

1 April 2021

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Tēnā koe Tracey,

**Re: Proposed legal services model for Auckland/Waitākere Alcohol and Other Drug Treatment Courts - consultation**

The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Ministry of Justice's proposed legal services model for the Auckland and Waitākere Alcohol and Other Drug Treatment Courts (**proposed model**).

The Law Society sought feedback from members of its Legal Services Committee and advertised the consultation in the weekly e-newsletter LawPoints. We received feedback from several practitioners who have worked or are working directly in the Alcohol and Other Drug Treatment Courts (**AODTC**) and have included their specific feedback below (verbatim where appropriate).

The Law Society supports the work of the therapeutic courts and acknowledges the opportunity provided to Legal Aid Services to create a legal services model that supports the permanent nature of the AODTC, as well as "addressing one of the recommendations of the Evaluation Report which was to review the existing Defence Counsel and Supervisor roles to determine the most effective and efficient structure."<sup>1</sup>

As the regulator of the legal profession, Practising Well and lawyers' wellbeing are priorities for the Law Society. More is now understood about the stress of practising law and the importance of appropriate support to ensure resilience. Lawyers need to be able to meet their ethical obligations to clients while working in a multi-disciplinary model, and the Law Society recommends that consideration is given to funding additional hours to allow AODTC defence lawyers to properly fulfil their functions and provide legal advice to their clients in the AODTC context. Practitioner feedback indicates that funding for 16 hours a week (per lawyer including team leader) would allow for all overflow work to be acknowledged (funding only 11-12 hours including the lengthy sitting day of the AODTC often results in unremunerated work). Burnout is not necessarily a greater risk in this role (compared to others practising in the legal aid space) but given that lawyers working in the AODTC would have an additional practice for approximately four days a week (if they were only funded for 11 hours) there is an increased concern about the demands being placed on those lawyers.

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<sup>1</sup> Proposed Legal Services Model Te Whare Whakapiki Wairua (Alcohol and Other Drug Treatment Court Auckland and Waitākere), Consultation, March 2021, at p 3.

While practitioners acknowledge one of the benefits of the proposed model is to have a larger pool of defence lawyers available to undertake this work, some consider the current model is preferable if the Team Leader position carried a full client file load and if there is an option to have suitably qualified lawyers available to cover any sick days/leave. As the Team Leader position is paid at a higher rate, that additional remuneration to the Team Leader would acknowledge the additional administrative work required of them. Accounting for expected sick leave and annual leave, practitioners consider the four team members would be able to cover each other more easily as each member would have two full days a week to complete their reports and the like.

### **AODTC practitioners' feedback**

The AODTC aims to break the cycle of offending by treating the causes of that offending. It provides an alternative to imprisonment for people whose offending is driven by alcohol and/or drug substance use disorders. Practitioners working in the Auckland and Waitākere courts have provided the following comments for the Ministry's consideration:

1. Team leader (colloquially known as supervisor) role:
  - a. The supervision component of supervising is virtually non-existent: all lawyers on the panel are experienced (and must be, to do the job). The proposed model acknowledges this by noting that applications will only be considered for those providers with criminal provider approval and at least 3 to 5 years' criminal law experience.
  - b. Supervision does not operate in the same way as duty lawyer supervising: it involves a small amount of administrative work, for example rostering and cover, timesheets and communications to lawyers. The senior supervisory work needed in a duty lawyer supervisor role often doesn't arise due to the nature of the AODTC. This is partly due to time and urgency as lawyers are not always able to supervise prior to raising the issue in front of the whole team (which also includes the judge and the prosecution). The AODTC functions on teamwork and a multidisciplinary approach. There are ethical considerations unique in this Court programme, including but not limited to, when the team (including judge and prosecution) must be advised about a therapeutic concern provided to the assigned lawyer in instructions – which, in criminal defence work, would ordinarily be confidential and advisable not to disclose; this necessitates additional pressures on assigned lawyers.
  - c. *Proposed solution:* Supervisors should carry a full file load and be considered a fulltime lawyer. This approach would be more cost-efficient (by reducing the number of lawyers) and the additional funding to each supervisor would match the extra administrative work required in that role.
2. Fortnightly model:
  - a. The nature of the AODTC is that for the first initial weeks/sometimes months, the participant (client) appears every week. Therefore, if lawyers appear fortnightly (as suggested in the proposed model) they will miss 2 out of 3 or 2 out of 4 appearances. This

makes it impossible to meet the expectations of the lawyer as set out on page 5 of the consultation paper.<sup>2</sup>

- b. Judges who also sit in the AODTC face the same pressures and may also be affected by lawyers being rostered on a fortnightly basis. Where this currently occurs, judges are often having to “fill in” lawyers on what happened the previous week or telling them in open court what to present or highlight in their oral presentation.
  - c. For each court appearance the participant is required to have a report prepared by their lawyer (whether their lawyer appears or not). This is expected to be prepared by the assigned lawyer so on weeks that the lawyer is not rostered to appear they will be required to contact the participant, check on their progress, and provide a report to the team for its use on the particular court day. On an ‘off-week’, the proposed model indicates the lawyer will not be remunerated for this work, and the participant is therefore at risk of having a lawyer who is not meeting their expectations.
  - d. Participants are subjected to drug/alcohol testing which is necessarily randomised and secret. Should a participant fail a test (which happens regularly) they must appear in the next AODTC day. Their lawyer may get remunerated for discrete bail issues but getting up to date instructions to ensure the participant is appropriately represented at the next date if it’s an ‘off-week’ for the lawyer is a significant amount of work. This would not be an issue if the service continued to operate on a weekly model.
  - e. There are a variety of other tasks required, for example sanction letters, plans, report reviews, housing, driver licencing, work approval and hours of community work. All these tasks require a lawyer with knowledge of the participant’s current situation to appropriately comment on. The AODTC works differently to any other court which inevitably means lawyers are not interchangeable. Therefore, even for a participant who never fails a test or breaches bail or is accused of new offending, there is still a lot of work requires reporting by the lawyer in order for the participant to be fairly represented in light of the expectations of the Court. The proposed fortnightly model will make this more cumbersome and impractical.
  - f. *Proposed solution:* Retain the current rostering model with a team lead and three defence lawyers, each carrying the same file loads. This will ensure continuity of counsel and consistency in representation.
4. Unremunerated work:
- a. Defence lawyers tend to take instructions during the lunch break which is frequently shortened due to the long sitting hours (this is a symptom of the unremunerated tasks

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<sup>2</sup> These include for example, evaluating a participant’s legal situation and ensure their rights are protected; advising participants on their legal rights and options in relation to treatment, programme conditions and sentencing outcomes; and stay updated on participant’s progress, support their programme participation and compliance, and make submissions for the consideration of the Court on rewards and incentives.

discussed above). This does not meet the expectations of AODTC and is not healthy for the lawyers' wellbeing.

- b. The average 10 hour sitting day on the proposed model will mean the defence lawyer gets up to 1 hour to do preparation work for the 'on-week' for 10-12 different clients (including anything that may arise for that client during the 'off week'). Aligned to the above, this is not possible to do whilst meeting the expectations required of the role.
- c. *Proposed solution:* funding for more hours (up to 16 hours) to cover unremunerated work which may fall outside of the proposed funding of 11 hours.

### **Next steps**

We hope these comments are helpful. If you have any questions or further discussion would assist, please contact the Law Society's Law Reform and Advisor, Amanda Frank ([amanda.frank@lawsociety.org.nz](mailto:amanda.frank@lawsociety.org.nz)).

Nāku noa nā,



Arti Chand  
**NZLS Vice-President**