



Local Court Duty Solicitor Scheme

GUIDELINES

This information leaflet outlines the Duty Solicitor Scheme, which coordinates the involvement of private lawyers in Local Court criminal duty matters on behalf of Legal Aid NSW.

Duty solicitors service all of the Local Courts throughout New South Wales and appear for clients on their first appearance and for pleas of guilty, mentions, adjournments and bail applications (subject to the Means Test when applicable).

Duty services are also provided by salaried solicitors of Legal Aid NSW at courts close to Legal Aid NSW offices.

Role of Legal Aid NSW

Legal Aid NSW has established the following guidelines relating to the provision of the Local Court Criminal Duty Solicitor Scheme (the Scheme):

Criteria for inclusion and participation in the Duty Solicitor Scheme

1 Solicitors participating in the Scheme must:

- be appointed to the General Criminal Law Panel; and
- hold a letter of delegation from Legal Aid NSW which authorises participation on the Local Court duty roster.

2 Location of Office (Normal Place of Business)

In regional areas the solicitor's office must be located in the town or within 35 kilometres from the town where the Local Court is located, unless otherwise approved by Legal Aid NSW. The office must be staffed within normal business hours and be capable of accepting service of police briefs.

In outer metropolitan Sydney, the solicitor's normal place of business must be located in the suburb with the Local Court or in a suburb which is close to the court location.

3 Duration of Roster

The Duty Solicitor Roster will be for twelve (12) months. Except where prior arrangements are made with Legal Aid NSW, Duty Solicitors must operate on a formal roster basis and not on an "on call" basis.

4 New Arrivals

Unless agreed by the majority of solicitors on the roster a "new arrival" will not be eligible for inclusion in the current duty roster. However, they will be eligible for appointment on the new duty roster subject to these guidelines.

5 Travel

Travel will not be paid to solicitors rostered to attend court as the Duty Solicitor except:

- At courts in regions covered by the Far West Law Society, the North and North-West Law Society and the Orana Law Society. Current travel entitlements apply.
- Where Legal Aid NSW has arranged for the attendance of a duty solicitor at a Local Court in a town where there are no legal firms or local firms do not participate in the Scheme, a travel allowance is paid if the total return distance travelled from the solicitors office to court exceeds 70 kilometres and the solicitor is travelling to a court located outside the Sydney metropolitan area. Prior approval is required.

Sydney metropolitan area:

The Sydney metropolitan area includes all courts within the area bound by:

- Hornsby
- Campbelltown
- Penrith
- Sutherland

If however the Duty Solicitor is already attending court on behalf of a private client travel will not be approved.

Role of the Regional Law Society

1. The Roster Coordinator

The appointment of the Duty Solicitor Roster Coordinator (Roster Coordinator) and the term of the appointment shall be decided by the relevant Regional Law Society. The Roster Coordinator must be appointed to the General Criminal Law Panel.

2. Preparing and coordinating the duty roster

- The Roster Coordinator will call for expressions of interest for appointment to the duty roster from solicitors whose normal place of business is within the location boundary. This should be done at least two months before the end of term for the current duty roster.

- Once expressions of interest have been received the Roster Coordinator will appoint solicitors to the duty roster in accordance with the “Criteria for inclusion and participation in the Duty Solicitor Scheme” section of the guidelines ensuring the fair and reasonable distribution of work amongst solicitors appointed to the duty roster.
3. Before the new duty roster commences, the Roster Coordinator must provide a copy to the Grants Division Duty Coordinator of the Scheme (Pip Brown). Email: pip.brown@legalaid.nsw.gov.au
 4. The Roster Coordinator must also provide a copy of the duty roster to:
 - the Registrar of the Local Court to which the roster applies;
 - the police station;
 - Aboriginal Legal Service (if a service is provided in the town);
 - the Probation and Parole Service;
 - Department of Corrective Services; and
 - the Regional Law Society President.

Role of the Duty Solicitor

1. On rostered duty days the Duty Solicitor should arrive at court in sufficient time to interview clients in custody or on bail before proceedings commence. Duty Solicitors can arrive at court from 8.30am.
2. Duty Solicitors must attend court as rostered. Duty Solicitors who are unable to attend court on their rostered duty day must arrange for another Duty Solicitor to attend in their place.

The replacement Duty Solicitor must be on the duty roster and hold a delegation. The replacement can be a solicitor from the rostered Duty Solicitor’s firm only if delegated.

The rostered Duty Solicitor must advise the Local Court and the Grants Division Duty Coordinator of the Duty Solicitor Scheme of the name of the replacement Duty Solicitor.

