

Summary Criminal Law Practice Standards

This document sets out practice standards for lawyers representing clients in summary criminal law matters in the Local and District Court under a grant of legal aid or appearing as a rostered duty lawyer.

These practice standards apply to in-house Legal Aid NSW solicitors and private lawyers acting in legally aided criminal matters.

Lawyers who are appointed to the Summary Criminal Law Panel (formerly the General Criminal Law Panel) (the panel) are eligible to receive grants of aid and assigned work from the Grants Division, including hearings, sentences and appeals.

Legal Aid NSW may audit panel lawyers for compliance with practice standards. Continued inclusion on the panel is conditional on compliance with these practice standards.

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General Principles

The majority of people appearing in the Criminal Justice System are people who are disadvantaged in the legal system. Many are from disadvantaged backgrounds. It is important that lawyers representing people in criminal courts are able to communicate effectively. Lawyers must also have an understanding of cross-cultural issues and issues facing socially and economically disadvantaged people, people with mental illness, people with a disability and Aboriginal and Torres Strait Islander people.

1. Responsibilities to Clients

A lawyer representing an accused person in a legally aided criminal matter will:

- 1.1 Provide representation in accordance with the Legal Profession Uniform Law (NSW) and the relevant Legal Profession Uniform Conduct Rules.
- 1.2 Obtain from the client adequate instructions as to the current status of the matter in order to apply for a grant or for an extension of legal aid.
- 1.3 Assist the client in obtaining a grant of legal aid by providing Legal Aid NSW with all information relevant to the application or extension.
- 1.4 Observe the principles governing the lawyer/client relationship and the privacy of instructions provided by the client.
- 1.5 Use a qualified interpreter where necessary after obtaining approval from the Grants Division.
- 1.6 Meet with the client as early in the process as possible and communicate with the client in a way that the client understands using language appropriate to the age, maturity, education and cultural background of the client.
- 1.7 Promptly comply with reasonable requests by a client for information regarding their matter.
- 1.8 Provide a meaningful reply to all correspondence, reply promptly to all urgent matters and advise clients that a detailed response for advice may require more time.
- 1.9 Respond to all telephone inquiries promptly.
- 1.10 Keep their clients informed of the progress of their matter in a timely manner and ensure that the client is aware of the stages through which a matter progresses in the court system.
- 1.11 In all communications with clients, lawyers are to use language that is clearly understandable, free of jargon and calculated to assist the resolution of the matter, not to inflame emotions or antagonize.

- 1.12 Give advice and explain all available options to the client together with the consequences of any decision made by the client. Lawyers must ensure that their clients make the decisions, not the lawyer making the decision for the client.
- 1.13 Explain to the client a matter to the extent reasonably necessary to permit them to make informed decisions regarding the matter and to advise their clients of what they are expected to do to assist their case.
- 1.14 Obtain prior instructions from the client before presenting their case in court. If there is insufficient time, the lawyer should adjourn the matter for such time as is necessary for the client to give proper instructions.
- 1.15 Advise the client at the first reasonable opportunity, if a possible delay in the progress of the matter becomes apparent.
- 1.16 Attend all court events in a timely manner; allowing adequate time to prepare.
- 1.17 Ensure the client is represented at all court events and that any agents engaged are members of the panel.
- 1.18 Ensure that where the lawyer is unable to meet with the client on a particular occasion that every effort is made beforehand to inform the client and Counsel, if briefed; and that any agents engaged are members of the panel.
- 1.19 Advise the client on the law, procedure and practice that apply to their case, including the charges and potential penalties, and the likely time their matter will take to be heard and completed. Before entering a plea the lawyer should have all relevant prosecution evidence including the charge sheet/court attendance notice/summons, the police facts sheet, the brief of evidence where appropriate and the client's criminal record. The client should be fully apprised of the case against him or her.
- 1.20 Speak with the client immediately following a court appearance, including clients who have been remanded in custody, and confirm that the client understands the result and any orders made by the court. The client should also be asked if they wish to make a release application. If it is not possible due to the lack of time because of list demands then a letter should be sent to the client informing them of the results and their effect.
- 1.21 Consider the appropriateness of a release application bearing in mind the restrictions on multiple release applications as set out in s.74 of the *Bail Act 2013* along with general considerations regarding show cause (s.16A and s.16B) and unacceptable risk (ss 17-20). If the matter is an appeal to the Court of Criminal Appeal or the High Court then further restrictions in s.22 of the *Bail Act 2013* should also be considered.

2. Responsibilities to Legal Aid NSW

A lawyer representing an accused person in a criminal matter subject to a grant of legal aid will:

- 2.1 Comply with these practice standards.

