

**CHILDREN'S COURT ASSISTANCE SCHEME**

**POLICIES AND GUIDELINES**

**PREAMBLE**

Legal Aid NSW, as funding body of the Children's Court Assistance Scheme (CCAS) commissioned a report from 'Matrix on Board' to review the program in 2011-12.

The purpose of this review was to:

* evaluate and Report on the nature and the effectiveness of the services provided across the courts in which it operates;
* scope the contractual and accountability framework for the program; and
* scope the potential need for CCAS services across all Children's courts and local courts sitting as Children's Courts in NSW.

As a result, Legal Aid NSW received advice that the CCAS Guidelines will need to be rewritten to incorporate the amendments to the program which are recommended in the review.

This document was written in February 2012 and issued with the Service Agreements covering CCAS from 1 July 2012. It was reviewed in June 2015 and reformatted for distribution with the new Service Agreements.

**GLOSSARY**

***Welfare and social support***

The provision of services and/or assistance which promotes the basic physical, social and emotional well-being of people in need

***Legal advice***

Offering or applying a solution to a legal inquiry or problem based on full consideration of particular facts of a case, and an assessment on how the law might apply in that particular matter

***Mandatory reporting***

Requirement under the *Children and Young Persons (Care and Protection) Act* 1998 to report to 'Family and Community Services' (FaCS) where a young person is suspected of being at 'risk of significant harm'

***Information and Referral***

The provision of information such as court processes, referral to external services and details about a particular welfare or assistance service

***Conflict of Interest***

Involves a conflict between a legal practitioner's professional duty to one client to maintain the confidentiality of information disclosed by that client and the solicitor's professional duty to another client to use all the knowledge and information at his or her disposal in the interests of another client.

**THE CHILDREN’S COURT ASSISTANCE SCHEME INTRODUCTION**

**Purpose of the Program**

Children's Court Assistance Schemes (CCASs) provide support to young people facing court in relation to all matters except care and protection. This is generally criminal matters and apprehended violence orders (AVOs). CCAS provide support to the family, carers, friends and other support people who accompany the young person to court. CCAS provide support for defendants in criminal law and AVO matters as well as support young people who are witnesses and people in need of protection (PINOPs),

The support that the CCAS program provides to young people and/or their families includes:

* information about court processes and outcomes;
* social support; and
* referral to welfare services such as counselling services, accommodation providers and drug and alcohol programs.

The Program creates a supportive and non-legal point of engagement for children and young people, allowing CCAS workers to identify and respond effectively to welfare and social needs. The CCAS program operates in parallel with, but is distinct from, the legal system.

**Funding and Structure**

The provision of the Children's Court Assistance Scheme is a community partnership between Legal Aid NSW and Community Legal Centres (CLCs) which auspice the CCAS programs. The CCAS is complimentary to Legal Aid NSW achieving its corporate priorities of assisting children and young people to have access to justice.

The CCAS Program is funded by the Public Purpose Fund (PPF) as part of the Community Legal Service Program (CLSP). Legal Aid NSW manages the program and administers this funding on behalf of the PPF.

The CCAS program is auspiced by four Community Legal Centres and operates at seven Children's Courts in NSW. At each CLC, a CCAS Coordinator rosters and manages volunteer or seconded Support Workers to provide services at the assigned Children's Court.

**Children's Court Assistance Scheme Operating Principles**

It is the role of the CCAS Co-ordinator to implement the eight Operating Principles for the CCAS at each Children’s Court for which CCAS funding is provided. The principles are set out below.

1. **Trained workers are available to all young people, on all criminal and AVO court list days.**
   1. ***The role of a CCAS Coordinator***

The role of a CCAS Coordinator is to ensure that the work performed by the Support Workers is compliant with the eight operating principles. In order to provide an effective service, Coordinators are required to ensure that Support Workers have appropriate training in:

* the role of a CCAS worker;
* Court Processes;
* the difference between Legal Advice and Information and Referral;
* Aboriginal Cultural awareness specifically focussed on the provision of court support for Aboriginal young people; and
* engaging with young people and using a child-centred approach.
  1. ***At the Children's Court***

CCAS workers should endeavour to make contact with every young person attending court on the day the CCAS is in attendance, in relation to any matter except care and protection and matters where a young person is in custody. There are some young people that CCAS workers will be unable to speak to, particularly young people in custody, in which case the support workers should make an effort to support the young person's family or support people.

1. **Workers will provide clear and timely registration, information and referral assistance. They will not provide legal advice.**

The objective of the CCAS is to provide young people and/or their families with information about court processes, social support, and referral to welfare services such as accommodation providers, drug and alcohol programs, mediation, family services and other support services available.