3. The Duty Solicitor must represent all clients who qualify for legal aid in the following matters:

Adults and Children

- Pleas of guilty to summary State or Commonwealth charge matters and indictable charge matters which may be dealt with summarily
 - Bail applications, bail variations and breaches of bail
 - Mentions and adjournments
 - Sentence matters requiring Probation and Parole or Juvenile Justice Reports.
4. The means test does not apply to adults in custody for the first appearance on bail applications.
 5. There is no means test in Children's Court duty matters.
 6. Retaining a plea/sentence

Legal Aid NSW will not authorise the Duty Solicitor to retain a plea of guilty on a day that he/she is not the rostered Duty Solicitor unless exceptional circumstances exist. Prior approval must be obtained from Legal Aid NSW.
 7. Duty as if to private client

Although the Duty Solicitor is not acting for a defendant on a continuous basis, the Duty Solicitor has the same duties towards the defendant as would apply to a private client under the normal solicitor-client relationship.

If the Duty Solicitor believes that he/she is unable to act for the defendant for ethical reasons, the Duty Solicitor should seek instructions in relation to an adjournment.
 8. Defended Hearings/Committals/Section 32 of the *Mental Health (Criminal Procedure) Act 1990*.

Duty solicitors must not appear in defended hearings, committal proceedings and in matters which require any disbursement or other expenditure. Expenditure may include but is not limited to:

 - preparation time
 - expert reports
 - photocopying
 - any disbursement

Once the Duty Solicitor has satisfied themselves that the matter is either a defended hearing, strictly indictable or requires any disbursement or expenditure, the Duty Solicitor must submit an application for legal aid certifying verification of means.

9. The Duty Solicitor should have a sound understanding of Legal Aid NSW General Criminal Practice Standards, Policies and Means Test Guidelines. See Legal Aid NSW 'For Legal Practitioners' link on the homepage at www.legalaid.nsw.gov.au
10. The Duty Solicitor should have sound knowledge and understanding of the following legislation: *Crimes Act 1900, Bail Act 1978, Evidence Act 1995, Criminal Procedure Act 1986, Crimes (Sentencing Procedure) 1999 Act, Crimes (Local Court Appeal and Review) Act 1999, Drugs Misuse and trafficking Act 1985, Summary Offences Act 1988, Road Transport (Driver Licensing) Act 1998, Road Transport (General) 1999, Road Transport (Safety and Traffic) Management Act 1999, Mental Health (Criminal Procedure) Act 1990, Commonwealth Criminal Legislation, Children (Criminal Proceedings) Act 1987, Young Offenders Act 1997* and any relevant legislation that may be introduced.
11. All solicitors appearing as Duty Solicitors must complete the Duty Legal Aid Application Form and have the client sign that form. Each form must be retained for Legal Aid NSW audit purposes.
12. Duty Tax Invoices must be submitted through Grants Online as soon as possible after the court appearance to allow prompt payment. Failure to submit claims as soon as possible through Grants Online may result in a delay in payment. When completing the Duty Tax Invoice the time should be rounded to the nearest half hour.
13. Verification

With the exception of first contact duty matters, the means of adult applicants and their spouse/partner must be verified.

The Duty Solicitor may appear on behalf of an applicant who satisfies the means test on the first occasion without sighting verification

documents. The Duty Solicitor must not appear on subsequent occasions unless verification documents are sighted. These documents are:

For applicants receiving Centrelink benefits:

- a copy of Centrelink Health Benefit Card

For employed applicants:

- a recent pay slip or other evidence of income such as a letter from an employer setting out gross wages (including any overtime) and taxation deductions for at least the last 3 months; and
- a statement showing the past three months operation on all accounts maintained with financial institutions by applicant and spouse/partner.

14. Late Applications

Where applications for legal aid for:

- local court defended matters; or
- committal proceedings

are made within 14 days of the date set down for the hearing of the matter, aid is only available in exceptional circumstances.

For further information please see



www.legalaid.nsw.gov.au

“For Legal Practitioners” link

Dispute Resolution

In the event of a dispute the solicitor and the Regional Law Society President shall attempt to settle the dispute by negotiation. If the Regional Law Society President requires guidance about how these Guidelines refer to the matters that are the subject of the dispute, he or she may request advice from Legal Aid NSW. If the dispute is not settled by the parties the Regional Law Society President shall submit the dispute to the President of the Law Society.

The President of the Law Society will notify the CEO of Legal Aid NSW and together they will determine the form the dispute resolution should take.

For more information contact Pip Brown on (02) 9219 5093
or Ann Miller on (02) 9219 5142.

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