

# Guidelines for the Back Up Duty Scheme

Back Up Duty Scheme (BUDS) practitioners are bound by the Legal Aid NSW [Quality Standards, Service Agreement](#) and the following BUDS Guidelines when providing duty or casework assistance on behalf of Legal Aid NSW. BUDS membership is open only to individuals and not to firms.

## Travel

### Travel permitted only at remote courts under limited circumstances

1. A travel allowance and lump sum payment in accordance with the existing Legal Aid NSW travel entitlements for practitioners in State Criminal Law matters will be available to eligible practitioners providing assistance at remote court locations including Bourke, Brewarrina, Cobar, Coonabarabran, Coonamble, Lightning Ridge, Nyngan, Walgett, and Warren.

No travel or lump sum payment is available to BUDS practitioners at other BUDS locations.

2. At Bourke, Brewarrina, Cobar, Coonabarabran, Coonamble, Lightning Ridge, Nyngan or Walgett, a travel allowance may be available where the total return distance travelled from the practitioner's principal place of practice to the court location exceeds 70 kilometres. Prior approval from the Legal Aid NSW office arranging the BUDS assistance is required.
3. Where required, expenses for accommodation and sustenance will be approved and paid at the maximum rates determined by the Department of Premier and Cabinet of the NSW Government in accordance with comparable public sector award rates based on the reasonable benefit limits set by the Australian Tax Office (as updated annually).
4. If the BUDS practitioner is already attending court on behalf of a private client or will be assisting a client pursuant to a grant of aid inclusive of travel for the BUDS attendance date, travel will not be approved.
5. Any request for travel outside these guidelines must be approved by the Legal Aid NSW Executive Director Criminal Law.

## Allocation of work

6. Legal Aid NSW In-house solicitors undertake the majority of the duty and casework matters at the Local Courts covered by the BUDS. The amount of legal aid duty back-up and urgent case work which is available for private practitioners is limited and is dependent upon the capacity of the in-house solicitors to meet the demand for legal aid services. This capacity can vary over time, and from court to court.

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7. Appointment to the BUDS does not confer an entitlement to work. Legal Aid NSW is, however, committed to ensuring a fair and reasonable distribution of work amongst practitioners appointed to the BUDS in each area.

BUDS offers of work are to be made through the Back Up Duty Allocation System (BUDSAS) to ensure fair and reasonable distribution of work amongst practitioners. BUDS Practitioners must accept work through a work offer from BUDSAS either by SMS or email.

8. It is the responsibility of the Solicitor in Charge or Senior Criminal Law Solicitor at each regional office or criminal law section to ensure the fair and reasonable distribution of work allocated under the BUDS.
9. If a practitioner has other commitments which may impact their availability to perform a full day of duty back-up work, they need to contact the senior in-house solicitor at the location the work is offered to advise before accepting the offer.
10. A practitioner cannot claim imbursement for the time spent on other commitments or private clients during BUDS work.

## **Role of the BUDS Practitioner**

11. When required to perform duty back-up work, a practitioner must arrive at court between 8:30am-9.00am, or as otherwise directed by the relevant local Legal Aid NSW office.
12. The BUDS practitioner must attend court as arranged with Legal Aid NSW. If unable to do so, a practitioner must advise the office of Legal Aid NSW which services the court at which the work was to be performed as soon as possible.
13. BUDS work cannot in any event be delegated to a practitioner who is not themselves a BUDS practitioner.
14. The BUDS practitioner should report to an in-house solicitor upon arrival at Court unless alternative arrangements have been made with the relevant Legal Aid NSW office prior to the duty shift. If tasks/files have been allocated to the BUDS practitioner ahead of time and there are no in-house Legal Aid NSW solicitors at court, the BUDS practitioner should contact the local Legal Aid NSW office on the morning of their duty shift to find out if there are any additional work items to attend to.
15. In-house solicitor(s) are responsible for coordinating the allocation of tasks and files and are required to direct the BUDS practitioners accordingly. The BUDS practitioner should advise the solicitor(s) at court (or the local Legal Aid NSW office, as relevant) as soon as practicable after reporting for duty. The BUDS practitioner should also advise the in-house solicitor(s) if they require breaks from duty outside of the regular morning tea and lunch breaks.

