

Back Up Duty Scheme

Information for Applicants and Guidelines

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This Information Package outlines the Back Up Duty Scheme relating to the involvement of private practitioners in Local Court, District Court and Children’s Court criminal duty back-up and urgent case work in courts serviced by a Legal Aid NSW office.

Introduction to the Back Up Duty Scheme

The Back Up Duty Scheme operates at courts serviced by Legal Aid NSW to supplement in-house Legal Aid NSW solicitors when they are unavailable. Practitioners are appointed to the Back Up Duty Scheme for regions and courts through an expression of interest process.

Practitioners appointed to the Back Up Duty Scheme are eligible to be allocated duty back-up work in circumstances where salaried solicitors of Legal Aid NSW are unable to meet the demand for services at a court covered by the Back Up Duty Scheme.

Practitioners allocated duty back-up work appear for clients on behalf of Legal Aid NSW on their first appearance and for pleas of guilty, mentions, adjournments, applications under section 14 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) and bail applications subject to Legal Aid NSW policy and guidelines.

Practitioners appointed to the Back Up Duty Scheme are also eligible to be allocated urgent case work including defended hearings and other matters requiring expenditure. In some locations this includes District Court appeals where assistance is provided on a duty basis.

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How to apply

New applicants

Expressions of interest addressing the selection criteria must be emailed to:
backupduty@legalaid.nsw.gov.au.

When completing an expression of interest a practitioner should:

- ensure you are on the Summary Crime Panel
- address all selection criteria and supply all other relevant information as required to demonstrate that the criteria are met; and
- provide the details of two recent referees that attest to the above point

Privacy

The information provided in an expression of interest will be used to determine initial appointments under the Back Up Duty Scheme and may be used in considering a practitioner's re-appointment to the Back Up Duty Scheme during a Review of Appointments.

The expression of interest will be provided to the selection committee and to the Executive Director Criminal Law or their delegate, where appropriate.

By submitting an application, the applicant acknowledges and authorises that Legal Aid NSW may, to the extent it is reasonably necessary:

- collect and use my personal information contained in this application, or contained in any audit or investigation, for the following purposes:
 - to assess my eligibility for appointment or ongoing inclusion on BUDS or any other panel, list or duty scheme, and
- disclose for any of the above purposes my personal information collected from this application, or collected from any audit or investigation of the practitioner, to any selection committee, which may include representatives of the Law Society of New South Wales and the New South Wales Bar Association.

Enquiries

Enquiries relating to the lodgement of expressions of interest should be directed to:
backupduty@legalaid.nsw.gov.au.

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Back Up Duty Scheme regions and included courts

All Back Up Duty Scheme regions and included courts are presented on the following page.

Practitioners will be required to nominate the regions in which they would be prepared to be allocated duty back-up and urgent case work and must be able to satisfy Legal Aid NSW that they can provide a responsive service to the courts in the nominated area(s). Practitioners will be expected to accept work at all courts in the area to which they are appointed.

