

Back Up Duty Scheme

Information for Applicants and Guidelines

Index

Introduction to the Back Up Duty Scheme	2
How to apply: new applicants	3
Information for current appointees.....	3
Sydney metropolitan Back Up Duty Scheme regions: Review of Appointments	3
Non-Sydney metropolitan Back Up Duty Scheme regions: No Review of Appointments	3
Privacy	4
Enquiries.....	4
Back Up Duty Scheme regions and included courts	4
Current Back Up Duty Scheme Locations.....	5
Initial Appointment to the Back Up Duty Scheme	6
Duration of Appointment.....	6
Review of Appointments to the Back Up Duty Scheme.....	6
Removal from the Back Up Duty Scheme	7
Selection Criteria	9
Guidelines for the Back Up Duty Scheme	11
Travel.....	11
Allocation of work	11
Role of the Practitioner	12

This Information Package outlines the Back Up Duty Scheme relating to the involvement of private practitioners in criminal duty back-up and urgent casework in courts serviced by a Legal Aid NSW office, including the Local Court, Children’s Court and District Court.

Introduction to the Back Up Duty Scheme

The Back Up Duty Scheme operates at courts serviced by Legal Aid NSW to supplement in-house Legal Aid NSW solicitors when they are unavailable. Practitioners are appointed to the Back Up Duty Scheme regions through an expression of interest process.

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 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 Legal Aid NSW policy and guidelines.

Practitioners appointed to the Back Up Duty Scheme are also eligible to be allocated urgent casework including defended hearings and other matters requiring expenditure. In some locations, this includes District Court appeals where assistance is provided on a duty basis.

How to apply: new applicants

Expressions of interest addressing the selection criteria must be emailed to backupduty@legalaid.nsw.gov.au by **Friday 22 February 2019**.

When completing an expression of interest a practitioner should:

- Address all selection criteria and supply all other relevant information as required to demonstrate that the criteria are met; and
- Provide the name and contact details of two referees.

Information for current appointees

Sydney metropolitan Back Up Duty Scheme regions: Review of Appointments

A Review of Appointments to the Back Up Duty Scheme in the Sydney metropolitan region will coincide with the call for fresh expressions of interest.

Practitioners will receive the Review of Appointments form shortly and must return it by backupduty@legalaid.nsw.gov.au by Friday 22 February 2019.

Practitioners currently appointed to Back Up Duty Scheme regions within the Sydney metropolitan area will be forwarded a Review of Appointments form shortly which must be completed and returned for consideration by the selection committee.

Practitioners who seek to add or change the region/s of their Back Up Duty Scheme appointment within the Sydney metropolitan area must submit a fresh expression of interest in relation to the new or changed Back Up Duty Scheme region/s at which they seek to be appointed.

The Sydney metropolitan Back Up Duty Scheme regions are **Central Sydney, Sydney West and Sydney South and South West**. A breakdown of which courts are covered by each Back Up Duty Scheme region is included on page five of this document.

Non-Sydney metropolitan Back Up Duty Scheme regions: No Review of Appointments

There will be no Review of Appointments for Back Up Duty Scheme practitioners appointed to regions outside of the Sydney metropolitan area at this time. Practitioners appointed to the Back Up Duty Scheme outside of the Sydney metropolitan area need not take any action at this time in relation to their appointment to the Back Up Duty Scheme.

Privacy

The information provided in an expression of interest will be used to determine initial appointments under the Back Up Duty Scheme, and may be used in considering a practitioner's re-appointment to the Back Up Duty Scheme during a Review of Appointments.

The expression of interest will be provided to the selection committee and to the Director Criminal Law or their delegate, where appropriate. It is not intended to disclose any personal information contained in expressions of interest to any other persons.

Enquiries

Enquiries relating to the lodgement of expressions of interest should be directed to: Isabelle Jones Rabbitt at backupduty@legalaid.nsw.gov.au or via phone at **(02) 9219 5638**.

Back Up Duty Scheme regions and included courts

All Back Up Duty Scheme regions and included courts are presented on the following page.

Practitioners will be required to nominate the regions in which they would be prepared to be allocated duty back-up and urgent casework 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 courts in the area to which they are appointed.

Central Sydney BUDS	Sydney West BUDS	Sydney South and South West BUDS
Burwood Local Court Central Local Court Downing Centre Local Court Manly Local Court Newtown Local Court Sydney District Court Waverley Local Court	Blacktown Local Court Mt Druitt Local Court Parramatta Local Court Parramatta District Court Penrith Local Court Penrith District Court	Bankstown Local Court Campbelltown Local Court Campbelltown District Court Fairfield Local Court Liverpool Local Court Sutherland Local Court
Albury BUDS	Ballina BUDS	Bathurst BUDS
Albury Children's Court Albury District Court Albury Local Court	Ballina Children's Court Ballina Local Court Byron Bay Local Court	Bathurst Children's Court Bathurst District Court Bathurst Local Court
Bourke and Cobar BUDS	Coffs Harbour BUDS	Coonamble and Walgett BUDS
Bourke Children's Court Bourke District Court Bourke Local Court Cobar Local Court Nyngan Local Court Warren Local Court	Bellingen Children's Court Bellingen Local Court Coffs Harbour Children's Court Coffs Harbour District Court Coffs Harbour Local Court Macksville Children's Court Macksville Local Court	Coonabarabran Local Court Coonamble District Court Coonamble Local Court Lightning Ridge Local Court Walgett Children's Court Walgett Local Court
Dubbo BUDS	Gosford BUDS	Kempsey BUDS
Dubbo Children's Court Dubbo District Court Dubbo Local Court Gilgandra Local Court Narromine Local Court Peak Hill Local Court Wellington Local Court	Gosford District Court Gosford Local Court Wyong Local Court	Kempsey Local Court
Lismore BUDS	Mudgee BUDS	Newcastle BUDS
Casino Local Court Kyogle Local Court Lismore Children's Court Lismore District Court Lismore Local Court	Mudgee Local Court	Belmont Local Court Newcastle District Court Newcastle Local Court Toronto Local Court
Nowra BUDS	Orange BUDS	Parkes BUDS
Nowra District Court Nowra Local Court	Blayney Local Court Orange Children's Court Orange District Court Orange Local Court	Forbes Local Court Parkes District Court Parkes Local Court
Port Macquarie BUDS	Tamworth BUDS	Taree BUDS
Port Macquarie District Court Port Macquarie Local Court	Quirindi Local Court Tamworth Children's Court Tamworth District Court Tamworth Local Court	Taree District Court Taree Local Court
Wagga Wagga BUDS	Wauchope BUDS	Wollongong BUDS
Wagga Wagga Children's Court Wagga Wagga District Court Wagga Wagga Local Court	Wauchope Local Court	Albion Park Local Court Port Kembla Local Court Wollongong District Court Wollongong Local Court

