

22 June 2023

Carl Crafar
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Ministry of Justice
Wellington

By email: carl.crafar@justice.govt.nz

Tēnā koe Carl,

RE: Family court-appointed counsel remuneration review – inclusion of youth advocates

1. Introduction

- 1.1 I write on behalf of the New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) regarding the upcoming triennial review of court-appointed counsel remuneration rates, specifically in the family jurisdiction. We understand the purpose of conducting a review is to ensure there is an appropriate mechanism to review and negotiate remuneration rates for court-appointed services in the Family Court.
- 1.2 Court-appointed counsel remuneration rates in the Family Court, in particular for Lawyer for Child, have been the subject of ongoing discussion between the Law Society's Family Law Section (**FLS**) and the Ministry of Justice (**Ministry**) since 2020.¹ In these discussions, the FLS had also verbally requested that youth advocates fall within the review's scope given their similar status as court-appointed counsel.
- 1.3 Following a recent meeting between the FLS and Ministry, the Law Society formally requests the Ministry consider including youth advocates in the review. Our reasons in support of this request are set out below.

2. Background

- 2.1 Following the announcement of a 2.5% increase over four years for lawyer for child, the FLS wrote to the Secretary of Justice in August 2020 requesting a working group be established to regularly review the remuneration rates for all court-appointed counsel in the Family Court. The primary concern was the lack of machinery to ensure the rates of all court-appointed counsel are regularly reviewed. Following numerous discussions with the Ministry, it was agreed in December 2022 that a formal review would be conducted (beginning in 2023) to establish a pathway forward.
- 2.2 We understand a meeting has since been scheduled for Monday 26 June to begin this process and to discuss terms of reference for the review.

¹ The Family Law Section wrote to the Ministry of Justice on several occasions throughout 2020 and 2022, and via several in-person meetings.

- 2.3 The issue of whether youth advocates should also be included in that review has been the subject of some discussion. In the Law Society’s submission on the Oranga Tamariki Amendment Bill in February 2022,² we noted the 2.5% increases for lawyer for child, following a 25-year period in which fees had not been reviewed or adjusted and that a regular review of those fees would likely impact the fees for youth advocates in the Youth Court.

3. Youth Advocates

Appointment

- 3.1 Generally, a youth advocate may be appointed by the Chief Executive of Oranga Tamariki (for an intention to charge family group conference where the offence is punishable by a maximum sentence of 10 years’ or more imprisonment)³ or by the Youth Court in accordance with the Appointment and Review Procedure issued by the Principal Youth Court Judge.⁴ That procedure sets out how a youth advocate is assigned a case, including by maintaining a list of lawyers by each Youth Court, suitable for appointment as a youth advocate. The Youth Court is free to appoint a Youth Advocate from outside the list, if circumstances require, under the Oranga Tamariki Act 1989 (**OT Act**). The Youth Advocate list is reviewed every three years.

Remuneration

- 3.2 Although there is a mechanism for a regular review of the lawyers who are included in the Youth Advocate list, this does not extend to the remuneration rate paid to youth advocates.
- 3.3 The remuneration rate is currently set out in the Oranga Tamariki (Youth Advocate) Regulations 2020 (**Regulations**). Those regulations provide an hourly rate of \$158.45 (incl. GST) where a youth advocate has been appointed under either section 248A (by the Chief Executive of OT) or 323 of the OT Act (by the Youth Court).⁵ However, supporting Ministry operational policy determines how much a youth advocate should be paid per appointment (in 6-hour blocks) and provides the youth court flexibility to increase the hours if needed.
- 3.4 Prior to 2020, the remuneration rate was only set out in Ministry operational policy. The Youth Court would pay youth advocates in accordance with that policy, which prescribed that a youth advocate could be paid up to 6 hours per appointment, plus time in appearances, at a rate of \$158.45 per hour. Additional time was at the discretion of the court registrar.
- 3.5 Although the youth advocate remuneration rate is now prescribed in secondary legislation (unlike the rate for lawyer for child), the hourly youth advocate rate has not been increased over the last 20 years.⁶ Nor is there any formal mechanism to regularly review these rates. The Regulations only prescribe a formal review of certain provisions, and this does not extend to the provision setting the remuneration rate.

² New Zealand Law Society submission, *Oranga Tamariki Amendment Bill*, 17 February 2022, accessed here: <https://www.lawsociety.org.nz/assets/Law-Reform-Submissions/OT-Amendment-Bill-NZLS-Submission.pdf>

³ Oranga Tamariki Act 1989, s 248A.

⁴ Ibid, s 323.

⁵ Oranga Tamariki (Youth Advocate) Regulations 2020, r 6.

⁶ We do not have confirmation of when the last review occurred, however we are aware it has been a significant period of time. On the basis of the information we have to hand, we believe remuneration has not increased over the past 20 years.

- 3.6 The issue of sustainability of practice for court-appointed work is affecting the availability of counsel across the profession and in particular, the availability of senior counsel. A machinery for regular review is important to ensure that court-appointed counsel are paid fairly for the important work they do that is essential to access to justice and the administration of justice. Including youth advocates in a regular review mechanism, comparable to that which exists for Crown Solicitors, is also important to ensure rates keep pace with the increasing costs of legal practice.⁷
- 3.7 Given the similar status to court-appointed counsel in the Family Court, and the significant period that has lapsed without any meaningful review of remuneration, the Law Society considers it appropriate to extend the scope of the review to include youth advocates. The omission of youth advocates from the review will lead to further inconsistencies in remuneration and would be a lost opportunity. Youth advocates can be included in the review with minimal impact on the review's scope, cost, and timeframes.

4. Conclusion

- 4.1 We invite the Ministry to consider including the remuneration rate of youth advocates in the wider review of court-appointed counsel. Although we acknowledge they fall within a different jurisdiction, their similar status as court-appointed counsel, and the lack of a regular review mechanism, in our view warrants inclusion of youth advocates in this process.
- 4.2 We are happy to meet with you to discuss this further if that is convenient. Contact can be made via the Law Society's Senior Law Reform and Advocacy Advisor, Amanda Frank (amanda.frank@lawsociety.org.nz / (04) 886 6547).

Nāku iti noa, nā



Dale Lloyd
NZLS Youth Justice Committee Convenor

Copy to:

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⁷ The Law Society is currently in the process of commissioning a new piece of work which looks at the costs of legal practice in Aotearoa, having not had an update in this area since 2003.