

Guidelines for the Back Up Duty Scheme

Back Up Duty Scheme practitioners should have regard for the Summary Criminal Law Panel Practice Standards and the Summary Criminal Law Panel Service Agreement when providing duty or casework assistance on behalf of Legal Aid NSW.

Travel

1. Travel will not be paid to practitioners attending court to perform work allocated under the Back Up Duty Scheme, except to eligible practitioners providing a Back Up Duty Scheme service remote court locations at Bourke, Brewarrina, Cobar, Coonabarabran, Coonamble, Lightning Ridge, Nyngan, Walgett, or Warren.

Travel permitted only at remote courts under limited circumstances

2. 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 Back Up Duty Scheme practitioners at other Back Up Duty Scheme locations.

3. 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 Back Up Duty Scheme assistance is required.
4. 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).
5. If the Back Up Duty Scheme 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 Back Up Duty Scheme attendance date, travel will not be approved.

Allocation of work

6. 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.

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7. 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.
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 Back Up Duty Scheme.

Role of the Practitioner

9. When required to perform duty back-up work, a practitioner must arrive at court at 9:00am, or at such other time as requested by Legal Aid NSW.
10. 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.
11. 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 (noting that the Means Test does not apply to first bail applications)
 - Mentions and adjournments
 - Section 32 applications.
12. A practitioner should not set a matter down for hearing unless the defendant has a grant of aid.
13. 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.
14. A practitioner performing duty back-up work who adjourns a matter for representations to be made to the police must 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.

Duty as if to private client

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15. 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.
16. If a practitioner believes they are 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.
17. 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 Criminal Law Duty and Advice form. Where a client is in custody, the practitioner should complete the form and note in the signature box that the client is in custody.
18. A practitioner should make notes on the duty form, or existing file for the client, providing details of the advice given and outcome of the attendance.

Defended hearings and committals

19. A practitioner performing back-up duty work should not ordinarily appear in defended hearings or committal proceedings, though a practitioner may appear in committal proceedings when engaged as agent on behalf of Legal Aid NSW in-house practitioners.

Verification

20. A 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.
21. A duty practitioner has the delegation to waive the requirement for verification in special circumstances.
22. A practitioner must be familiar with, and remain up to date with Legal Aid NSW policy and guidelines and relevant panel Practice Standards, particularly in relation to duty work and file management.
23. A 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 within three (3) days. Documents may be provided to the relevant Legal Aid NSW office in softcopy or hardcopy. Practitioners must liaise with local Legal Aid NSW offices to clarify local arrangements for forwarding documents.

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.

- 24.** 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.
- 25.** When requested to appear in an urgent case work matter (eg a defended hearing) a 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.
- 26.** A practitioner must comply with the Terms and Conditions for Use of Grants Online available on the Legal Aid NSW website.
- 27.** 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.