

Care and Protection Panel Duty Guidelines for Lawyers in Specialist Children's Courts

These guidelines are intended to provide a quick reference guide for Care and Protection Panel (the panel) lawyers and roster coordinators on practical issues relating to duty work and care proceedings at the following specialist Children's courts:

Campbelltown	Broadmeadow	Metropolitan Sydney (Parramatta & Surry Hills)
Port Kembla	Central Coast (Woy Woy & Wyong)	

Duty Rosters

1. Duty Rosters will be made up only of those lawyers appointed to the panel for the relevant Court. Inclusion on the panel does not, however, guarantee inclusion on a duty roster in circumstances where there are sufficient numbers of lawyers on the rosters.
2. Duty rosters must allocate lawyers for the representation of children and adults. Lawyers may only be included on the roster for children if they have been appointed to the panel to represent children.
3. The Roster Coordinator for each Court is responsible for managing and maintaining the duty roster. Lawyers must liaise with the roster coordinator about duty roster commitments.
4. Unless otherwise advised the Roster Coordinators for **Campbelltown and Port Kembla** are private lawyers who are members of the Panel.
5. The Roster Coordinator for **Metropolitan Sydney** Children's Courts (including Parramatta and Surry Hills) and the **Central Coast** (Woy Woy and Wyong) is the Duty Coordinator, Legal Aid NSW. The Roster Coordinator for **Broadmeadow** Children's Court is the care and protection solicitor at the Legal Aid NSW Newcastle office.
6. In all specialist Children's Courts, the Roster Coordinator must organise the roster around any duty work that Legal Aid NSW advises that it will undertake at the relevant court.
7. Lawyers must attend on each day that they are rostered for duty and are to be in attendance at Court 30 minutes prior to the duty list commencing. Failure to be in attendance at Court prior to the commencement of the duty list will result in duty matters being re-allocated. In such circumstances, lawyers will not be permitted to submit a duty invoice for that day.
8. The commencement time of duty lists vary between Courts and days. It is the responsibility of panel lawyers to be aware of the commencement time for the duty list and be in attendance accordingly.
9. Lawyers should make themselves known to the in-house Legal Aid NSW solicitor upon attendance at Court, as the in-house practice will attend to the allocation of duty matters following conflict and continuity checks.

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10. Lawyers may not attend to other commitments during the period when they are rostered on as duty solicitor, other than legally aided matters listed in the duty list. This includes, but is not limited to, appearing in hearings, dispute resolution conferences, attending to commitments in other Courts and/or appearing in matters on behalf of the Department of Family and Community Services (FACS).
11. A copy of the duty roster for each court must be provided to Duty Coordinator and Senior Solicitor Care & Protection for approval.
12. Where a lawyer is unable to attend on a rostered duty day and arranges for another lawyer to attend on his or her behalf, the rostered lawyer must notify the Duty Coordinator in writing by email at dutyscheme@legalaid.nsw.gov.au.

The notification must include:

- the change to the duty roster; and
 - the name of the lawyer who will appear.
13. Failure to notify Legal Aid NSW of a change to the roster could result in delayed payment of duty invoices.
 14. Panel lawyers must not delegate their duty roster commitments to lawyers who are not members of the panel. Where a lawyer is appointed to the panel to represent children, they may only delegate their duty responsibilities to another lawyer who has been appointed to the panel to represent children.
 15. Any non attendance by a lawyer where arrangements have not been made for another panel lawyer to attend in their place and/or late attendances by lawyers on days that they are rostered on duty will be notified to Legal Aid NSW and may result in the lawyer being omitted from future duty rosters.

