

Guidelines for Back Up Duty Scheme for Courts serviced by a Legal Aid NSW office

These Guidelines outline the Back Up Duty Scheme relating to the involvement of private practitioners in Local Court criminal duty back-up and urgent case work in courts serviced by a Legal Aid NSW office.

Salaried solicitors of Legal Aid NSW undertake the majority of duty and case matters at the Local Courts covered by the Back Up Duty Scheme.

Practitioners appointed to the Back Up Duty Scheme are eligible to be allocated duty back-up work in circumstances where salaried solicitors of Legal Aid NSW are unable to meet the demand for services at a Local Court covered by the Back Up Duty Scheme. Practitioners allocated duty back-up work appear for clients on behalf of Legal Aid NSW on their first appearance and for pleas of guilty, mentions, adjournments, Section 32 applications and bail applications (subject to a Means Test when applicable).

Practitioners appointed to the Back Up Duty Scheme are also eligible to be allocated urgent case work including defended hearings and other matters requiring expenditure at Local Courts covered by the Back Up Duty Scheme.

Courts covered by the Back Up Duty Scheme

Sydney Central – to be allocated work from Central, Downing Centre, Newtown, Waverley, Burwood, and Manly Local Courts

Sydney West – to be allocated work from Parramatta, Blacktown, Penrith and Mt Druitt Local Courts

Sydney South and South-West – to be allocated work from Bankstown, Fairfield, Liverpool, Campbelltown and Sutherland Local Courts

Nowra – to be allocated work from Nowra Local Court and Nowra District Court

Port Macquarie – to be allocated work from Port Macquarie Local Court and Port Macquarie District Court

Kempsey – to be allocated work from Kempsey Local Court

Wauchope – to be allocated work from Wauchope Local Court

Taree – to be allocated work from Taree Local Court and Taree District Court

Coffs Harbour – to be allocated work from Coffs Harbour, Macksville and Bellingen Local and Children's Courts and Coffs Harbour District Court

Dubbo – to be allocated work from Dubbo, Wellington, Gilgandra, Narromine and Peak Hill Local and Children's Courts and Dubbo District Court

Warren – to be allocated work from Warren Local and Children's Courts

Mudgee – to be allocated work from Mudgee Local and Children's Courts

Coonabarabran – to be allocated work from Coonabarabran Local and Children's Courts

Gosford – to be allocated work from Gosford, Wyong and Woy Woy Local Courts and Gosford District Court

Lismore – to be allocated work from Lismore, Casino and Kyogle Local and Children's Courts and Lismore District Court

Ballina – to be allocated work from Ballina and Byron Bay Local and Children's Courts

Newcastle – to be allocated work from Newcastle, Belmont and Toronto Local Courts and Newcastle District Court

Orange – to be allocated work from Orange and Blayney Local and Children's Courts and Orange District Court

Bathurst – to be allocated work from Bathurst Local, Children's and District Courts

Parkes – to be allocated work from Parkes and Forbes Local and Children's Courts and Parkes District Court

Tamworth – to be allocated work from Tamworth and Quirindi Local and Children's Courts and Tamworth District Court

Wagga Wagga – to be allocated work from Wagga Wagga Local, Children's and District Courts

Albury – to be allocated work from Albury Local, Children's and District Courts

Wollongong – to be allocated work from Wollongong, Albion Park and Port Kembla Local Courts and Wollongong District Court

Practitioners will be required to nominate the area(s) in which they would be prepared to be allocated duty back-up and urgent case work and must be able to satisfy Legal Aid NSW that they can provide a responsive service to the courts in the nominated area(s). Practitioners will be expected to accept work at all Local Courts in the area to which they are appointed.

Practitioners may nominate a maximum of 3 regions from Sydney Central, Sydney West, Sydney South and Southwest, Gosford and Wollongong. Subject to meeting the criteria, there is no restriction on the number of regional areas for which practitioners may apply.

Initial Appointment to the Back Up Duty Scheme

Practitioners will be appointed to the Back Up Duty Scheme by the Legal Aid NSW Director Criminal Law or his delegate.