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16. The BUDS practitioner must undertake legal aid work in an effective and efficient manner bearing in mind the high volume demands of duty work, while ensuring all clients are represented to a high professional and ethical standard.
17. Fresh custody matters must be prioritised and have their case heard as early in the day as possible.
18. In first contact duty matters the BUDS practitioner must ensure that a [Criminal Law Duty form](#) is completed and signed by the client. All fields on the duty form must be completed, regardless of whether the client is in custody or at liberty. Where a client is in custody, it is not essential that the client sign the duty form, instead the BUDS practitioner should note in the signature box that the client is in custody.

## Who must the BUDS Practitioner appear for?

19. Unless otherwise directed by the in-house practice, the BUDS practitioner must represent clients who qualify for legal aid in the following matters:
  - Pleas of guilty and sentence matters in summary State and Commonwealth charge matters and indictable charge matters which may be dealt with summarily
  - Release (bail) applications, bail variations, detention applications and breach of bail proceedings (noting that the Means Test does not apply to first bail applications)
  - Mentions and adjournments
  - Applications under section 14 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) (or s20BQ Commonwealth applications)
  - Forensic Procedure Applications for eligible defendants: see [4.3.8], [4.3. Local Court criminal law matters - Legal Aid NSW](#))
  - Filing and proceeding with section 4 Annulment applications
  - Apprehended Domestic Violence Orders for eligible defendants: see [4.4. Apprehended Domestic Violence Orders - Legal Aid NSW](#)

### Section 14 Applications (formerly section 32s)

20. The BUDS practitioner should not adjourn a matter for the purposes of a section 14 application, unless:
  - The accused person is eligible for a grant of aid,
  - Arrangements are in place to obtain reports in support of the proposed application, and
  - The file is clearly marked with what those arrangements are
21. If the proposed arrangements for obtaining reports in support of a s14 will require expenditure, the matter should not be adjourned for this purpose without approval of the senior in-house solicitor present at the time. If no in-house solicitor is available or it is impractical to obtain their approval before adjourning the matter, the BUDS practitioner in seeking the adjournment for a s14 application should advise the court that the undertaking of an assessment and report on the client is subject to a grant of aid for this purpose.

### Setting down Defended Hearings

22. When the BUDS practitioner is asked to fix a date for a defended summary hearing, or any other matter which requires expenditure, the BUDS practitioner must be satisfied that the client either:
- has a grant of legal aid for that specific matter, or
  - is eligible to be granted legal aid and has provided the required verification documents
23. If the BUDS practitioner is not satisfied that the client has a grant, or is eligible to be granted legal aid, the BUDS practitioner must:
- For non-Domestic Violence proceedings:  
Obtain instructions from the client to adjourn the proceedings so as to allow the client to provide verification documents, or
  - in Domestic Violence proceedings, or where an adjournment is not sought or is refused:
    - advise the court that:
    - the BUDS practitioner is appearing on a duty basis,
    - legal aid has not yet been granted to the client for the defended hearing/s.14 application etc,
    - representation on the hearing date is subject to the client being granted legal aid or arranging their own legal representation
    - If there is no grant of legal aid, or they do not to make their own arrangements the defendant will be unrepresented, and
    - Any outstanding brief items are to be served on the defendant

### Section 4 Annulment applications

24. Where the BUDS practitioner is instructed to file a section 4 annulment application, the BUDS practitioner should file the application with the court during the course of the duty day where reasonably practicable to do so.

### Duty as if to private client

25. A BUDS practitioner has the same duties towards the Legal Aid NSW client as would apply to a private client under the normal practitioner-client relationship.
26. If the BUDS practitioner believes they are unable to act for the client for ethical reasons, the BUDS practitioner should refer the client to another practitioner performing duty work at the court on the day. If not practical, seek instructions from your client in relation to an adjournment.
27. In all matters, the BUDS practitioner must make detailed and legible notes recording the advice given and instructions received. When a plea of guilty is to be entered, the BUDS

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practitioner should obtain signed instructions from their client if it is practicable to do so. The outcome of the court proceedings must be recorded on the file cover, duty form or in accordance with the practices of the office where you are performing duty that day.

28. Selected Legal Aid NSW criminal law practices have adopted a digital practice model where traditional paper files are not used, and documents/files are stored and shared electronically. If you are conducting duty back-up at one of these locations, you will be provided with further information about how you can access papers/files and how papers/files and court outcomes are communicated back to the Legal Aid NSW office.