Duty Matters

Duty work encompasses:

- Taking instructions and appearing for an adult or child when it is the adult or child's first appearance at the Children's Court in a care and protection matter.
 - Taking instructions and appearing for an adult or child / young person in a compulsory schooling order matter;
1. A lawyer rostered to appear as duty solicitor on a list day in the Children's Court will, subject to the Care and Protection Practice Standards:
 - (i) Arrive at Court at least 30 minutes prior to the duty list commencing or as determined by the roster coordinator for the court so as to allow sufficient time to interview clients.
 - (ii) In those Courts where the Aboriginal Legal Service provides legal representation in care and protection matters, advise eligible clients of the availability of the ALS service and that the client may choose to be represented by ALS instead of the duty solicitor. Should the client choose to be represented by the ALS, the duty solicitor must liaise with

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the ALS solicitor at the relevant Court to ensure that the client is able to obtain that representation

- (iii) Give priority to the representation of children and ensure that, in each matter in the list, all children are represented by a lawyer appointed to the panel to represent children.
- (iv) Apply for a case grant of legal aid for each child or adult represented on a duty basis who requires further assistance, and maintain continuity of representation for that client. Failure or the refusal to represent an adult client, without reasonable excuse, following a duty appearance may result in a lawyer being omitted from any future duty roster. Legal Aid NSW will undertake periodic audits and cross reference against duty invoices to ensure compliance with the requirement.
- (v) Act for the child or adult in accordance with the Care and Protection Practice Standards and the Representation Principles for Children's Lawyers published by the Law Society of NSW.

Following a duty day appearance a lawyer will:

- 2. Compile and retain the child / adult's documents incorporating:
 - (i) The signed duty application,
 - (ii) a copy of the care and protection application and accompanying material,
 - (iii) notes of the client's instructions, if available
 - (iv) any other documents obtained from the child/adult and/or from the Department of Family and Community Services.
- 3. Write to the client to confirm the outcome of the proceedings including any future court dates.

Duty Applications and Invoices

- 1. A duty application must be completed with all required details for each client, whether they are adults or children, and signed by any adult client.
- 2. Lawyers are not required to send duty applications with duty invoices to Legal Aid NSW. Lawyers should retain duty applications for duty solicitor appearances in their office. Legal Aid NSW reserves the right to conduct an audit of applications taken.

Case Grants of Aid

- 1. When a child or adult client requires further representation other than on a duty basis a completed application for aid must be submitted to Legal Aid NSW. In the case of adults and/or certain categories of care applications, a means and/or merits test will apply.
- 2. Matters will be assigned to lawyers in accordance with Legal Aid NSW's Grants Allocation Guidelines and the Care and Protection Practice Standards (as amended), which are both available at www.legalaid.nsw.gov.au. Generally, continuity of representation will apply and the matter will be assigned to the

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lawyer who undertook the initial duty appearance or who previously appeared for the client in prior proceedings.

3. Case grants of aid are subject to current fee rates and guidelines.

Delegation of Assigned Matters

1. The conduct of a matter that has been assigned to a lawyer by Legal Aid NSW pursuant to a case grant of aid must not be delegated or assigned by the lawyer to any other lawyer.
2. If a panel lawyer can no longer maintain conduct of a matter, or where a further representative is required (for example, an additional child representative is required), the matter must be referred to Legal Aid NSW for allocation to a panel lawyer or a lawyer in the in-house practice.

Conflict of Interest in Assigned Matters

1. Legal Aid NSW must be notified of a conflict of interest as soon as the lawyer becomes aware of the conflict.
2. If the lawyer informs Legal Aid NSW of a conflict of interest, or Legal Aid NSW becomes aware of a conflict of interest, Legal Aid NSW may reallocate the assigned matter to another panel lawyer or to a solicitor employed by Legal Aid NSW.

Travel Allowance

1. Travel allowance will not be approved where a panel lawyer is appearing at a court at which he or she is on the duty roster or a court at which a panel lawyer has elected to receive assignments of case grants of aid.

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LEGAL AID NSW CONTACT DETAILS

ENQUIRY	CONTACT	DETAILS
Approval of Duty Rosters for Campbelltown Port Kembla	Solicitor in Charge Care and Protection	Phone: 02 9219 5786
Broadmeadow Roster Coordinator	Grade IV Care and Protection Solicitor Newcastle Office	Phone: 02 4929 5482
Metropolitan Sydney (Parramatta & Surry Hills) and Central Coast (Woy Woy & Wyong) Roster Coordinator	Duty Coordinator	dutyscheme@legalaid.nsw.gov.au or phone 02 9219 5122