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- 2.2 Comply with the provisions of the [Legal Aid Commission Act 1979 \(NSW\)](#) and the [policies and guidelines](#) of Legal Aid NSW (as amended).
- 2.3 Comply with the [Terms and Conditions of use of Grants Online](#) (as amended).
- 2.4 Comply with the terms and conditions of the grant of legal aid.
- 2.5 Ensure that any Applications for legal aid, extensions of the grant of aid and requests for reconsideration and review are lodged promptly with all relevant information and supporting material to enable a decision to be made without delay.
- 2.6 Be responsible for the matter and accountable to Legal Aid NSW for any breach of these practice standards including for any work undertaken in the matter by another lawyer or employee of the (your) firm.
- 2.7 Seek approval of the Grants Division for any disbursements prior to expenditure on the file by obtaining the appropriate grant or extension via Grants Online.
- 2.8 Review all files on completion of the matter to ensure all necessary steps have been taken before notifying the Grants Division that the matter is finalised. When submitting the final claim to the Grants Division the lawyer must complete the file outcome form setting out the steps involved in completion of the matter and the result in the matter.
- 2.9 Ensure prompt payment to experts, witnesses and other third parties who have undertaken work pursuant to a grant of aid for that work.
- 2.10 Reassign all pro forma invoices for Counsel's fees to the barrister who has been briefed so that the barrister can claim directly from Legal Aid NSW.
- 2.11 Provide the file in a matter to Legal Aid NSW where a written authority is received from a client to hand over the file.
- 2.12 Seek orders for costs where appropriate.
- 2.13 Notify Legal Aid NSW immediately of any circumstances that could give rise to a claim for professional negligence and provide a detailed statement in relation to the matter.
- 2.14 Where Counsel receives an offer of a direct access matter from Legal Aid NSW and the matter is not defined as complex under 8.2, Counsel may accept or continue with the assignment if, in their opinion, it appears likely that the proceedings can be resolved by way of a plea of guilty in the Local Court and an instructing solicitor will not be required.

3. Responsibilities to Others

When dealing with other lawyers, Counsel, experts, witnesses and the staff of the Tribunals or Courts or other agencies or institutions, the lawyer will:

- 3.1 Conduct all communication in a courteous, prompt and professional manner.

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- 3.2 Comply with time limitations, procedural steps, the practice directions of the Court or Tribunal and any undertakings given to the Court or Tribunal.
- 3.3 Avoid unnecessary expense or waste of time by ensuring that:
- (i) documents are served or filed on time;
 - (ii) documents served, filed or given to the client are legible;
 - (iii) the client is aware of medical appointments, conferences and hearing dates and understands the importance of attending promptly and on time;
 - (iv) witnesses are aware of conferences and hearing dates and understand the importance of attending promptly and on time;
 - (v) court commitments are accurately diarised

4. Duty Work

Duty Work encompasses:

- Taking instructions on first appearances and if appropriate entering a plea;
- Mentioning matters;
- Replying to a brief and confirming a plea where appropriate;
- Bail applications;
- Bail variations;
- Sentence matters;
- Breach matters;
- Mental Health matters;
- S. 4 Applications;
- District Court Severity Appeals;
- Supreme Court Bail Applications.

A lawyer appearing on a duty day in a Local Court will:

- 4.1 Comply with the [Local Court Duty Solicitor Scheme Guidelines](#) or the [Back Up Duty Scheme Guidelines](#) for Local Courts serviced by a Legal Aid NSW office.
- 4.2 Give priority to clients in custody.
- 4.3 Complete a legal aid application for each client who requires assistance (the application must be fully completed with address, contact and charge details) and record the outcome of the proceedings on the duty application.
- 4.4 Explain to the client what a grant of legal aid means, the basis of representation and the confidential nature of the lawyer/client relationship and need for verification.
- 4.5 Obtain all relevant material from the client, and where necessary the prosecutor, including the police facts, details of bail conditions and the client's criminal history.
- 4.6 Advise the client of the nature of the charge(s) and any defence(s), read the police fact sheet to the client, advise the nature of the proceedings and their possible outcomes along with the potential effect on the client including victim's compensation

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restitution if appropriate, advise on the right to make an election and the consequences of not making an election in respect of Indictable Offences listed in Table 1 of the *Criminal Procedure Act 1986*.