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Central Sydney BUDS	Sydney West BUDS	Sydney South and South West BUDS
Burwood Local Court Central Local Court Downing Centre Local Court Manly Local Court Newtown Local Court Sydney District Court Waverley Local Court	Blacktown Local Court Mt Druitt Local Court Parramatta Local Court Parramatta District Court Penrith Local Court Penrith District Court	Bankstown Local Court Campbelltown Local Court Campbelltown District Court Fairfield Local Court Liverpool Local Court Sutherland Local Court
Albury BUDS	Ballina BUDS	Bathurst BUDS
Albury Children's Court Albury District Court Albury Local Court	Ballina Children's Court Ballina Local Court Byron Bay Local Court	Bathurst Children's Court Bathurst District Court Bathurst Local Court
Bourke and Cobar BUDS	Cessnock BUDS	Coffs Harbour BUDS
Bourke Children's Court Bourke District Court Bourke Local Court Brewarrina Local Court Cobar Local Court Nyngan Local Court Warren Local Court	Cessnock Children's Court	Bellingen Children's Court Bellingen Local Court Coffs Harbour Children's Court Coffs Harbour District Court Coffs Harbour Local Court Macksville Children's Court Macksville Local Court
Coonamble and Walgett	Dubbo BUDS	East Maitland BUDS
Coonabarabran Local Court Coonamble District Court Coonamble Local Court Lightning Ridge Local Court Walgett Children's Court Walgett Local Court	Dubbo Children's Court Dubbo District Court Dubbo Local Court Gilgandra Local Court Narromine Local Court Peak Hill Local Court Wellington Local Court	East Maitland Children's Court
Gosford BUDS	Grafton BUDS	Kempsey BUDS
Gosford District Court Gosford Local Court Wyong Local Court	Grafton Local Court	Kempsey Local Court
Lismore BUDS	Lithgow BUDS	Newcastle BUDS
Casino Local Court Kyogle Local Court Lismore Children's Court Lismore District Court Lismore Local Court	Lithgow Local Court	Belmont Local Court Newcastle District Court Newcastle Local Court Toronto Local Court
	Mudgee BUDS	
	Mudgee Local Court	
Nowra BUDS	Orange BUDS	Parkes BUDS
Nowra District Court Nowra Local Court	Blayney Local Court Orange Children's Court Orange District Court Orange Local Court	Forbes Local Court Parkes District Court Parkes Local Court
Port Macquarie BUDS	Tamworth BUDS	Taree BUDS
Port Macquarie District Court Port Macquarie Local Court	Quirindi Local Court Tamworth Children's Court Tamworth District Court Tamworth Local Court	Taree District Court Taree Local Court
Wagga Wagga BUDS	Wauchope BUDS	Wollongong BUDS
Wagga Wagga Children's Court Wagga Wagga District Court Wagga Wagga Local Court	Wauchope Local Court	Albion Park Local Court Port Kembla Local Court Wollongong District Court Wollongong Local Court

Initial Appointment to the Back Up Duty Scheme

Practitioners will be appointed to the Back Up Duty Scheme by the Legal Aid NSW Executive Director Criminal Law or their delegate.

Practitioners wishing to be considered for appointment under the Back Up Duty Scheme may submit an expression of interest when called for by Legal Aid NSW. To be eligible for appointment under the Back Up Duty Scheme, a practitioner must be a Principal or a nominated associate of a Law Practice that is on the Legal Aid NSW Summary Crime Panel and satisfy certain other selection criteria nominated by Legal Aid NSW and set out below. Please note, if you are not the principal of your firm, your firm may be on the Summary Crime Panel, however, to be eligible for BUDS, you must be nominated individually as an associate. If you are unsure, please email panels@legalaid.nsw.gov.au to confirm you are on the Summary Crime Panel before applying.

You can also find out more information on how to [update panel memberships on our website](#).

Expressions of interest will be considered by a Selection Committee consisting of:

- a nominee of the Legal Aid NSW Executive Director Criminal Law;
- a nominee of the Legal Aid NSW Director Grants;
- a nominee of the Law Society of NSW; and
- a nominee of the NSW Bar Association.

The Selection Committee will meet as required to consider expressions of interest. The Selection Committee will make recommendations to the Executive Director Criminal Law or their delegate.

Practitioners who are assessed as most suitably qualified for appointment will be appointed to the Back Up Duty Scheme in one, or more than one, area. The appointment of practitioners to the Back Up Duty Scheme, and to a particular area or areas, will be dependent upon the number of suitably qualified practitioners seeking appointment and the demand for the provision of duty back-up and urgent case work in each area, as determined by Legal Aid NSW. The number of practitioners appointed to each area will be limited and will be determined by Legal Aid NSW.

Unlike Panel membership, individual practitioners, rather than a firm of practitioners, will be appointed to the Back Up Duty Scheme. Only those individual practitioners appointed will be eligible to perform work allocated under the Back Up Duty Scheme.

Legal Aid NSW is not bound to appoint any practitioner expressing an interest in being appointed to the Back Up Duty Scheme. All expressions of interest will be treated in confidence.

Practitioners will be advised in writing of the outcome of their expression of interest.

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Duration of Appointment

Practitioners will be appointed under the Back Up Duty Scheme until the next Review of Appointments is conducted, or earlier if the practitioner is removed from the Scheme, or a date deemed as appropriate by Legal Aid NSW.