Practitioners wishing to be considered for appointment under the Back Up Duty Scheme may submit an Expression of Interest when called for by Legal Aid NSW. To be eligible for appointment under the Back Up Duty Scheme, practitioners must be appointed to the Legal Aid NSW General Crime Panel and satisfy certain other selection criteria nominated by Legal Aid NSW and set out below.

Expressions of Interest will be considered by a Selection Committee consisting of a nominee of the Legal Aid NSW Director Criminal Law, a nominee of the Legal Aid NSW Director Grants, a nominee of the Law Society of NSW and a nominee of the NSW Bar Association. The Selection Committee will make recommendations to the Director Criminal Law or his delegate.

The Selection Committee will meet as required to consider Expressions of Interest.

Practitioners who are assessed as most suitably qualified for appointment will be appointed to the Back Up Duty Scheme in one, or more than one, area. The appointment of practitioners to the Back Up Duty Scheme, and to a particular area or areas, will be dependent upon the number of suitably qualified practitioners seeking appointment and the demand for the provision of duty back-up and urgent case work in each area, as determined by Legal Aid NSW. The number of practitioners appointed to each area will be limited and will be determined by Legal Aid NSW.

An individual practitioner, rather than a firm of practitioners, will be appointed to the Back Up Duty Scheme. Only those individual practitioners appointed will be eligible to perform work allocated under the Back Up Duty Scheme.

Duration of Appointment

Practitioners will be appointed under the Back Up Duty Scheme until the next Review of Appointments is conducted, or earlier if the practitioner is removed from the Scheme.

Review of Appointments to the Back Up Duty Scheme

A Review of Appointments to the Back Up Duty Scheme will be conducted every 12 months or as deemed appropriate by Legal Aid NSW. The Review will be conducted by a Selection Committee consisting of a nominee of the Legal Aid NSW Director Criminal Law, a nominee of the Legal Aid NSW Director Grants, a nominee of the Law Society of NSW and a nominee of the NSW Bar Association. The Selection Committee will make recommendations to the Director Criminal Law or his delegate.

Prior to any Review of Appointments being conducted, Legal Aid NSW may call for new Expressions of Interest from practitioners on the NSW Legal Aid General Crime Panel who wish to be considered for appointment to the Back Up Duty Scheme.

After consideration of the recommendations of the Selection Committee, the Director Criminal Law or his delegate may:

1. Determine to re-appoint a practitioner to the Back Up Duty Scheme in one or more of the areas
2. Determine not to re-appoint a practitioner previously appointed to the Back Up Duty Scheme in one or more of the areas
3. Determine to appoint a practitioner to the Back Up Duty Scheme who has not previously been appointed in one or more of the areas.

In making recommendations to the Director Criminal Law or his delegate, the Selection Committee may consider the following:

1. The need to increase or decrease the number of practitioners appointed to a particular area in response to the business needs of Legal Aid NSW
2. The practitioner's ability to meet or continue to meet the selection criteria for appointment or re-appointment to the Back Up Duty Scheme
3. Any non-compliance with or breach of the Service Agreement, Back Up Duty Scheme Guidelines or Legal Aid NSW General Criminal Law Standards by the practitioner.

In considering the re-appointment of a practitioner, the Selection Committee may request, and take into account, any information or opinion provided by a Solicitor in Charge/Senior Criminal Solicitor at a Legal Aid NSW office at which the practitioner has been allocated work under the Back Up Duty Scheme, relating to the practitioner's ability to continue to meet the selection criteria for re-appointment or any alleged non-compliance with or breach of the Service Agreement, Back Up Duty Scheme Guidelines or Legal Aid NSW General Criminal Law Standards by the practitioner.

Where the Director Criminal Law or his delegate is intending to make a determination that a practitioner not be re-appointed to the Back Up Duty Scheme as a result of an alleged inability to continue to meet the selection criteria or an alleged non-compliance with or breach of the Service Agreement, Back Up Duty Scheme Guidelines or Legal Aid NSW General Criminal Law Standards, the practitioner will be advised of the intention not to re-appoint and the reasons for this determination and will be given an opportunity to address the issues raised.