- 4.7 Consider whether a bail application or bail variation is necessary and obtain full instructions in respect of the factors necessary for bail or bail variation.
- 4.8 Speak to the client immediately following the court appearance and confirm the client understands the proceedings, the outcome and the requirements of any penalty imposed.
- 4.9 Where a client has been charged with an offence which is strictly indictable or where an election can be made, explain the committal procedure to the client.
- 4.10 Ensure that the client is aware that they need to apply for legal aid and provide verification of income in committal/District Court proceedings.
- 4.11 Inform the client when a matter is not completed on the first appearance that verification of the client's income is required. In situations where a matter has been adjourned for plea/sentence and no expenditure is anticipated, the client should be asked for verification at court (if it is more convenient) or handed a request for verification. The application form should clearly mark that verification has been sighted and details should be recorded. If a written request has been handed to the client, this should be recorded.
- 4.12 Where a duty solicitor appearing at a court which is not serviced by a Legal Aid office has adjourned a matter and will not be appearing on the next return date, send client's documents, to the rostered panel lawyer for the next return date no later than two working days prior to the next court appearance.
- 4.13 Where a duty solicitor is appearing at a court serviced by a Legal Aid office, all application forms and relevant documents should be returned to the Legal Aid office within 3 days of the duty appearance.
- 4.14 Advise the client remanded in custody of their rights to bail review and to lodge a Supreme Court bail application when appropriate.
- 4.15 Explain appeal rights and processes, advise on prospects and ensure that the client is aware that a separate application for Legal Aid for an appeal must be lodged.
- 4.16 Following a duty day appearance the lawyer will:
 - (i) Compile the client's documents incorporating:
 - a. The duty application;
 - b. A copy of the facts;
 - c. A copy of the client's record;
 - d. Notes of the client's instructions;
 - e. Any other documents obtained from the client or the prosecutor at court;

- (ii) Where it is considered appropriate, write to the client confirming the outcome of proceedings, any future court dates, appeal rights and processes and contact details for the lawyer.
- (iii) Where a matter is adjourned for the service of a brief, write to the informant advising the address for service of the brief and the date by which the brief must be served.
- (iv) Where approval has been given by Legal Aid NSW, maintain continuity in subsequent adjournments and appearances.

5. Summary Matters

5.1 Defended Hearings

A lawyer appearing in a defended hearing in the Local Court will:

- 5.1.1 Ensure that applications for legal aid on the grounds that there is a real possibility of a term of imprisonment being imposed or there are exceptional circumstances are supported by sufficient documentation on the client's file including the following: the charge sheet, police facts and client's instructions
- 5.1.2 Open and retain a file for the client with copies of the charge sheet, police facts, bail conditions, criminal history and the brief.
- 5.1.3 Obtain prior instructions from the client before presenting their case in court. If there is insufficient time, the lawyer should adjourn the matter for such time as is necessary for the client to give proper instructions.
- 5.1.4 Ensure the matter is ready to proceed and that a grant of aid has been formally approved before setting it down for hearing. There should be a brief of evidence, and instructions taken on the brief of evidence. The client should have verified their income and assets before setting the matter down for hearing.
- 5.1.5 Advise the client on the evidence in the brief and whether there is sufficient evidence to prove a prima facie case.
- 5.1.6 Advise the client of any relevant defences available to the charges faced by the client. If the client wishes to enter a plea of guilty despite a possible defence, the lawyer should obtain signed instructions where practical.
- 5.1.7 Consider whether a bail application or bail variation is necessary and obtain full instructions in respect of the factors necessary for bail or bail variation.
- 5.1.8 Once a sentence or defended matter is completed in the Local Court the lawyer will:
 - (i) Speak to the client immediately following the court appearance and confirm the client understands the proceedings and the outcomes.
 - (ii) Advise on appeal prospects and, if appropriate, take instructions on an appeal.

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- (iii) Assist the client in lodging an appeal.
- (iv) Advise the client whether legal aid is likely to be available for the appeal.
- (v) Assist the client to complete a legal aid application for the appeal.
- (vi) Take the client's instructions on a bail application.
- (vii) Apply for appeal bail if instructed.
- (viii) Forward a copy of the notice of appeal and legal aid application to Legal Aid NSW.
- (ix) Write to the client and confirm the date of the appeal and that an application for legal aid has been lodged.

5.2 Sentence Matters

A lawyer appearing in a sentence matter in the Local Court following conviction after hearing or a plea of guilty will:

- 5.2.1 Open and retain a file for the client with copies of the charge sheet, police facts and criminal history.
- 5.2.2 Obtain instructions from the client in relation to the matter.
- 5.2.3 Advise the client on the law, procedure and practice that applies to their case, including the charges and the potential penalties.
- 5.2.4 In pleas of guilty, consider whether it is appropriate to enter into negotiations with the prosecutor in relation to different or lesser charges or amendments to the police facts.
- 5.2.5 In pleas of guilty, read to the client, or have the client read, the agreed police facts. It is recommended that the client sign these facts and confirm in writing the instructions to enter a plea of guilty. The signed facts should not be provided to the prosecution, but the practitioner should ensure that the facts tendered by the prosecution contain any amendments agreed upon.
- 5.2.6 Obtain a personal history from the client, including medical history, psychiatric diagnoses, psychological assessments, drug and alcohol history, attempts at rehabilitation, family background, and immigration status.
- 5.2.7 Determine whether it is appropriate in the circumstances to request a pre-sentence report.
- 5.2.8 Determine what material should be tendered on sentence and obtain the material, after obtaining an appropriate grant of aid where expenditure is required. Where a psychiatric, psychological or other medical report is appropriate, past reports should be obtained and other cost effective methods of obtaining material should be considered, such as a report from a court-based clinical liaison nurse, a report from a

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treating doctor or a report prepared for another purpose eg. for Department of Aging Disability & Homecare (DADHC) purposes.

