

Children's Criminal Law Duty Guidelines for Lawyers

These guidelines are intended to provide a quick reference guide for panel lawyers on practical issues relating to duty work and defended hearings in the Children's Court.

These guidelines also apply to children's matters listed in the Local Court.

Lawyer means a person who holds a current practising certificate issued by the Law Society of NSW, the NSW Bar Association or equivalent interstate organisation.

Back-up Duty at Parramatta, Surry Hills, Campbelltown, Hornsby, Sutherland and Port Kembla Children's Courts

1. The Children's Legal Service is responsible for managing duty work at these courts. When a back-up lawyer is required the Children's Legal Service will contact panel lawyers from a rolling list. Lawyers should liaise with the Children's Legal Service regarding back up duty commitments.

Duty Roster Commitments at Other Children's Courts

1. The roster coordinator at each court is responsible for managing and maintaining the duty roster.
2. The roster coordinator will be responsible for reporting to Legal Aid NSW on a regular basis any non-attendance by a lawyer where arrangements have not been made for another panel lawyer to attend in their place. Legal Aid NSW will also be notified of late attendances by lawyers on days that they are rostered on duty.
3. Lawyers must liaise with the roster coordinator about duty roster commitments.
4. Panel lawyers must not delegate their duty roster commitments to non-panel members.
5. Lawyers who are unable to attend court on their rostered duty day must arrange for another panel lawyer to attend in their place. The replacement duty lawyer can be another member of the lawyer's firm provided he or she is a panel member.
6. 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 in writing the Children's Court, the roster coordinator and Legal Aid NSW (Attention: Duty Coordinator, e-mail: dutyscheme@legalaid.nsw.gov.au) of:
 - the change to the duty roster; and
 - the name of the lawyer who will appear.
7. Failure to notify Legal Aid NSW of a change to the roster could result in delayed payment of duty invoices.

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8. Failure to attend on a rostered duty day where no arrangement has been made for another panel lawyer to attend on the lawyer's behalf may lead to the issue of a "show cause" notice.

Duty Roster Procedure

1. At Parramatta, Surry Hills, Campbelltown, Hornsby, Sutherland and Port Kembla Children's Court the back-up duty lawyer should be at the Court by 8.30am.
2. On rostered duty days at other Children's Courts the duty lawyer can arrive at Court from 8.30 am if the court is open at that time. This allows sufficient time to interview clients who are in custody or on bail. Lawyers should arrive at Court no later than 9.00 am at these courts.

Duty Matters

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
 - Forensic procedure applications that can be concluded on the duty day
1. Lawyers must give priority to children in custody.
 2. "Duty" matters do not include defended hearings (including forensic procedure applications that are listed for hearing), matters requiring expenditure and committal hearings. A completed duty application must be submitted to Legal Aid NSW for any of these matters and the matter will be assigned in accordance with the [Grants Allocation Guidelines](#).
 3. An application for legal aid must be submitted via Grants Online to Legal Aid NSW for serious children's indictable matters or any other matters for committal following the first duty appearance.
 4. In all other matters, where a plea of not guilty is indicated on a first appearance and a matter is adjourned for service of a brief the matter remains a duty matter until it is listed for hearing.
 5. At, **Parramatta, Surry Hills, Campbelltown, Hornsby, Sutherland and Port Kembla** Children's Courts lawyers should indicate that the brief is to be served on relevant office of the Children's Legal Service.
 6. At other Children's Courts, lawyers:
 - (i) may adjourn a duty matter to their next rostered duty day if the client instructs the lawyer to do so and the Court is prepared to adjourn the matter to that day.
 - (ii) must forward material relating to a duty matter to the rostered duty lawyer if the matter is adjourned to a day when the lawyer is not rostered as the

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duty lawyer particularly in matters where pleas of guilty have been entered and the matter has been stood over for sentence and a report ordered.

7. If a matter is a “difficult and complex” matter as defined under 9.2 of the Children’s Criminal Practice Standards, a lawyer can apply to Legal Aid NSW for the matter is to be assigned at an early stage. An application for legal aid must be submitted via Grants Online to Legal Aid NSW for determination. Legal Aid NSW will assess applications for early assignment of “difficult and complex” matters on a case by case basis. Legal Aid NSW reserves the right to assign or re-assign a matter to a lawyer employed by Legal Aid NSW, where it is of the opinion that it is reasonable to do so.
8. Legal Aid NSW will not authorise a duty lawyer to retain a plea of guilty on a day on which he or she is not the rostered duty lawyer unless the matter is a “difficult or complex matter” or exceptional circumstances exist. Prior approval must be sought from Legal Aid NSW and a completed duty application must be submitted to Legal Aid NSW for determination.