The information and referrals should be communicated clearly, using plain English, in a way that is appropriate for young people.

* 1. ***What is 'Information and Referral'?***

An important distinction exists between 'legal advice' and 'information and referral' and it is the responsibility of the CCAS Coordinator to ensure that Support Workers understand the difference.

Information and Referral relates to CCAS workers providing general information about court processes and referral to welfare services. It is often the case with information and referrals, that a support worker will refer to a resource, for example, a brochure for emergency accommodation. In many cases the worker may need to obtain some information from the person about their particular circumstances in order to ensure that the information and/or referrals provided are the most appropriate. Obtaining some particular facts about an individual and providing more targeted or specific information and/or referral based on that information, is still to be regarded as information and referral.

Conversely, legal advice refers to providing a professional opinion to a client that is based on full consideration of the particular facts of a case and an assessment on how the law might apply in that particular matter.

CCAS workers do not provide legal advice and are not a formal part of the court system. The CCAS worker is not acting as an advocate for the child but rather facilitates contact with referral agencies with the child ultimately being the person who speaks with any third party. There is no ongoing relationship between the child and the CCAS worker.

* 1. ***'Conflict of Interest'***

A conflict of interest cannot arise for a CCAS worker as he or she is not a solicitor, and is not providing advice or a legal service. Legal practitioners owe a fiduciary duty to their clients, to use all the information at their disposal to advise their clients. This obligation cannot be fulfilled if that duty is owed to two or more parties whose interests are in opposition and the solicitor has confidential information relating to both parties. A legal practitioner has a conflict of interest when they are "serving or attempting to serve two or more interests which aren’t compatible"[[1]](#footnote-1).

A CCAS worker does have a duty to maintain a client's confidentiality but having confidential information about CCAS clients does not prevent a support worker from providing assistance to another client even where these clients may be co-accused and have different interests, as the assistance provided is non-legal. A CCAS Worker must not disclose to a client any information obtained from another client.

If it appears to a CCAS worker that a young person may need legal advice on an issue which is different to the one that brings them to the court, the CCAS worker may refer the young person to a legal service provider, including the auspicing Community Legal Centre.

* 1. ***Registration***

CCAS workers provide referral and support services to children who attend the Children's Court. The presence and expertise of workers from the CCAS program facilitates the process of court list days, engaging and grounding young people in what may be an otherwise complex and overwhelming environment.

At the start of the day it is good practice to greet the court staff, juvenile justice officer and duty solicitors. CCAS staff should wear their badge and identify themselves as a Support Worker to clients and anyone else they are dealing with.

A CCAS worker coordinates a registration and information function at the Children's Court which contributes to the smooth operation of the justice system. This registration process generally involves CCAS workers:

* Approaching young person's appearing before the court and noting their presence on the 'Attendance List' (Appendix 1) or 'AVO Attendance List' (Appendix 2), as appropriate.
* If the young person does not have a solicitor, facilitating contact between Legal Aid or the Aboriginal Legal Service (ALS), as appropriate.
* Provide information to the young person about the court processes including where to find court lists, which room number their matter will be heard in and the location of amenities, if required.
* Maintain statistical information on the 'Daily Data Form' (Appendix 5).

In addition to the registration function that CCAS workers provide in court, their role in providing referrals addresses individual young person's specific needs and can improve the outcomes they obtain from the legal system.

* 1. ***Introducing yourself to the young person***

Having regard to the operating principles, a CCAS Worker should always clearly explain their role and purpose at court when they introduce themselves to a young person.

An example of this would be:

*"Hello my name is Michelle and I am with the Children's Court Assistance Scheme. My role is to assist young people at court and provide information and referrals about other community support if you require it. My role is not to provide any form of legal advice. Everything you tell me is confidential but it helps me refer you to other support services if you would like such assistance."*

1. **Workers will provide assistance in a culturally appropriate manner**

CCAS support workers need to be sensitive to the range of different cultural issues facing different groups of young people, in particular Aboriginal young people, but also people from culturally and linguistically diverse backgrounds.

This will require support workers to:

* undertake Aboriginal cultural awareness training;
* where possible, make materials available in a range of languages commonly spoken in their geographical area; and
* use interpreters (telephone or face-to-face) for young people as appropriate.

CCAS Coordinators should seek to engage CCAS workers and volunteers from backgrounds that reflect the diversity of young people attending their local courts.