Review of Appointments to the Back Up Duty Scheme

A Review of Appointments to the Back Up Duty Scheme will be conducted every 12 months or as deemed appropriate by Legal Aid NSW. The Review will be conducted by a Selection Committee consisting of a nominee of the Legal Aid NSW Executive Director Criminal Law, a nominee of the Legal Aid NSW Director Grants, a nominee of the Law Society of NSW and a nominee of the NSW Bar Association. The Selection Committee will make recommendations to the Executive Director Criminal Law or their delegate.

Prior to any Review of Appointments being conducted, Legal Aid NSW may call for new expressions of interest from practitioners who are nominated associates of a Law Practice that is on the NSW Legal Aid Summary Criminal Law Panel who wish to be considered for appointment to the Back Up Duty Scheme.

After consideration of the recommendations of the Selection Committee, the Executive Director Criminal Law or their delegate may:

- Determine to re-appoint a practitioner to the Back Up Duty Scheme in one or more of the areas
- Determine not to re-appoint a practitioner previously appointed to the Back Up Duty Scheme in one or more of the areas
- Determine to appoint a practitioner to the Back Up Duty Scheme who has not previously been appointed in one or more of the areas.

In making recommendations to the Executive Director Criminal Law or their delegate, the Selection Committee may consider the following:

- The need to increase or decrease the number of practitioners appointed to a particular area in response to the business needs of Legal Aid NSW
- The practitioner's ability to meet or continue to meet the selection criteria for appointment or re-appointment to the Back Up Duty Scheme
- Any non-compliance with or breach of the [Legal Aid NSW Quality Standards](#), [Back Up Duty Scheme Guidelines](#) by the practitioner.

In considering the re-appointment of a practitioner, the Selection Committee may request, and take into account, any information or opinion provided by a Solicitor in Charge/Senior Criminal Solicitor at a Legal Aid NSW office at which the practitioner has been allocated work under the Back Up Duty Scheme, relating to the practitioner's ability to continue to meet the selection criteria for re-appointment or any alleged non-compliance with or breach of the Legal Aid NSW Quality Standards and Back Up Duty Scheme Guidelines by the practitioner.

Where the Executive Director Criminal Law or their delegate is intending to make a determination that a practitioner not be re-appointed to the Back Up Duty Scheme as a result of an alleged inability to continue to meet the selection criteria or an alleged non-compliance with or breach of the Legal Aid NSW Quality Standards and/or Back Up Duty Scheme Guidelines, the

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practitioner will be advised of the intention not to re-appoint and the reasons for this determination and will be given an opportunity to address the issues raised.

Removal from the Back Up Duty Scheme

A practitioner will be removed from the Back Up Duty Scheme by the Executive Director Criminal Law or their delegate in the following circumstances:

- during or after a review of the probational period, where the practitioner has failed to meet the requisite standards and expectations of a duty lawyer
- after a Review of Appointments is conducted and a determination is made not to re-appoint a practitioner
- for breach of the Back Up Duty Scheme Guidelines and/or or Legal Aid NSW Quality Standards.
- if the practitioner becomes ineligible to undertake legal aid work on the Summary Crime Panel.
- at the practitioner's request

Prior to removal from the Back Up Duty Scheme for breach of the Back Up Duty Scheme Guidelines or Legal Aid NSW Quality Standards, the practitioner will be advised of the intention to remove and the reason for removal and will be given an opportunity to address the issues raised.

Selection Criteria

Practitioners who wish to be considered for appointment to the Back Up Duty Scheme are invited to submit an expression of interest by using this [BUDS EOI form](#).

Preference will be given to practitioners who satisfy all the selection criteria. However, in areas where there are insufficient numbers of practitioners who meet this criteria, expressions of interest from practitioners who do not fully meet the criteria may be considered.

Practitioners who do not fully meet the criteria may be appointed if the Selection Committee is satisfied that, given their level of experience and knowledge, they will be able to competently perform the work allocated through the Back Up Duty Scheme. Conditions of supervision or a probation period(s) may be imposed in these circumstances.

If a private practitioner does not meet the criteria as determined by the selection committee and or the Executive Director of Crime, LANSW has the discretion to impose a minimum period that a private practitioner cannot reapply and be reconsidered for Back Up Duty Scheme. The private practitioner will be advised in writing of the minimum period, as determined by Legal Aid NSW.