Duty Applications and Invoices

1. A duty application must be completed for each client and the following information recorded:
 - (i) child’s address and phone number including land line and mobile
 - (ii) any instructions
 - (iii) the outcome (including bail conditions and any orders made); and
 - (iv) next date that the matter is in court.
2. **Parramatta, Surry Hills, Campbelltown, Hornsby, Sutherland and Port Kembla Children’s Courts**
 - (i) At the completion of the duty day at these courts lawyers should forward all duty applications and the duty invoice to the relevant Children’s Legal Service office.
 - (ii) Lawyers should retain a copy of duty applications for duty lawyer appearances in their office. Legal Aid NSW reserves the right to conduct an audit of applications taken.
3. **Other Children’s Courts**
 - (i) Lawyers are not required to send duty applications with duty invoices to Legal Aid NSW. Lawyers should retain duty applications for duty lawyer appearances at these courts in their office. Each form must be retained for Legal Aid NSW audit purposes. Where the duty application is forwarded to another duty lawyer, in relation to a further duty appearance, a copy of the application should be kept in the lawyer’s office.

Defended Matters

1. When a matter is listed for hearing a completed application must be submitted to Legal Aid NSW via Grants Online and the matter will be assigned.
2. Defended matters will be assigned to lawyers in accordance with the Legal Aid NSW [Grants Allocation Guidelines](#).

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3. If a lawyer wishes to receive the assignment of a defended hearing arising from a duty appearance the lawyer must indicate on the application for legal aid the basis on which the assignment is sought. For example:
 - The client has specifically requested that the lawyer appear at the defended hearing.
 - The client has built a relationship with the lawyer over a number of duty appearances and continuity should be maintained.
 - The lawyer has represented the client in other proceedings and has requested that the lawyer appear on the defended hearing.
 - There are issues relating to the client's gender, age or ATSI, NESB or cultural status that require continuity to be maintained.
 - The grant would be effective, efficient and economical as the lawyer has other matters listed or is rostered for duty at that Court on the same day.

Apprehended Domestic Violence Orders and Apprehended Personal Violence Orders

1. Legal Aid is available for children who are defendants in proceedings for apprehended domestic violence orders and apprehended personal violence orders. For more information go to Legal Aid NSW [Policy Online](#).

Principle Place of Practice

In regional areas the principal place of practice of the solicitor (as registered with and stated on the Law Society website) must be located in the town or within 35 kilometres of the town where the local court is located, unless otherwise approved by Legal Aid NSW and the Law Society of NSW.

In outer Metropolitan Sydney, the principal place of practice of the solicitor must be located in the suburb with the local court or in a suburb which is close to the court location.

Travel Allowance

1. A travel allowance is only available with the prior approval of Legal Aid NSW where the return journey from the solicitor's office to Court exceeds 70 kms.
2. Generally, 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 defended hearings.

Children's Legal Service Bulletin

The Children's Legal Service Bulletin is available online at the [Children's Legal Service webpage](#). Lawyers are reminded to regularly refer to the bulletin for up to date information on issues and legislation relevant to the representation of children.

Conference papers from the Annual Children's Legal Service Conference are also available on the webpage.

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LEGAL AID NSW CHILDREN'S LEGAL SERVICE

CENTRAL SYDNEY

Legal Support Officer Ph: 9219 5120 Fax: 9219 5793

SURRY HILLS CHILDREN'S COURT

Surry Hills Court Ph: 8667 2100 Fax: 8667 2130

PARRAMATTA JUSTICE PRECINCT

Legal Support Officer Ph: 8688 3800 Fax: 8688 3890

PARRAMATTA CHILDREN'S COURT

Parramatta Court Ph: 8688 1888 Fax: 8688 1999

CAMPBELLTOWN OFFICE

Legal Support Officer Ph: 4629 2752

CAMPBELLTOWN CHILDREN'S COURT

Campbelltown Court Ph: 4629 9777 Fax: 4629 9744

SUTHERLAND OFFICE

Legal Support Officer Ph: 9545 7823

PORT KEMBLA CHILDREN'S COURT

Port Kembla Court Ph: 4274 0735 Fax: 4276 3239

SUTHERLAND CHILDREN'S COURT

Sutherland Court Ph: 1300 679 272 Fax: 9542 0244

NEWCASTLE OFFICE

Legal Support Officer Ph: 4929 5482

BROADMEADOW CHILDREN'S COURT

Broadmeadow Court Ph: 4915 5200 Fax: 4915 5201

WOY WOY CHILDREN'S COURT

Woy Woy Court Ph: 4344 0111 Fax: 4344 4831

WYONG CHILDREN'S COURT

Wyong Court Ph: 4350 3010 Fax: 4350 3050

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