

6 April 2023

Hon Kiritapu Allan  
Minister of Justice

By email: [kiritapu.allan@parliament.govt.nz](mailto:kiritapu.allan@parliament.govt.nz)

Tēnā koe Minita

**Re: Duty Lawyer hourly rates**

I understand the Criminal Bar Association (**CBA**) has recently written to you, requesting an increase to the duty lawyer hourly rate, commensurate with the rate of inflation.

The New Zealand Law Society Te Kāhui Ture o Aotearoa strongly supports an increase to the hourly rate paid to duty lawyers. We note that there was a small increase in 2006 from \$80 to \$88 but remuneration has not significantly increased since 1998. Duty lawyers play a critical role in our criminal justice system by providing timely and dependable legal advice to unrepresented defendants. They are key to the efficient operation of the District Court and to improving the administration of, and access to, justice.

However, inadequate remuneration coupled with growing shortages among duty lawyers, for example those willing to work on the Saturday roster, has led to significant difficulties in attracting and retaining providers. While Budget 2022 provided a small initial increase to legal aid funding – an increase we hope marks the beginning of continued investment in the legal aid system – the duty lawyer service did not receive any of this additional funding.

In the Law Society's 2021 Access to Justice Survey, much of the 'free text' feedback singled out duty lawyer remuneration as an issue. This included comments such as:

- Duty lawyers directly provide access to justice but are 'severely undercompensated'. Non-criminal lawyers commented on the 'outstanding' work of duty lawyers.
- 'When did duty lawyer rates last go up?', 'duty lawyer [work] is not viable, really a public service.'
- 'Duty work continues to be paid particularly poorly. The hourly rates don't seem to have changed in the last 20 years. This needs urgent attention and is very poorly remunerated. I only do this work out of a sense of obligation.'
- Duty lawyer rates are 'insulting'.
- 'I'm doing less each year. In effect it has become pro bono. It's particularly galling to have duty lawyer rates that are barely cost-recovery.'

At the same time, lawyers are very clear on the importance of the duty lawyer service, and their commitment to ensuring access to justice.

I also acknowledge the recent work of the Legal Services Commissioner on the Minimum Payment Policy,<sup>1</sup> an initiative we have welcomed. However, we are not convinced this will make a substantial difference to the difficulties currently faced by duty lawyers. The feedback we have received from the profession is that it is only on rare occasions that a duty lawyer would not have sufficient work to meet the minimum hours under the new policy. Without further investment in an adequate hourly rate for duty lawyers, the national coverage issues will only continue to grow, placing further pressure on an already stretched District Court caseload.

As noted, it is becoming unsustainable for lawyers to commence or continue this work, and the Law Society holds grave concerns for the impact this will have on defendants, victims, and the criminal justice system as a whole.

We know there is work planned for a review of the duty lawyer regime but we would like to reiterate our support for the need for a wider legal aid review. This is particularly important given the postponed triennial review. We consider urgent attention is required, and remain available to work with you and your officials to resolve these issues.

Ngā mihi



Frazer Barton  
**NZLS President**

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<sup>1</sup> From 3 April 2023 duty lawyers will now be able to claim a minimum payment of two hours on weekdays and a minimum payment of four hours on weekends and public holidays.