1. **The assistance will be young person and child-centred, family–focused, strengths-based; and participatory**

Adopting a child-centred approach means that the safety, welfare and wellbeing of a child or young person is the paramount consideration.

* 1. ***'Keep them safe' Mandatory Reporting guidelines***

The law says that mandatory reporting is required when a person who:

* in the course of his or her professional work or other paid employment delivers health care, welfare, education, children's services, residential services, or law enforcement wholly or partly, to young people, and
* holds a management position in an organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly to young people, and
* has reasonable grounds to suspect that a young person under the age of 16 is at risk of significant harm, and those grounds arise during the course of or from the person's work, the person must, as soon as practicable, report to 'Family and Community Services' (FaCS) the name, or description, of the young person and the grounds for suspecting that the young person is at risk of significant harm.[[2]](#footnote-2)
  1. ***Meaning of 'risk of significant harm'***

A CCAS Worker has a statutory obligation to report to FaCS when a young person discloses something that indicates that they are at 'risk of significant harm'. This new statutory threshold has replaced 'risk of harm' in the *Children and Young Persons (Care and Protection) Act* 1998.

A young person is at risk of significant harm if the circumstances that are causing concern for the safety, welfare or well-being of the young person are present to a significant extent.

What is significant is not minor or trivial, and may reasonably be expected to produce a *substantial and demonstrably adverse impact* on the child or young person's safety, welfare or wellbeing.

* 1. ***CCAS Support Workers and Mandatory Reporting Guidelines***

If CCAS staff are working at the Children's Court and they suspect that a child is at risk of significant harm, they should speak to the Coordinator of the CCAS before a notification is made to FaCS.

Special protection is afforded to people who make reports to FaCS. A person who makes a report in good faith shall not breach professional standards, not be liable for defamation and not be liable in civil proceedings for malicious prosecution or conspiracy.

The contents of any report is not admissible in any other proceedings other than Care Proceedings and the person making the report shall not be compelled to produce the contents of the report and will have their identity protected except by consent of the reporter or by leave of the court.[[3]](#footnote-3)

* 1. ***A welfare approach to the work***

The primary benefits of the CCAS relate to emotional support and the provision of information for young people.

Adopting a welfare approach to the work of a CCAS Support Worker requires the interests of the young person to be at the centre of any decisions or referrals. CCAS workers establish good rapport with the young person and promote the participation of the young person in the decision making process, where appropriate.

The CCAS creates a supportive and non-legal point of engagement for children and young people, allowing Support Workers to identify and respond effectively to welfare and social needs. The CCAS program operates in parallel with, but is distinct from, the legal system.

1. **Workers will understand and work within court processes to contribute to the smooth running of Children's Courts**

CCAS workers should have a good understanding of court processes, promote positive relationships and effectively communicate with court staff and solicitors and work within court processes to contribute to the smooth running of the court.

* 1. ***Confidentiality***

It is expected that CCAS Support Workers maintain the confidentiality of clients (and their families and friends).

Young people appearing in court are protected from having details about them published or disseminated[[4]](#footnote-4). Some exceptions apply, however the work of a CCAS Support Worker does not fall under any of the exceptions provided for under the *Children (Criminal Proceedings) Act 1987.*

Any record which has been created to comply with the Mandatory Reporting Guidelines (appendix 4) are owned and maintained by the CCAS and are to be kept at the Children's Court in a locked cupboard.

A CCAS Coordinator or Support Worker employed by a Community Legal Centre may have employment accountabilities to a person at the CLC, however even in this context the CCAS worker must not identify any particular CCAS client or discuss any matter in a way or to the extent that would identify the client or any other party to the matter.

* 1. *Publication or broadcasting of names*

The purpose and intention of the non-publication provisions is to ensure the privacy of a child involved in criminal proceedings. The prohibition on the identification of children involved in criminal proceedings is also protected under the United Nations Convention on the Rights of the Child.

While the non-publication provisions are generally directed to media outlets, the broadcasting of a child's name is not necessarily limited to dissemination by the media.

A CCAS worker should not conduct their work in a way that may lead to the child or young person being identified. That is, ensuring any document; notes or court lists which are used by the CCAS worker in the course of exercising their duties, do not leave the Children's Court at the conclusion of the list day.

* 1. *Using the Court lists*

The daily list created by courts is created for a specific purpose and is only distributed to parties participating in and facilitating the court processes. As this list belongs to the Children's Court, a CCAS worker should never take the list with them at the conclusion of a list day.

The removal of court lists by CCAS workers is not related to the exercise of the court's judicial functions and, therefore, is not covered by an exemption under the *Children (Criminal Proceedings) Act 1987* (s15G).

