

## Legal Aid Duty Solicitor Scheme - Tip Sheet

### Usage of Legal Aid Duty Forms

The use of Legal Aid duty forms is mandatory for every appearance with a legally aided client (who does not already have a grant of Legal Aid). Retain the form for audit purposes. This form must be used for any advice, minor assistance or duty appearance - not just those who are eligible for aid.

#### Completing the client's personal information is important

- All client information must be completed in both Columns.
- On the left hand side, include the applicant's full name, aliases, DOB, address, custody location, mobile and other phone numbers.
- ATS I status
- Employment details
- If they receive a Centrelink Benefit, tick Yes, sight card, and write down the CRN number and identify the type of benefit.
- Where possible get them to agree to have their benefit checked and sign the declaration on the inside of the form.
- Ensure everything written on the form is **legible**. The information provided is only useful if other people can read it.

The image shows the 'Application for legal aid' form. It is divided into two columns. The left column contains sections for: 1. Name, 2. Age and gender, 3. Address, 4. Custody, 5. Phone, 6. Background, 7. Are you employed?, 8. Centrelink, and 9. Living arrangements. The right column contains sections for: 10. Dependents, 11. Do you pay child support?, 12. Income, 13. Housing and expenses, 14. Assets, and 15. How did you find out about Legal Aid? At the bottom, there is a 'Your declaration' section.

The image shows the back of the legal aid form. On the left, there is a 'Centrelink Consent' section with a checkbox and explanatory text. On the right, there is a 'For official use only - Solicitor' section with a heading and several lines of text for recording legal advice, including 'Facts read to client', 'Client agrees that he hit the', 'Explained to client Max Pen', 'Explained to client 25% di', and 'Discussed likely penalty. Y would get a good behavio'.

#### Use the inside of the form to record your legal advice

Document the confidential information your client provides you here.

Have the client sign the Centrelink Consent if applicable.

The form suggests that on the left, you document the background and subjectives of their client. On the right, you document their instructions and legal advice provided. How you use the inside of the form is a matter for you.

If you provide the client with any advice on a particular plea, a discount for pleading guilty, the maximum penalty etc, this should be recorded

#### On the back of the form, record what actually occurred in court.

In matter group, tick one or more boxes for the type of charge it is.

In Charges/Matter types, write the short name of the charge, and the H number. **Only write in a plea if you have entered a plea in court.**

**Do not write what the client thinks s/he wants to plead (that's what the inside of the form is for).**

Tick the court type, court Location (Port Macquarie for example), Bench (which Magistrate/Judge), and name of prosecutor.

The image shows the back of the legal aid form, titled 'Solicitor to complete all information'. It includes sections for: 'Matter group' (with checkboxes for various offense types), 'Charges/matter types' (with columns for name, H number, and plea), 'Names of any co-accused', 'Court type' (with checkboxes for Local, CC, Drug, District, Supreme), 'Location', 'Bench', 'DPP/Prosecutor', 'Solicitor/defendant', and 'Privacy' (with a small text box explaining data collection). There is also a 'Listing' section with a date field and checkboxes for 'Appeal', 'Bail', 'Committal', 'Hearing', 'Mention', 'Reply to brief', and 'Other procedures'. Below that is a 'Results' section with a large text area. Further down are sections for 'Next listing', 'Service provided' (with checkboxes for Advice, Minor assistance, Duty allowed, etc.), 'Solicitor's name', 'Legal Aid office/Firm name and address', 'Signed by solicitor', and 'Client referred to'. At the bottom, there is an 'AUDIT' section with a note: 'This fully completed form must be retained for Legal Aid NSW audit purposes.' and the date 'MAY 2014'.

Under listing, you write the date you appeared at court. You then tick what the matter was listed for.

Under "Results" you write what occurred in court. If the matter was a plea of not guilty and brief orders occurred, you might write this. If you did not appear, write that instead.

Document the client's eligibility – it will almost always be:

- DUTY ALLOWED (if you appeared) Or
- DUTY REFUSED MEANS (they earn too much/have too many assets) Or
- DUTY REFUSED GUIDELINES (it's a type of matter we won't do)
- Be sure to write your name.

## **Duty Solicitor Scheme Fundamentals**

### **Attendance at court**

The rostered practitioner must be at court on a list day by 8:30AM. On non-list days (whether during the week or weekend) you must attend at an appropriate time to see all of the custodies by the time that court commences. Legal Aid estimates 30 minutes per person in custody, for the taking of instructions.

### **What duty solicitors cannot do**

Duty solicitors must not appear in defended hearings, committal proceedings or in matters which require any disbursement such as an expert report. Once the duty solicitor has satisfied themselves that the matter is either a defended hearing, a committal or requires any disbursement, the duty solicitor must submit an application for legal aid via Grants Online. A duty solicitor cannot provide advice in defended hearing matters to unrepresented litigants.

### **Auditing Processes**

Solicitors on the Legal Aid duty scheme are subject to spot-audit checks to ensure that they are complying with the Legal Aid Duty Scheme Guidelines. Solicitors who claim for duty work are required to keep documentation (see over) to demonstrate to Legal Aid NSW the clients that they have seen and the advice provided.

### **Financial Verification**

Legal Aid clients, even on a duty basis, are required to satisfy the duty solicitor that they fall within the Legal Aid NSW Means Test. This should be done by completing full financial information on the front of the Legal Aid form, and citing Centrelink/income verification where possible. Further information about the Means Test can be found online at:

<http://www.legalaid.nsw.gov.au/for-lawyers/policyonline/policies/7.-means-test>

For the Means Test threshold income rates please see the table below:

<b>Threshold</b>	<b>Rate</b>
Net assessable income - upper threshold	\$400
Housing costs - metropolitan	\$455
- nonmetropolitan	\$320
Financially Associated Person allowance	\$200
Dependant allowance (per dependant)	\$120
Child Support (maximum per child)	\$120
Childcare costs	\$325

### **Dispute Resolution**

In the event of a dispute the solicitor and the Regional President shall attempt to settle the dispute. If the Regional President requires guidance, he or she may request advice from Legal Aid NSW. If the dispute is not settled by the parties the Regional President shall submit the dispute to the President and/or CEO of the Law Society of NSW. The President and/or CEO of the Law Society of NSW will notify the CEO of Legal Aid NSW and together they will determine a resolution. Legal Aid NSW regional offices do not play any role in dispute resolution.

### **Submitting claims**

Claims should be submitted as soon as possible after the duty appearance has occurred. It is important that the information in the claim (especially the date) is double checked by the practitioner before submitting the claim. A tip-sheet to assist on submitting claims can be found on the Duty Scheme web page at: <http://www.legalaid.nsw.gov.au/for-lawyers/duty-lawyers-information>

### **Submitting grants for hearing**

It is the obligation of the duty practitioner to put on an application for a grant of aid, if one is required (for example, if a matter is set down for defended hearing, or expenditure is required).

### **Contributions on Grants of Aid**

Please remember Legal Aid is not free. While the duty scheme does not attract a contribution, once a grant of aid is approved the client is liable for payment of their assessed contribution.

**For queries about the Duty Scheme Guidelines please contact the Duty Solicitor Scheme Coordinator on (02) 92195122 or [dutyscheme@legalaid.nsw.gov.au](mailto:dutyscheme@legalaid.nsw.gov.au).**