- 5.2.9 Advise the client about the appeal process, appeal prospects and time limits for appeal. Explain the Legal Aid NSW policy in respect to obtaining legal aid for an appeal against severity of sentence.

5.3 District Court Appeals

A lawyer appearing in a District Court Appeal will:

- 5.3.1 Open and retain a file for the client with copies of the police facts, bail conditions, criminal history, the brief and Notice of appeal.
- 5.3.2 Determine whether the appeal lodged is a conviction or sentence appeal and whether any other Appeal or leave to appeal document needs to be lodged.
- 5.3.3 Consider whether a bail application or bail variation is necessary and obtain full instructions in respect of the factors necessary for bail or bail variation.
- 5.3.4 Obtain instructions from the client and give advice about the law, the likelihood of the appeal succeeding and the possibility of the sentence being increased in sentence appeal proceedings (“Parker Warning”).
- 5.3.5 Obtain instructions from the client about whether they are on any medications and/or whether they have been or are being treated for any psychiatric, psychological or medical issues.
- 5.3.6 In Sentence Appeals advise the client about, and obtain, full subjective materials for use in the Sentence Appeal.
- 5.3.7 In Conviction Appeals obtain all transcripts and exhibits of the Local Court proceedings before a merit determination is made and before the Appeal is listed for hearing.
- 5.3.8 In Conviction Appeals provide advice on and determine whether any fresh evidence is to be called or whether an application will be made for evidence to be given.
- 5.3.9 Upon finalisation of the Appeal fully advise the client in writing of the result of the Appeal.

6. File Management

A lawyer representing an accused person in a criminal matter subject to a grant of legal aid must ensure that:

- 6.1 Files must be maintained in an orderly manner so that Legal Aid NSW may effectively audit the file if required, and to ensure that another lawyer assuming conduct of the matter may quickly and easily understand its factual basis, the client’s instructions, the stage the matter has reached and all further action required to run the matter in line with the practice standards.

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- 6.2 All documents including:
- (i) correspondence from the Grants Division in relation to the grant of legal aid; and
 - (ii) correspondence received and sent in relation to the matter
- are kept on the file in date order.
- 6.3 Court documents filed, served or issued in the proceedings are kept in a separate bundle on the file in date order.
- 6.4 Clear and legible file notes are kept of all telephone conversations, conferences, interviews, meetings with clients or witnesses and experts and include:
- (i) date;
 - (ii) name of person spoken to; and
 - (iii) relevant details of the conversation.
- 6.5 Clear and legible file notes are kept of information and advice given to a client that is not confirmed in writing.
- 6.6 All court attendances are noted on the file in date order with:
- (i) Coram;
 - (ii) date and venue of court appearance;
 - (iii) the name of the lawyer attending on behalf of the legally assisted person;
 - (iv) details of other parties' representative/s;
 - (v) summary of any negotiations and orders or directions made;
 - (vi) start and finish time/s of the court attendance; and
 - (vii) the date proceedings have been adjourned to or the outcome of the matter.
- 6.7 All Conferences, Views, Prison Visits and any other specific attendances must be noted on file including at a minimum, details of the length and type of attendance and the date on each occasion.
- 6.8 Receipts or other verifying evidence for all disbursements claimed for payment from Legal Aid NSW are retained in a separate section of the file.

7. Training

A lawyer who is a member of the panel will:

- 7.1 Undertake training as required by Legal Aid NSW.

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8. Definitions

8.1. Duty

For private lawyers, a “duty” matter is presently defined as Local Court matters including first appearances, adjournments, mentions, bail applications and pleas. “Duty” matters do not include defended hearings, matters requiring expenditure and committal hearings.

8.2. Complex Matters

A complex criminal matter under a grant of legal aid includes:

- All Supreme Court trials and pleas;
- Matters where the maximum penalty is life imprisonment;
- Manslaughter trials and pleas;
- All terrorism matters;
- Sexual Assault matters where there are multiple complainants and/or multiple defendants;
- Matters where the trial is complex because of the nature of the charge or the defence or where significant case management is required (e.g. sex slavery, fraud or money laundering charges where there are more than 30 counts and/or the total value is more than \$500,000.00);
- Matters involving a number of expert witnesses and identified by the trial judge as requiring significant case management pursuant to s.141 Criminal Procedure Act 1986;
- Where the trial length is estimated at 20 days or more; and
- Where the brief of evidence is more than 5,000 pages.

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