether it should be delivered face-to-face at the place of detention.

The provider's initial questions should gather enough information for the provider to make the assessment.<sup>3</sup> An initial assessment may need to be subsequently revised as the circumstances of the case and the person become clearer.

The provider should establish:

- the nature and seriousness of alleged offences, including charges, or possible charges, and any factors that may impact on gravity, including, for example, the condition of any victim or previous convictions
- the weight of evidence to date and intended evidence, including any statements made by the detained person, particularly any admissions or statements made by others
- exhibits seized
- any injuries to the complainant
- any intentions police have concerning further evidence, such as 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 they are a young person or child, if they have any disabilities such as mental health issues, an intellectual disability or language difficulties
- the person's resilience and likelihood that they will follow advice, and whether they seek the provider's attendance
- whether there are any issues regarding police conduct or whether adherence to correct procedure needs to be checked or overseen.

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<sup>3</sup> 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.

## FACTORS RELEVANT TO TYPE OF ATTENDANCE

The provider will need to weigh-up many factors in determining whether legal services should be provided face-to-face or by phone. As far as possible, the provider should exclude considerations of convenience and proximity to the place of detention.

Factors relevant to the provider's assessment are outlined in the table below.<sup>4</sup>

Consideration	Factors for face-to-face attendance	Factors for phone attendance only
<b>Seriousness of offences(s)</b>	<ul style="list-style-type: none"> <li>• Most PAL 3 and 4 matters and some PAL 2 matters</li> <li>• If convicted, the consequences for the person are likely to be substantial, for example, imprisonment</li> <li>• The matter may become more serious, for example, because of the condition of any victim or where other charges are in prospect</li> </ul>	<ul style="list-style-type: none"> <li>• Solely drink-driving offences and offences where, if convicted, will not result in imprisonment</li> <li>• Situation is clear and no value from attendance, for example, statement(s) already given, charges settled and no others pending, and/or bail determined</li> <li>• Resilience of person, so lawyer assured they will follow advice, because they: <ul style="list-style-type: none"> <li>– are familiar with police procedure</li> <li>– have confidence to follow advice, including remaining silent if appropriate</li> </ul> </li> </ul>
<b>Vulnerability of person</b>	<ul style="list-style-type: none"> <li>• Person has special need for protection, for example, child or young person, intellectual disability, mental health or language issues</li> <li>• Police appear unwilling to meet special requirements that the provider perceives the case requires</li> <li>• Person does not understand their situation, particularly its seriousness<sup>5</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Other arrangements can be put in place, such as attendance by a mental health team</li> <li>• Drink-driving or other matters where person will not be held in custody</li> </ul>
<b>Sufficiency of information about circumstances</b>	<ul style="list-style-type: none"> <li>• Cannot obtain enough detail or cannot assess reliability to determine appropriate advice or assistance</li> <li>• Peculiar circumstances of case suggest a fuller assessment of the situation is desirable, for example: <ul style="list-style-type: none"> <li>– person's role in relation to co-offenders is unclear</li> <li>– person has injuries that should be seen</li> <li>– recent sexual offences where there are issues of consent</li> <li>– suitability for videotape interview needs to be assessed</li> <li>– other defences available which can be articulated at the place of detention</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• The circumstances of the case can be ascertained over the telephone</li> </ul>

<sup>4</sup> If face-to-face attendance is deemed desirable and the PDLA provider who has taken the initial call cannot attend, the lawyer will need to advise Police that they must contact another PDLA provider (see 'Obligation to refer case on' below).

<sup>5</sup> This does not include an obligation to always attend if the person is drunk or under the influence of drugs.

Consideration	Factors for face-to-face attendance	Factors for phone attendance only
<b>Potential to improve outcome</b>	<ul style="list-style-type: none"> <li>• Assessment suggests that attendance may result in an improved outcome for <b>the</b> person, including: <ul style="list-style-type: none"> <li>– possibility of lesser charges or release</li> <li>– a potential defence</li> <li>– advancing matters relevant to mitigation</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Objectives can be achieved by telephone</li> <li>• Police position is clear and is unlikely to alter, for example, bail for domestic violence cases</li> </ul>
<b>Monitoring police conduct</b>	<ul style="list-style-type: none"> <li>• Allegations about police misconduct or mistreatment have been raised by the person</li> <li>• Lawyer has concerns about police actions</li> <li>• Next stage of police evidence gathering is desirably overseen to safeguard the person's rights</li> </ul>	<ul style="list-style-type: none"> <li>• Lawyer can adequately assess police behaviour by phone</li> <li>• Rights of the person can be safeguarded through advice to them by phone</li> </ul>
<b>Attendance requested<sup>6</sup></b>	<ul style="list-style-type: none"> <li>• Other factors, as listed above, are evident</li> </ul>	<ul style="list-style-type: none"> <li>• No other circumstances in the case suggest face-to-face attendance is necessary</li> </ul>

### Timing of attendance

In general, a PDLA provider is expected to arrive at the place of detention as soon as possible after the completion of the phone attendance.

It is recognised that it may be possible for the provider to negotiate with Police about the timing of their attendance at the place of detention, especially at night. However, in considering the urgency of attending, the provider needs to take account of the overall circumstances of the case.

### Obligation to refer case on

If a face-to-face attendance is required, a PDLA provider should refer a case on if they are:

- not sufficiently experienced to deal with the seriousness or complexity of the case<sup>7</sup>
- unable to attend themselves, because of geographic distance or personal commitments.

In the above situations, the PDLA provider who has taken the call should advise Police that they must contact another provider, and advise the person that another lawyer is to be accessed.

<sup>6</sup> 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

<sup>7</sup> For example, the matter is equivalent to a legal aid criminal PAL 3 matter and the lawyer is approved for PAL 2.



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