The Selection Committee may request, and take into account, any information or opinion provided by a Solicitor in Charge/Senior Criminal Solicitor at a Legal Aid NSW office at which the

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practitioner will be allocated work under the Back Up Duty Scheme, relating to the practitioner's ability to meet the selection criteria for appointment or any alleged non-compliance with or breach of the Legal Aid NSW Quality Standards and Back Up Duty Scheme Guidelines by the practitioner.

The following selection criteria must be addressed when expressing an interest in appointment the Back Up Duty Scheme:

1. You are the principal of a Law Practice or a nominated associate of a Law Practice that is on the Legal Aid NSW Summary Crime Panel
2. Five years post-admission experience and devotion of not less than 50% of normal full-time practice to the area of criminal law in each year of the past three-year period . Provide a chronological employment history, which includes: * position held * position responsibilities * employer name * tenure of employment OR alternatively, provide a copy of your up to date Curriculum Vitae (CV) with your Application Form
3. Extensive knowledge of criminal law and experience or capacity to conduct criminal duty list work in the Local Court **(max. 300 words)**
4. Demonstrated experience representing legal aid clients in courts **(max. 300 words)**
5. Proven experience in the provision of quality advice and representation in a high-volume work environment **(max. 300 words)**
6. Nominate the Back Up Duty Scheme [region/s listed on page 5 of this document](#) in which the practitioner would be willing to perform duty back-up and urgent case work

If practitioners wish to nominate more than one area they should list the areas in order of preference for appointment.

7. Ability to provide a responsive service to the needs of Legal Aid NSW and its clients within the area(s) to which appointment is sought. **(max. 300 words)**

To satisfy this requirement, it would generally be expected that the principal place of practice of the practitioner would be located within or in close proximity to the relevant area. However, it is acknowledged that practitioners outside the relevant area that can attend court locations and take instructions from clients at an accessible location may also have the ability to provide a responsive service.

8. Ability to identify and address the legal issues faced by people:
 - with mental and or cognitive impairment
 - who are socially and economically disadvantaged
 - from wide-ranging culturally diverse backgrounds **(max. 300 words)**
9. Excellent interpersonal skills, including the ability to understand and effectively communicate with people from a wide range of backgrounds including clients and other professionals **(max. 300 words)**

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10. Excellent written communication skills, including the ability to prepare court documents, correspondence, submissions and other written materials **(max. 300 words)**
11. Excellent file management skills, including making file notes, accurate recording of client instructions and recording court outcomes **(max. 300 words)**
12. Knowledge of Legal Aid NSW policies and procedures to determine applications of legal aid on a duty basis, and advise clients about eligibility including the means tests and contributions policy **(max. 300 words)**
13. Willingness and ability to comply with Legal Aid NSW policies, guidelines, reporting and administrative requirements **(max. 300 words)**
14. Willingness to attend training as required by Legal Aid NSW
15. Practitioners should also provide the name and contact details (including telephone number and email address) of two referees (a referee from Legal Aid NSW – Criminal Law Division is preferred, but not essential). The nominated referees must be recent and can attest to the practitioner's demonstrated ability to meet the above selection criteria:

The comments and opinions of referees will be considered in the assessment of the expression of interest.

Nominated referees should be independent. They should not be employed by or have a commercial interest in the firm where the practitioner is currently employed.

Judicial officers should not be given as referees.

Referees may be asked to provide information about their direct knowledge of a practitioner's skills and experience and their opinion on whether the practitioner is a suitable person for appointment to the Back Up Duty Scheme and the reasons for their opinion. They may also be asked to give their opinion about the extent to which the practitioner meets the selection criteria.

An Expression of Interest Form is available by clicking on the link below or you can download from the [Back Up Duty Scheme page on our website](#).

↓ [BUDS EOI form](#)

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Guidelines for the Back Up Duty Scheme

Back Up Duty Scheme (BUDS) practitioners are bound by the Legal Aid NSW [Quality Standards, Service Agreement](#) and the following BUDS Guidelines when providing duty or casework assistance on behalf of Legal Aid NSW. BUDS membership is open only to individuals and not to firms.

Travel

Travel permitted only at remote courts under limited circumstances

1. A travel allowance and lump sum payment in accordance with the existing Legal Aid NSW travel entitlements for practitioners in State Criminal Law matters will be available to eligible practitioners providing assistance at remote court locations including Bourke, Brewarrina, Cobar, Coonabarabran, Coonamble, Lightning Ridge, Nyngan, Walgett, and Warren.