Removal from the Back Up Duty Scheme

A practitioner will be removed from the Back Up Duty Scheme by the Director Criminal Law or his delegate in the following circumstances:

1. after a Review of Appointments is conducted and a determination is made not to re-appoint a practitioner
2. at the practitioner's request
3. for breach of the Service Agreement, Back Up Duty Scheme Guidelines or Legal Aid NSW General Criminal Law Practice Standards.

Prior to removal from the Back Up Duty Scheme for breach of the Service Agreement, Back Up Duty Scheme Guidelines or Legal Aid NSW General Criminal Law Practice 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.

Selection Criteria

Practitioners who wish to be considered for appointment to the Back Up Duty Scheme are invited to submit an Expression of Interest.

Preference will be given to Practitioners who satisfy all of the selection criteria. However, in areas where there are insufficient numbers of practitioners who meet this criteria, Expressions of Interest from practitioners who do not fully meet the criteria may be considered.

Practitioners who do not fully meet the criteria may be appointed in these circumstances if the Selection Committee is satisfied that, given their level of experience and knowledge, they will be able to competently perform the work allocated through the Back Up Duty Scheme. Conditions of supervision may be imposed in these circumstances.

The following selection criteria will be considered in determining appointments and re-appointments to the Back Up Duty Scheme.

- Member of the Legal Aid NSW General Crime Panel
- Five years post-admission experience and devotion of not less than 50% of normal full-time practice to the area of criminal law in each year of the past three year period
- Extensive knowledge of criminal law (max. 500 words)
- Experience or capacity to conduct criminal duty list work in the Local Court (max. 300 words)
- Demonstrated experience representing legal aid clients in Courts (max. 300 words)
- Proven experience to provide quality advice and representation in a high volume work environment (max. 300 words)
- Nominate the area(s) in which the practitioner would be willing to perform duty back-up and urgent case work. (If practitioners wish to nominate more than one area they should list the areas in order of preference for appointment). Practitioners

may nominate a maximum of 3 regions from Sydney Central, Sydney West, Sydney South and Southwest, Gosford and Wollongong. Subject to meeting the criteria, there is no restriction on the number of regional areas for which Practitioners may apply.

- Ability to provide a responsive service to the needs of Legal Aid NSW and its clients within the area(s) to which appointment is sought. In order to satisfy this requirement it would generally be expected that the principal place of business of the practitioner would be located within or in close proximity to the relevant area. However, it is acknowledged that practitioners outside the relevant area that can attend court locations and take instructions from clients at an accessible location may also have the ability to provide a responsive service (max. 300 words)
- Ability to identify and address the legal issues faced by people:
 - a) with mental illness and/or disabilities
 - b) who are socially and economically disadvantaged
 - c) from wide-ranging culturally diverse backgrounds (max. 300 words)
- Excellent interpersonal skills, including the ability to understand and effectively communicate with people from a wide range of backgrounds including clients and other professionals (max. 300 words)
- Excellent written communication skills, including the ability to prepare court documents, correspondence, submissions and other written materials (max. 300 words)
- Excellent file management skills, including making file notes, accurate recording of client instructions and recording court outcomes (max. 300 words)
- Knowledge of Legal Aid NSW policies and procedures to determine applications of legal aid on a duty basis and advise clients about eligibility; or the capacity to rapidly acquire such knowledge (max. 300 words)
- Willingness and ability to comply with Legal Aid NSW policies, guidelines, reporting and administrative requirements (max. 300 words)
- Willingness to attend training courses for Back Up Duty Lawyers, as required by Legal Aid NSW.
- Practitioners should also provide the name and contact details (including telephone number and email address) of **two referees** who can attest to the practitioner's demonstrated ability to meet the above selection criteria. The comments and opinions of referees will be taken into account in the assessment of the Expression of Interest.

Nominated referees should be independent. They should not be employed by or have a commercial interest in the firm where the practitioner is currently employed.

Judicial officers should not be given as referees.

