

Central Coast CLSD Program Meeting
3.5.2023 | 10am – 12pm | Central Coast CLC

MINUTES

Present: Deborah MacMillan (Central Coast CLC), Sym'mon Andrews (Central Coast CLC), BJ Duncan (Central Coast CLC), Wayne Cook (Central Coast CLC), Chris Murnane (Legal Aid NSW), Kate Halliday (Legal Aid NSW), Jacob Smeaton (Barang Regional Alliance), Allira Moore (Barang Regional Alliance), Corinne Hodson (Barang Regional Alliance), Vanessa Molles (Central Coast WDVCS), Kristy Fisher (Central Coast WDVCS) Karen Smith (Regional Youth Support Services), Dean McLaren (Intellectual Disability Rights Service) Karan Mahimkar (Interelate), Natalie Ashbrook (Central Coast CLC), Paddy (Disability Advocacy NSW), Johnnie Rowan (Disability Advocacy NSW), Kai Wu (Legal Aid NSW), Winnecke Baker (Legal Aid NSW)

Agenda item	Discussion
1. Opening and purpose	Wayne Cook acknowledged that the meeting took place on Darkinjung Country. Purpose of today's meeting: <ul style="list-style-type: none">• To demystify how people can access grants of legal aid for criminal, family, and civil law problems through a panel discussion with lawyers working in these areas.• To obtain feedback from partners about a draft joint legal service referral guide.
2. Accessing Legal Aid Grants	<i>A grant of legal aid provides people with legal representation in court by a solicitor who works for Legal Aid NSW or a private solicitor paid for by Legal Aid NSW. This session, presented by Chris Murnane and Kai Wu from Legal Aid NSW in Gosford, looked at the operation of grants for criminal law and civil law matters.</i> <p style="text-align: center;">Grants of Legal Aid in Criminal Matters</p> <p>Chris Murnane (Solicitor in Charge Legal Aid NSW, Gosford)</p> <p>The general principle with grants of legal aid is that there is a means test</p> <p>Legal Aid NSW Means Test</p> <ul style="list-style-type: none">- The means test considers a person's income and assets.

- It is important to know that when Legal Aid NSW assesses a person's income, they consider whether they have any dependents, and they deduct costs like:
 - o Rent
 - o Mortgage repayments
 - o Childcare
- There is a cap on the value of a home, which operates to exclude properties below the cap and include properties above the cap.
- People can get legal aid if they own a home, but Legal Aid NSW might put a charge over their property to recoup costs if they ever sell it.
- There is a [Means Test Indicator](#) online that people and services can use to gauge whether someone may be financially eligible for legal aid
- **Important Update:** on 2 May 2023 the Means Test was increased to reflect increases in the cost of living and for the purpose of the Means Test the Central Coast is now considered part of Greater Sydney. As a result, it is likely that the dollar amount of rent and the value of property allowed under the test will likely increase in this region.

Eligibility for Legal Aid in Apprehended Domestic Violence Order (ADVO) Matters

- Legal aid is available to *applicants* in ADVO matters if they meet the means test and they are a victim of domestic violence.
- Legal aid is available for *defendants* in ADVO matters if they meet the means test and Legal Aid NSW is satisfied that they are the primary victim of domestic violence, or if [exceptional circumstances](#) apply.
- Central Coast Community Legal Centre also provides advice to defendants in ADVO matters.
- Exceptional circumstances include when the defendant has an intellectual impairment, a developmental disability, a psychiatric condition, or a physical disability. This requires some degree of proof like a letter from a doctor.
- *Legal aid is also available for Aboriginal Women to defend an ADVO in the Local Court and in defended hearings in the Local Court even when there is no prospect of gaol time.*
- Legal aid is not available for ADVO matters that Legal Aid NSW determines are frivolous or vexation, that have no reasonable prospects of success, or if the application is made by a police officer for the applicant.

Eligibility for Legal Aid in Apprehended Personal Violence Order (APVO) Matters

- APVOs are between people where there is no domestic relationship.
- Legal aid is available to defend an application for an APVO if the defendant meets the means test and exceptional circumstances apply.
- Legal aid is not available for applicants for an APVO unless the applicant is a child.

Eligibility for Legal Aid Through the Criminal Law Duty Service

- Legal aid is available for people to make their 1st bail application at court when they are charged with a criminal offence.
- The duty service governed by same means test that is relevant to all other matters. If someone meet the means test Legal Aid NSW can act for them.
- People sometimes wrongly assume that a Legal Aid NSW duty lawyer will help them during their next court appearance because Legal Aid NSW represented them in their first bail application.
- Solicitors can approve a grant of aid on the basis of the duty form, especially if they are able to consider someone's Centrelink statement. Chris estimates that 90% of people don't need to complete the longer application form.
- Legal aid is available for sentencing matters and for appeals from the Local Court to the District Court.