No travel or lump sum payment is available to BUDS practitioners at other BUDS locations.

2. At Bourke, Brewarrina, Cobar, Coonabarabran, Coonamble, Lightning Ridge, Nyngan or Walgett, a travel allowance may be available where the total return distance travelled from the practitioner's principal place of practice to the court location exceeds 70 kilometres. Prior approval from the Legal Aid NSW office arranging the BUDS assistance is required.
3. Where required, expenses for accommodation and sustenance will be approved and paid at the maximum rates determined by the Department of Premier and Cabinet of the NSW Government in accordance with comparable public sector award rates based on the reasonable benefit limits set by the Australian Tax Office (as updated annually).
4. If the BUDS practitioner is already attending court on behalf of a private client or will be assisting a client pursuant to a grant of aid inclusive of travel for the BUDS attendance date, travel will not be approved.
5. Any request for travel outside these guidelines must be approved by the Legal Aid NSW Executive Director Criminal Law.

Allocation of work

6. Legal Aid NSW In-house solicitors undertake the majority of the duty and casework matters at the Local Courts covered by the BUDS. The amount of legal aid duty back-up and urgent case work which is available for private practitioners is limited and is dependent upon the capacity of the in-house solicitors to meet the demand for legal aid services. This capacity can vary over time, and from court to court.

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7. Appointment to the BUDS does not confer an entitlement to work. Legal Aid NSW is, however, committed to ensuring a fair and reasonable distribution of work amongst practitioners appointed to the BUDS in each area.

BUDS offers of work are to be made through the Back Up Duty Allocation System (BUDSAS) to ensure fair and reasonable distribution of work amongst practitioners. BUDS Practitioners must accept work through a work offer from BUDSAS either by SMS or email.

8. It is the responsibility of the Solicitor in Charge or Senior Criminal Law Solicitor at each regional office or criminal law section to ensure the fair and reasonable distribution of work allocated under the BUDS.
9. If a practitioner has other commitments which may impact their availability to perform a full day of duty back-up work, they need to contact the senior in-house solicitor at the location the work is offered to advise before accepting the offer.
10. A practitioner cannot claim imbursement for the time spent on other commitments or private clients during BUDS work.

Role of the BUDS Practitioner

11. When required to perform duty back-up work, a practitioner must arrive at court between 8:30am-9.00am, or as otherwise directed by the relevant local Legal Aid NSW office.
12. The BUDS practitioner must attend court as arranged with Legal Aid NSW. If unable to do so, a practitioner must advise the office of Legal Aid NSW which services the court at which the work was to be performed as soon as possible.
13. BUDS work cannot in any event be delegated to a practitioner who is not themselves a BUDS practitioner.
14. The BUDs practitioner should report to an in-house solicitor upon arrival at Court unless alternative arrangements have been made with the relevant Legal Aid NSW office prior to the duty shift. If tasks/files have been allocated to the BUDS practitioner ahead of time and there are no in-house Legal Aid NSW solicitors at court, the BUDS practitioner should contact the local Legal Aid NSW office on the morning of their duty shift to find out if there are any additional work items to attend to.
15. In-house solicitor(s) are responsible for coordinating the allocation of tasks and files and are required to direct the BUDS practitioners accordingly. The BUDS practitioner should advise the solicitor(s) at court (or the local Legal Aid NSW office, as relevant) as soon as practicable after reporting for duty. The BUDS practitioner should also advise the in-house solicitor(s) if they require breaks from duty outside of the regular morning tea and lunch breaks.

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16. The BUDS practitioner must undertake legal aid work in an effective and efficient manner bearing in mind the high volume demands of duty work, while ensuring all clients are represented to a high professional and ethical standard.
17. Fresh custody matters must be prioritised and have their case heard as early in the day as possible.
18. In first contact duty matters the BUDS practitioner must ensure that a [Criminal Law Duty form](#) is completed and signed by the client. All fields on the duty form must be completed, regardless of whether the client is in custody or at liberty. Where a client is in custody, it is not essential that the client sign the duty form, instead the BUDS practitioner should note in the signature box that the client is in custody.

Who must the BUDS Practitioner appear for?