The removal of court lists, or any documents pertaining to the identification of a young person, could potentially result in a breach of the broadcasting and publication provisions outlined above.

* 1. ***Interaction with Court staff and Judicial Officers***

If CCAS staff are addressed by the bench, they should respectfully advise the magistrate that their role as a CCAS worker is to provide information and referrals to a young person and the instructed solicitor would be a more appropriate person to inform the court about any referral.

A CCAS worker should not disclose information pertaining to a young person's court matter, either directly or indirectly. This includes taking care that the court lists, or documents containing the names of a young person, are not left in interview rooms or around the court. The privacy of the young person should always be a paramount consideration for CCAS workers.

Receiving court lists from the Registrar or Court Officer is an acceptable practice for a CCAS worker as it assists in the efficient administration of the Children's Court process.

1. **Workers will have experience and training in working with young people and the scheme will have good relationships with the local youth and community sectors.**

To effectively support young people, court support workers must have a good understanding of, and strong relationships with, youth and community support organisations in their local area. Establishing and maintaining these networks will allow CCAS workers to make appropriate referrals to relevant organisations and assist young people to access the support systems they require.

* 1. ***Training and support for CCAS workers***

It is the responsibility of the Coordinator to provide advice, support and debriefing to CCAS workers during the day and at regular feedback and review meetings. The Coordinator should also organise more formal support or training mechanisms if required by the support workers.

1. **The scheme will educate the community on issues experienced by young people in the juvenile justice system.**

CCAS Coordinators and support workers may be able to identify system wide legal or welfare issues affecting young people when they face court. Support Workers should be encouraged to provide this information to their Coordinator.

The Coordinator should have a strategy in place for identifying and reporting this information to the CCAS Advisory Group for appropriate action.

The CCAS also has a role to play in conducting community education or training to young people and/or youth workers in relation to court processes and youth justice issues.

1. **The scheme will provide statistical reports to the funding body (Legal Aid NSW)**
   1. ***Reporting requirements***

The CCAS Coordinator is required to provide a Summary Report every six months which:

* collates the statistical data collected over the six month period;
* highlights any achievements, if appropriate; and
* identifies any outstanding issues, if appropriate.

This report is to be provided to the State Program Manager (SPM) of the relevant funding body. It may also be the case that the Management Committee and/or the Principal Solicitor of the auspicing CLC may also request this statistical data, this is an acceptable practice.

* 1. ***Statistical reports***

It is the responsibility of the CCAS workers and Coordinators to collect statistical data during the list day. The information collected assists the CCAS Advisory Group and the Funding Body in determining the effectiveness of the current service delivery and identifies any areas of opportunity which may exist across the scheme.

The 'Daily Data Form' (appendix 5) collects the daily statistics from the list day including details on gender, whether or not a young person is accompanied and other statistical information which assists the Funding Body.

* 1. ***Approved templates***

There are five approved templates which should be used by CCAS staff and are attached as appendices to these guidelines. It should be noted, the first four templates should never be removed from the Children's Court.

Each template is outlined below at Table 1.1:

**Table 1.1**

|  |  |  |  |
| --- | --- | --- | --- |
| **App** | **Form** | **Purpose** | **Contents** |
| 1\* | Attendance List | To allow for 'registration' of young people attending court | Includes name of young person, whether they have attended, if they are accompanied and if they have seen a solicitor |
| 2\* | AVO Attendance List | 'Registration' of young people attending AVO matters | Name of accused and PINOP, whether they have attended |
| 3\* | Action Form | To note the attendance at court of a young person who is not on the court list | To be used by CCAS Coordinators, to record Registry staff details where a young person is not required in court that day, also when the next occasion is. |
| 4\* | Long Contact Sheet | To monitor trends and record Mandatory Reporting references. | Initials of the young person, date, reference number, referral details. |
| 5 | Daily Data Form | To collate data collected through the attendance list | Tallies up the number of young people (family/career's, friends) assisted, gender, Aboriginal status and first language spoken if not English. |

\* not to be removed from the Children's Court

1. 2006, [www.lawsociety.com.au](http://www.lawsociety.com.au) ; Shirvington**,** *"Ethics and Conflict of Interest and Duties"*, at page 3. [↑](#footnote-ref-1)
2. Children and Young Persons (Care and Protection) Act 1998 s27. [↑](#footnote-ref-2)
3. Children and Young Person (Care and Protection) Act 1998 s29. [↑](#footnote-ref-3)
4. Children (Criminal Proceedings) Act 1987 s15A. [↑](#footnote-ref-4)