Referees may be asked to provide information about their direct knowledge of a practitioner's skills and experience and their opinion on whether or not the practitioner is a suitable person for appointment to the Back Up Duty Scheme and the reasons for their opinion. They may also be asked to give their opinion about the extent to which the practitioner meets the selection criteria.

Travel

Travel will not be paid to practitioners attending court to perform work allocated under the Back Up Duty Scheme.

Allocation of work

Salaried solicitors of Legal Aid NSW undertake the majority of the duty and case matters at the Local Courts covered by the Back Up Duty Scheme. 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 salaried solicitors to meet the demand for legal aid services. This capacity can vary over time, and from court to court.

Appointment to the Back Up Duty Scheme 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 Back Up Duty Scheme in each area. Unless exceptional circumstances exist, offers of work will be made by Legal Aid offices in sequence to each of the practitioners appointed to the Back Up Duty Scheme in the area applicable to the court serviced by that office.

It is the responsibility of the Solicitor in Charge or Senior Criminal Solicitor at each regional office or criminal law section to ensure the fair and reasonable distribution of work allocated under the Back Up Duty Scheme.

Role of the Practitioner

1. When required to perform duty back-up work, a practitioner must arrive at court at 9 am, or at such other time as requested by Legal Aid NSW.

2. A 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.
3. A practitioner performing duty back-up work must represent all 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
 - Bail applications, bail variations and breaches of bail (NB. The Means test does not apply to defendants in custody for the first appearance in bail applications)
 - Mentions and adjournments
 - Section 32 applications.
4. A practitioner should not set a matter down for hearing unless the defendant has a grant of aid.
5. If a salaried Legal Aid NSW solicitor is available to be contacted, a practitioner performing duty back-up work should not commit Legal Aid NSW to a course which will require the expenditure of funds unless that course has been discussed with and approved by the salaried solicitor. Where it is not possible to contact a salaried solicitor, the practitioner should indicate to the court that the course proposed is subject to a grant of legal aid being approved for that purpose.
6. A practitioner performing duty back-up work who adjourns a matter for representations to be made to the police should draft the representations during the course of or at the end of the duty day and provide that draft to the relevant Legal Aid NSW office.
7. Duty as if to private client.

Although a practitioner performing duty back-up work is not acting for a defendant on a continuous basis, the practitioner has the same duties towards the defendant as would apply to a private client under the normal practitioner-client relationship.

If a practitioner believes he/she is unable to act for the defendant for ethical reasons, the practitioner should seek instructions in relation to an adjournment or refer the defendant to another practitioner performing duty work at the court on the day.

8. Defended hearings and committals

A practitioner performing duty work should not ordinarily appear in defended hearings or committal proceedings.

9. In first contact duty matters (ie. matters where a Legal Aid file does not already exist), a practitioner should ensure that each client fully completes and signs a Duty Legal Aid Application Form (where a client is in custody the practitioner should complete the Application form and note in the signature box that the client is in custody).

10. Verification

A practitioner should sight any verification documents the client has in his/her possession. These may include a Centrelink Pensioner Concession card, a Centrelink Statement of Benefit, a payslip and/or 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.

A duty practitioner has the delegation to waive the requirement for verification in special circumstances.

11. A practitioner must be familiar with, and remain up to date with Legal Aid Policies and Means Tests Guidelines and NSW General Criminal Law Practice Standards particularly in relation to duty work and file management,
12. A practitioner should return all files 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 within 3 days. All applications, regardless of whether the matter was adjourned or completed on the day, should be returned to Legal Aid NSW. A practitioner will not be authorised to retain any matter resulting from a duty back-up appearance.
13. 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.
14. When requested to appear in an urgent case work matter (eg. a defended hearing) a practitioner should only accept the assignment of work if he/she believes that he/she has adequate time to prepare the matter before the next court date.
15. A practitioner must comply with the Terms and Conditions for Use of Grants Online (as amended), which can be located on the Legal Aid NSW website.

16. A practitioner is obliged to abide by professional standards of conduct, including behaving with courtesy and respect in their dealings with staff of Legal Aid NSW, clients, the courts, and other members of the legal profession.