19. Unless otherwise directed by the in-house practice, the BUDS practitioner must represent clients who qualify for legal aid in the following matters:
 - Pleas of guilty and sentence matters in summary State and Commonwealth charge matters and indictable charge matters which may be dealt with summarily
 - Release (bail) applications, bail variations, detention applications and breach of bail proceedings (noting that the Means Test does not apply to first bail applications)
 - Mentions and adjournments
 - Applications under section 14 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) (or s20BQ Commonwealth applications)
 - Forensic Procedure Applications for eligible defendants: see [\[2.2.3.7\], 2.2. Crime Policies- Local Court - Legal Aid NSW](#))
 - Filing and proceeding with section 4 Annulment applications
 - Apprehended Domestic Violence Orders for eligible defendants: see [5.1. Apprehended Domestic Violence Orders \(ADVO\) - Legal Aid NSW](#)

Section 14 Applications (formerly section 32s)

20. The BUDS practitioner should not adjourn a matter for the purposes of a section 14 application, unless:
 - The accused person is eligible for a grant of aid,
 - Arrangements are in place to obtain reports in support of the proposed application, and
 - The file is clearly marked with what those arrangements are
21. If the proposed arrangements for obtaining reports in support of a s14 will require expenditure, the matter should not be adjourned for this purpose without approval of the senior in-house solicitor present at the time. If no in-house solicitor is available or it is impractical to obtain their approval before adjourning the matter, the BUDS practitioner in seeking the adjournment for a s14 application should advise the court that the undertaking of an assessment and report on the client is subject to a grant of aid for this purpose.

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Setting down Defended Hearings

22. When the BUDS practitioner is asked to fix a date for a defended summary hearing, or any other matter which requires expenditure, the BUDS practitioner must be satisfied that the client either:
- has a grant of legal aid for that specific matter, or
 - is eligible to be granted legal aid and has provided the required verification documents
23. If the BUDS practitioner is not satisfied that the client has a grant, or is eligible to be granted legal aid, the BUDS practitioner must:
- For non-Domestic Violence proceedings:
Obtain instructions from the client to adjourn the proceedings so as to allow the client to provide verification documents, or
 - in Domestic Violence proceedings, or where an adjournment is not sought or is refused:
 - advise the court that:
 - the BUDS practitioner is appearing on a duty basis,
 - legal aid has not yet been granted to the client for the defended hearing/s.14 application etc,
 - representation on the hearing date is subject to the client being granted legal aid or arranging their own legal representation
 - If there is no grant of legal aid, or they do not to make their own arrangements the defendant will be unrepresented, and
 - Any outstanding brief items are to be served on the defendant

Section 4 Annulment applications

24. Where the BUDS practitioner is instructed to file a section 4 annulment application, the BUDS practitioner should file the application with the court during the course of the duty day where reasonably practicable to do so.

Duty as if to private client

25. A BUDS practitioner has the same duties towards the Legal Aid NSW client as would apply to a private client under the normal practitioner-client relationship.
26. If the BUDS practitioner believes they are unable to act for the client for ethical reasons, the BUDS practitioner should refer the client to another practitioner performing duty work at the court on the day. If not practical, seek instructions from your client in relation to an adjournment.
27. In all matters, the BUDS practitioner must make detailed and legible notes recording the advice given and instructions received. When a plea of guilty is to be entered, the BUDS practitioner should obtain signed instructions from their client if it is practicable to do so. The outcome of the court proceedings must be recorded on the file cover, duty form or in accordance with the practices of the office where you are performing duty that day.

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- 28.** Selected Legal Aid NSW criminal law practices have adopted a digital practice model where traditional paper files are not used, and documents/files are stored and shared electronically. If you are conducting duty back-up at one of these locations, you will be provided with further information about how you can access papers/files and how papers/files and court outcomes are communicated back to the Legal Aid NSW office.

Defended hearings and Early Appropriate Guilty Pleas (EAGP) matters

- 29.** The BUDS practitioner performing back-up duty work should not ordinarily appear in the following:
- defended hearings without a grant of legal aid.
 - EAGP proceedings, except first appearance bails or, if engaged as agent on behalf of Legal Aid NSW in-house solicitor or as otherwise directed by the in-house practice.