## Defended hearings and Early Appropriate Guilty Pleas (EAGP) matters

29. The BUDS practitioner performing back-up duty work should not ordinarily appear in the following:
- defended hearings without a grant of legal aid.
  - EAGP proceedings, except first appearance bails or, if engaged as agent on behalf of Legal Aid NSW in-house solicitor or as otherwise directed by the in-house practice.

## Verification of means

30. If applicable, the BUDS practitioner should sight any verification documents the client has in their possession. These may include a Centrelink Pensioner Concession card, a Centrelink Statement of Benefit, a payslip and bank statements. The documents should be retained on file or copied if possible. If unable to be retained or copied, details of the documents sighted should be recorded on the Application form.
31. If the client is on Centrelink, the BUDS practitioner should ensure that the Centrelink Consent on the duty form has been signed.
32. The BUDS practitioner has the delegation to waive the requirement for verification for duty matters in special circumstances [7.11.5 Discretion to waive verification](#). This delegation does not extend to verification for a grant of aid.
33. Where practicable, the BUDS practitioner should return all files, duty forms and applications for legal aid resulting from duty back-up work to the Legal Aid NSW office servicing the court at which the work was performed at the end of the duty day. Where not practicable, the material should be returned within three (3) days. The BUDS practitioners must liaise with local Legal Aid NSW offices to clarify local arrangements for forwarding documents.
34. All applications, regardless of whether the matter was adjourned or completed on the day, should be returned to Legal Aid NSW. The BUDS practitioner will not be authorised to retain any matter resulting from a duty back-up appearance.

- 35. Duty tax invoices must be submitted through Grants Online as soon as possible after the performance of duty back-up work to allow for prompt payment.
- 36. When requested to appear in an urgent case work matter (eg a defended hearing) the BUDS practitioner should only accept the assignment of work if they believe that they have adequate time to prepare the matter before the next court date.

### Removal or suspension from the BUDS

- 37. Legal Aid NSW’s Criminal Law Executive monitors the quality of legal aid work undertaken by BUDS practitioners and handles complaints against them.
- 38. Complaints or suspected breach of these Guidelines will be investigated by the Crime Executive and may result in removal or suspension of the practitioner from the BUDS.
- 39. A practitioner will be removed from the Back Up Duty Scheme by the Executive Director Criminal Law or their delegate in the following circumstances:
  - after a Review of Appointments is conducted and a determination is made not to re-appoint a practitioner
  - at the practitioner's request
  - if the practitioner becomes ineligible to undertake legal aid work on the Summary Crime Panel.
  - for a breach of the BUDS Guidelines, Legal Aid NSW Service Agreement or Quality Standards.
- 40. Prior to removal from the Back Up Duty Scheme for breach of the BUDS Guidelines, Legal Aid NSW Service Agreement and/or Quality Standards, the practitioner will be advised of the intention to remove and the reason for removal and will be given an opportunity to address the issues raised.
- 41. Breaches of the Legal Aid NSW Service Agreement and/or Quality Standards may also be referred to the Private Lawyer Quality Standards Unit (PLQS) for investigation in accordance with Clause 11 of the Service Agreement.

### Temporary Deactivation

- 42. If a practitioner has been offered but has not accepted Back Up Duty work for over 6 months, their membership may be temporarily deactivated until they advise Legal Aid NSW that they are available to accept duty work again.

## Definitions

### Assignment

The process of allocating a grant of legal aid for the provision of legal services to a legal practitioner who is not employed by Legal Aid NSW or to a private law firm, or another organisation external to Legal Aid NSW (such as a Community Legal Centre). The grant of legal aid is “assigned” to the private legal practitioner, law firm or other organisation. Legal Aid NSW has power to assign legal work is under s12 of the Legal Aid Commission Act 1979 (NSW).

### Duty Work

Duty work does NOT include EAGP matters, appearing in defended hearings or in matters requiring expenditure.

### Grant of Legal Aid

Grant of aid means the funding of legal services by Legal Aid NSW.

**Law Practice** is defined by the Act and means:

- a sole practitioner (including a barrister)
- a law firm
- an incorporated legal practice
- an unincorporated legal practice.

### Special Circumstances

Special circumstances for the purpose of waiver of verification of means in duty matters may include, but are not limited to, where the applicant is in custody and has a District Court appeal or Supreme Court bail application.

### Verification

Legal Aid NSW requires that clients verify their means (both income and assets) as disclosed in the legal aid application.