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 their delegate.

Practitioners who seek to be considered for appointment to 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 Summary Criminal Law 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 meet as required to consider expressions of interest. The Selection Committee will make recommendations to the Director Criminal Law or their delegate.

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

Individual practitioners, 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.

Legal Aid NSW is not bound to appoint any practitioner expressing an interest in being appointed to the Back Up Duty Scheme. All expressions of interest will be treated in confidence.

Practitioners will be advised in writing of the outcome of their expression of interest.

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 their delegate.

Back Up Duty Scheme Guidelines	Version 3.0
November 2018	6

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 Summary Criminal Law 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 their delegate may:

- Determine to re-appoint a practitioner to the Back Up Duty Scheme in one or more of the areas; or
- Determine not to re-appoint a practitioner previously appointed to the Back Up Duty Scheme in one or more of the areas; or
- 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 their delegate, the Selection Committee may consider the following:

- 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; and/or
- The practitioner's ability to meet or continue to meet the selection criteria for appointment or re-appointment to the Back Up Duty Scheme; and/or
- Any non-compliance with or breach of the Service Agreement, Back Up Duty Scheme Guidelines or Legal Aid NSW Summary Criminal Law Practice 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 Summary Criminal Law Practice Standards by the practitioner.

Where the Director Criminal Law or their 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 Summary Criminal Law Practice 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 their delegate in the following circumstances:

- After a Review of Appointments is conducted and a determination is made not to re-appoint a practitioner; or
- At the practitioner's request; or
- For breach of the Service Agreement, Back Up Duty Scheme Guidelines or Legal Aid NSW Summary Criminal Law Practice Standards.

Back Up Duty Scheme Guidelines	Version 3.0
November 2018	7

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

Back Up Duty Scheme Guidelines	Version 3.0
November 2018	8

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 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 must be addressed when expressing an interest in appointment to the Back Up Duty Scheme:

1. **Member of the Legal Aid NSW Summary Criminal Law Panel**
2. **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**
3. **Extensive knowledge of criminal law and experience or capacity to conduct criminal duty list work in the Local Court (max. 300 words)**
4. **Demonstrated experience representing legal aid clients in courts (max. 300 words)**
5. **Proven experience in the provision of quality advice and representation in a high-volume work environment (max. 300 words)**
6. **Nominate the Back Up Duty Scheme regions in which the practitioner would be willing to perform duty back-up and urgent casework**

If practitioners wish to nominate more than one area they should list the areas in order of preference for appointment

7. **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. (max. 300 words)**

In order to satisfy this requirement it would generally be expected that the principal place of practice 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.

8. **Ability to identify and address the legal issues faced by people:**
 - **with mental illness and/or disabilities**

Back Up Duty Scheme Guidelines	Version 3.0
November 2018	9

- **who are socially and economically disadvantaged**
 - **from wide-ranging culturally diverse backgrounds** (max. 300 words)
9. **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)
 10. **Excellent written communication skills, including the ability to prepare court documents, correspondence, submissions and other written materials** (max. 300 words)
 11. **Excellent file management skills, including making file notes, accurate recording of client instructions and recording court outcomes** (max. 300 words)
 12. **Knowledge of Legal Aid NSW policies and procedures to determine applications of legal aid on a duty basis, and advise clients about eligibility including the means tests and contributions policy** (max. 300 words)
 13. **Willingness and ability to comply with Legal Aid NSW policies, guidelines, reporting and administrative requirements** (max. 300 words)
 14. **Willingness to attend training as required by Legal Aid NSW**
 15. **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. Ideally, one referee should be a Legal Aid NSW Solicitor in Charge/Practice Manager at one of the office locations at which the applicant seeks to provide a Back Up Duty Scheme service**

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.

Back Up Duty Scheme Guidelines	Version 3.0
November 2018	10

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, and 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, Walgett, and Warren, 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 casework 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.

Back Up Duty Scheme Guidelines	Version 3.0
November 2018	11

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; and
 - 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 within three (3) days of the attendance.

Duty as if to private client

Back Up Duty Scheme Guidelines	Version 3.0
November 2018	12

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 of the attendance. 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.

Back Up Duty Scheme Guidelines	Version 3.0
November 2018	13

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 casework 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.