Verification of means

- 30.** If applicable, the BUDS practitioner should sight any verification documents the client has in their possession. These may include a Centrelink Pensioner Concession card, a Centrelink Statement of Benefit, a payslip and bank statements. The documents should be retained on file or copied if possible. If unable to be retained or copied, details of the documents sighted should be recorded on the Application form.
- 31.** If the client is on Centrelink, the BUDS practitioner should ensure that the Centrelink Consent on the duty form has been signed.
- 32.** The BUDS practitioner has the delegation to waive the requirement for verification for duty matters in special circumstances [1.4.9 Discretion to waive verification](#). This delegation does not extend to verification for a grant of aid.
- 33.** Where practicable, the BUDS practitioner should return all files, duty forms and applications for legal aid resulting from duty back-up work to the Legal Aid NSW office servicing the court at which the work was performed at the end of the duty day. Where not practicable, the material should be returned within three (3) days. The BUDS practitioners must liaise with local Legal Aid NSW offices to clarify local arrangements for forwarding documents.
- 34.** All applications, regardless of whether the matter was adjourned or completed on the day, should be returned to Legal Aid NSW. The BUDS practitioner will not be authorised to retain any matter resulting from a duty back-up appearance.
- 35.** Duty tax invoices must be submitted through Grants Online as soon as possible after the performance of duty back-up work to allow for prompt payment.

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36. When requested to appear in an urgent case work matter (eg a defended hearing) the BUDS practitioner should only accept the assignment of work if they believe that they have adequate time to prepare the matter before the next court date.

Removal or suspension from the BUDS

37. Legal Aid NSW's Criminal Law Executive monitors the quality of legal aid work undertaken by BUDS practitioners and handles complaints against them.
38. Complaints or suspected breach of these Guidelines will be investigated by the Crime Executive and may result in removal or suspension of the practitioner from the BUDS.
39. Where there is a complaint or suspected breach of the Guidelines subject to investigation, the Crime Executive may suspend a practitioner from undertaking further BUDS work pending the outcome of the investigation and any subsequent determination made.
40. A practitioner will be removed from the Back Up Duty Scheme by the Executive Director Criminal Law or their delegate in the following circumstances:
- during or after a review of the probational period, where the practitioner has failed to meet the requisite standards and expectations of a duty lawyer
 - after a Review of Appointments is conducted and a determination is made not to re-appoint a practitioner
 - for breach of the Back Up Duty Scheme Guidelines and/or or Legal Aid NSW Quality Standards.
 - if the practitioner becomes ineligible to undertake legal aid work on the Summary Crime Panel.
 - at the practitioner's request
41. Prior to removal from the Back Up Duty Scheme for breach of the BUDS Guidelines, Legal Aid NSW Service Agreement and/or Quality Standards, the practitioner will be advised of the intention to remove and the reason for removal and will be given an opportunity to address the issues raised.
42. Breaches of the Legal Aid NSW Service Agreement and/or Quality Standards may also be referred to the Private Lawyer Quality Standards Unit (PLQS) for investigation in accordance with Clause 11 of the Service Agreement.

Temporary Deactivation

43. If a practitioner has been offered but has not accepted Back Up Duty work for over 6 months, their membership may be temporarily deactivated until they advise Legal Aid NSW that they are available to accept duty work again.

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Definitions

Assignment

The process of allocating a grant of legal aid for the provision of legal services to a legal practitioner who is not employed by Legal Aid NSW or to a private law firm, or another organisation external to Legal Aid NSW (such as a Community Legal Centre). The grant of legal aid is “assigned” to the private legal practitioner, law firm or other organisation. Legal Aid NSW has power to assign legal work is under s12 of the Legal Aid Commission Act 1979 (NSW).

Duty Work

Duty work does NOT include EAGP matters, appearing in defended hearings or in matters requiring expenditure.

Grant of Legal Aid

Grant of aid means the funding of legal services by Legal Aid NSW.

Law Practice is defined by the Act and means:

- a sole practitioner (including a barrister)
- a law firm
- an incorporated legal practice
- an unincorporated legal practice.

Special Circumstances

Special circumstances for the purpose of waiver of verification of means in duty matters may include, but are not limited to, where the applicant is in custody and has a District Court appeal or Supreme Court bail application.

Verification

Legal Aid NSW requires that clients verify their means (both income and assets) as disclosed in the legal aid application.

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