Getting the best support at court for clients with disability

If you are working with a client with a cognitive impairment or intellectual disability who needs to attend court, it is really helpful for Legal Aid NSW lawyers to know in advance.

If you contact Legal Aid NSW ahead of time, the duty lawyer can mention the matter quickly and if appropriate, can ask to have matter adjourned so that the client can have an advice appointment. The lawyer can then schedule an appointment for the client that is longer than normal to give them as much time as they need. During the appointment they can provide legal advice, discuss what will happen at their next court date, and help them to prepare. Their support worker/person can also attend the advice appointment.

If you can't speak to Legal Aid before your client's court date, speak to the duty lawyer on the day as early as possible. This way, they know to allocate more time for your client, perhaps later in the day while court is quieter, and your client can have a cup of tea or coffee and wait elsewhere, in a more comfortable environment until they speak to the lawyer.

Legal aid is not available for the following Local Court matters:

- Traffic matters, unless there is a possibility that the defendant will go to gaol.
- Defended hearings unless there is a possibility that the defendant will go to gaol. This is interpreted liberally. Even if the chance of someone going to gaol is remote it is likely that legal aid will be approved.
- Private prosecutions.
- Victim's compensation matters for respondents.

How to Apply for a Grant of Aid

- For criminal matters, most clients access legal aid via the duty form only.
- People often need to complete the full application in ADVO matters because the test is complicated.

- It is an offence for someone to have retained a lawyer privately and also be accessing legal aid.

Contributions in Criminal Law Matters

- Everyone who receives a grant of legal aid must pay a minimum contribution of \$75.
- The majority of people who are reliant on Centrelink are charged \$75 only.
- Some people who are eligible for legal aid may need to make a larger contribution towards their legal costs.
- Chris, as a solicitor in charge, has discretion to vary or wave the contribution that is calculated up to \$10,000. This could occur if someone has just missed out on the means test. For example, if someone has narrowly missed out on a grant of legal aid, Chris can negotiate for that person to pay a higher contribution towards their matter.
- This doesn't apply to the duty service, which is free, where people obtain advice and plead guilty, so their matter is finalised quickly
- Exercising this discretion is very common in District Court matters because they are so expensive. Legal costs in District Court trials average \$120,000.

Grants of Legal Aid in Civil Matters

Kai Wu (Civil Law Solicitor, Legal Aid NSW Gosford)

- Grants of legal aid are available for representation in lots of civil law matters including consumer law matters, housing matters, employment matters, social security matters including in relation to the NDIS, discrimination matters, mental health tribunal matters and in relation to fines and debts.
- A complete list of civil law matters where legal aid is available [can be viewed online here](#).
- A complete list of civil law matters where legal aid is not available [can be viewed online here](#).
- Recommend people book in for an advice appointment with a civil law solicitor at Legal Aid in Gosford. During the appointment they can provide initial advice about their legal issue and about the eligibility for a grant of legal aid.
- To be eligible for a grant of legal aid for civil law matters, people need to meet the [Merit Test](#) and the [Means Test](#).

Snapshot of Civil Law Matters Where Legal Aid is Available

Consumer protection matters include things like:

- Tenancy issues (for tenants only)
- Credit matters, including mortgages and guarantees
- Matters involving unfair contracts terms and relating to the purchase of goods and services
- Matters relating to insurance contracts and superannuation

Housing matters include things like:

- Social housing tenant facing termination (big growth area)
- Private tenants facing termination.
- Tenant blacklisting and TICA listings,
- Issues with requests for property repairs

Employment matters include things like:

- Unfair dismissal (people need to take action within 21 days, so it is important to obtain legal advice ASAP!)
- General protections under the Fair Work Act
- Recovery of entitlements like unpaid wages or superannuation.
- To be eligible for a grant of legal aid in employment matters, a client needs to meet the Social Disadvantage Test in addition to the Means and Merit Tests.

The Social Disadvantage Test

A person will be at a social disadvantage if there is a significant risk that they will suffer social or financial detriment as a result of the matter relating to their current or recent employment. Legal Aid NSW takes into account a person's financial vulnerability, personal vulnerability, and whether they are a victim or at risk of family or domestic violence, whether they are a child, and whether they are an Aboriginal person.

Discrimination matters include things like:

- Sexual discrimination, racial discrimination, gender discrimination, age discrimination, discrimination on the basis of disability, discrimination on the basis of health or marital status and sexual harassment.
- Legal aid may be available in these matters before the Administrative or Equal Opportunity Divisions of the NSW Civil and Administrative Tribunal (NCAT)
- Legal aid may also be available for discrimination matters under Federal laws.

Matters under the Public Health Act

- Legal aid is available to people who are subject to Public Health Orders made under the *Public Health Act 2010*.
- This includes applications to NCAT to confirm a Public Health Order and applications to NCAT to review a Public Health Order.

Social Security matters include things like:

- Legal aid may be available where a decision has been made that impacts the receipt or amount of a Commonwealth pension, benefit, or allowance.

- For social security matters, people need to meet the Merit and Means Tests and Legal Aid NSW also needs to determine that:
 - o There is a risk that the person will incriminate themselves, or
 - o The case is complicated, or
 - o The case requires significant medical evidence, or
 - o It would be unreasonable for them to represent themselves due to special circumstances, or
 - o The appeal involves complex questions of law.

Contributions in Civil Law Matters

- There is no set contribution for civil law matters.
- Contributions are normally deducted from settlements achieved for the client and vary from case to case.
- It is unlikely that a grant of aid will be available for representation where the amount in dispute is less than \$3,000 as legal fees will generally be greater than \$3,000, but always best to get an advice appointment regardless!

Questions

1. Regarding evidence of disability, is it enough for people with an intellectual disability to show that they have been assessed by a worker from the Justice Advocacy Service (JAS), Intellectual Disability Rights Service (IDRS) or other prominent disability service, or do they need a doctor certificate?
 - o An assessment/referral from a specialist disability support services is enough.
2. How can people on low incomes pay the contribution?
 - o The contribution can be deducted in small increments directly from someone's Centrelink payments. If someone needs to apply for a grant of aid and they haven't paid a contribution for a previous grant of aid, they need to pay the previous contribution, or start a payment plan before accessing a new grant of aid.
 - o Vanessa noted that the WDVCAS often sees 'frequent flyers' with multiple contributions outstanding that relate to private applications because they have been fearful of engaging the police.
 - o Chris noted that it is sufficient to commit to a payment plan to access a new grant of aid, the whole amount doesn't need to be paid in full at that point.
3. How can people access a grant of aid if they have outstanding contributions and they are picked up by police on an outstanding charge, having been released from custody, before they have had an opportunity to apply for Centrelink?

- People who are incarcerated have access to legal aid via the duty service.
- If someone can produce a letter from Centrelink noting that they have applied for benefits, then Legal Aid NSW will accept this so long as they also obtain the client's authority to obtain a copy of their Centrelink statement later.
- Also, if people just put something in writing about their current circumstances, Chris and his colleagues will accept this too. The last thing lawyers want to see at the Local Court is someone unrepresented who could have been represented!
- The Legal Aid Act states that if you are unrepresented but you have applied for legal aid your matter must be adjourned to allow time for your application to be assessed, which also gives people more time.

4. [Can you appeal decisions about grants of legal aid?](#)

- Yes! People can appeal to Legal Aid Review Committee or LARC.
- Chris encourages people to do this if they only narrowly miss out due to the Means Test.
- LARC can grant aid on the basis of varying a contribution that the Legal Aid NSW Grants Division may have said no to.
- People should also appeal if it is clear that they meet the exceptional circumstances test. Sometimes people don't provide enough information about this in their application.
- Contact Chris directly if you think exceptional circumstances apply for your client as he can do a redetermination. For example, if you have a letter from IDRS about the client's cognitive impairment that wasn't in their application.

5. [When are matters assigned to Legal Aid NSW Lawyers \(kept in-house\) and when are they allocated to private lawyers?](#)

- Legal Aid will keep all criminal matter in-house unless there are exceptional circumstances.
- Exceptional circumstances included when there is a conflict between 2 defendants and where Legal Aid NSW acts for the victim in other proceedings.
- There is separate policy for criminal, civil and family law matters.

6. [In family law matters, which are often allocated to private solicitors, can people nominate the solicitor that they would like to use? People often do this if they have had a particular solicitor before.](#)

- Provided that the solicitor the person nominates is on the panel, it will go to that solicitor, but it doesn't go to them by way of right.

7. [What can people do if they have concerns about how a private lawyer handled their matter?](#)

	<ul style="list-style-type: none"> ○ Private lawyers can be removed from a Legal Aid NSW panel if they don't meet the professional standards guidelines. ○ If you are working with someone who has concerns about how they were represented by a private lawyer, as a first step, double check if they are unsatisfied with the lawyers conduct or the outcome of their matter. Unfortunately, it is common for people to be unsatisfied with the outcome of their matter. ○ Complaints can be made by speaking to Chris and he will refer them directly to the Professional Standards Unit to address. ○ There is a complaints process for Legal Aid NSW lawyers too.
3. Central Coast Joint Legal Referral Guide	<ul style="list-style-type: none"> - Draft copies of the guide were distributed during the meeting. - Feedback will be discussed at the next meeting in June - Please contact clsd@centralcoastclc.org.au if you would like a copy of the draft guide.
5. Next Meeting	28 June.