Virtual Bail Court Scheme Guidelines

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Virtual Bail Court Scheme (VBCS) practitioners are bound by the Legal Aid NSW Quality Standards, Service Agreement and the VBCS Guidelines when engaged on behalf of Legal Aid NSW. VBCS membership is open only to individuals and not to Law Practices.

Where can I find more information?

Further information relating to the Virtual Bail Court Scheme (VBCS) is available at:

https://www.legalaid.nsw.gov.au/for-lawyers/schemes/virtual-bail-court-scheme.

For all enquiries relating to the VBCS please contact us via VirtualBailCourt@legalaid.nsw.gov.au

Allocation of work

1. The amount of legal aid duty back-up work 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.
2. Appointment to the VBCS does not confer an entitlement to work. Legal Aid NSW is committed to ensuring a fair and reasonable distribution of work amongst practitioners appointed to the VBCS in each court hub area.
3. When applying for the VBCS, practitioners are appointed to the Virtual Bail Court hub location correlating to their primary place of business. To ensure coverage, an additional statewide bail list will be created. If there are no local solicitors within the regional hub available, the work offer can be made to the statewide bail list, this means practitioners may be allocated virtual bail work outside their local regional hub.
4. On weekdays, VBCS work offers will be made through the Back Up Duty Allocation System (BUDSAS). To support the fair and equitable distribution of work among practitioners, VBCS practitioners must accept allocations via the BUDSAS SMS work offer, where the court location is listed as "Virtual Bail Court".
5. On weekends, VBCS work offers will be made through RosterLab. To support the fair and equitable distribution of work among practitioners, VBCS practitioners must accept allocations by responding to the email sent by the Bail Operations Manager.
6. Before accepting VBCS work practitioners should check they are available on the date the work is offered. Practitioners should not accept work and then retrospectively check their availability. If a practitioner has other commitments which may impact their availability to perform a full day of work, they should not accept the offer.
7. 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 VBCS.
8. Only practitioners appointed to the VBCS can be allocated virtual bail court work. VBCS work cannot in any event be delegated to a practitioner who is not themselves on the VBCS.
9. VBCS practitioners who undertake work on these days will be remunerated for a **minimum** of 5 hours plus 1 hour follow up work and must not undertake other work, including other Legal Aid NSW matters or physical appearance in any other court.
    - Payment is made at the rate published on our website for duty lawyers. Please see this link for more information.
    - No weekend or public holiday loading applies to the fee payable. Private practitioners are remunerated in accordance with the standard duty lawyer fee scales irrespective of day of work.
    - 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.
    - VBCS practitioners must manually record their hours worked. If a practitioner has worked fewer than 6 hours, they are still entitled to claim and be paid a

minimum of 6 hours; however, they must ensure that they enter 6 hours on the duty tax invoice when claiming payment to be paid for the minimum amount.

- The Legal Aid office that offered the VBCS work is responsible for arranging payment to a practitioner. If a practitioner needs to clarify the details of their claim, they should contact the Legal Aid office that engaged them for the work.

Role of the VBCS Practitioner

10. Legal Aid NSW will provide practitioners with specific information relating to their accepted VBCS shift before the shift occurs. Practitioners should ensure that they read all information and are familiar with all documents contained in this communication. This includes the Standard Operating Procedures (SOPs) for centralised weekday bail as set by the Local Court of New South Wales. Information provided is regularly updated and varies between regional court hubs. It is the responsibility of a practitioner to review the documentation each time they accept a VBCS shift.
11. When adjourning matters, practitioners should ensure that they list the matter on a list day at the adjourning court. It is the responsibility of the practitioner to ensure the listing date is correct as per the sitting and listing arrangements as published on the website of the Local Court of New South Wales. If a matter is listed on a non-list day, it is the responsibility of the practitioner to re-list the matter to the correct list day.
12. When required to perform bail work, a practitioner must setup the necessary tech systems in a suitable environment for conferencing and appearing via AVL by 9.00am, or as otherwise directed by the relevant local Legal Aid NSW office.
13. In-house solicitor(s) are responsible for coordinating the allocation of tasks and matters and are required to direct the VBCS practitioners accordingly. The VBCS practitioner should advise the solicitor(s) rostered on their hub as soon as practicable after reporting for duty. The VBCS practitioner should also advise the in-house solicitor(s) if they require breaks from duty outside of the regular morning tea and lunch breaks.
14. Practitioners must attend a whole day or as otherwise directed. If a practitioner is unable to attend their accepted bail shift, they must contact and advise the office of Legal Aid NSW that offered them the work as soon as possible.
15. VBCS practitioners are expected to work collaboratively with other solicitors in a hub, handling matters beyond their local area if required.
16. The VBCS 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.

Technical and Operational Readiness for Virtual Bail Court Work

17. As all bail proceedings are conducted virtually, solicitors wishing to undertake Bail Court work must ensure they possess the necessary skills, equipment, and confidence in digital platforms to appear and operate effectively in virtual courtrooms. This includes:

- Access to a fully functional computer suitable for video conferencing and online court appearances.
- The ability to reliably connect to virtual courtrooms, including navigating platform links and logins.
- Appropriate audio and video accessories (e.g. headset and webcam) to ensure clear communication during all conferences and court proceedings.
- Proficiency in Microsoft Teams, which is the primary communication platform used for Centralised Bail Court.
- Familiarity with Webex, which is used for conferencing with defendants and during specific court appearances.
- The ability to complete and submit the Legal Aid NSW Digital Duty Form efficiently and accurately
    - Aligning with the virtual model of the Bail Division, this includes submitting a typed (not handwritten) version of the Digital Duty Form.
- Capability to receive, mark up, and manage paperwork electronically (or arrange printing at personal expense if preferred).
- Competency in sending and receiving documents electronically, including emails and shared file platforms.
- Comfort with navigating digital workflows, following procedural steps without hard-copy backups.
- Access to a stable and reliable internet connection to prevent disruption during court proceedings.
- Basic troubleshooting skills to address common technical issues quickly and independently.

18. It is the VBCS practitioners' responsibility to conference defendants via Audio Visual Link (AVL) and to report any issues with the availability of or quality of AVL facilities in all locations.

19. The Aboriginal Legal Service (ALS) do not appear in the Bail Division; however practitioners should ensure that clients are aware of this option for representation in future appearances. When representing an Aboriginal client whose matter will be adjourned to a court where the ALS appear, the practitioner should ask the client if they would like their matter referred to the ALS. The client's preference of representation should be clearly noted on the Digital Criminal Law Duty Form.

20. The VBCS practitioner must complete administration tasks and follow processes as set out by Legal Aid NSW.

21. In all first contact duty matters, the VBCS practitioner must ensure that the Digital Criminal Law Duty Form is fully completed. This requirement applies regardless of whether the client is in custody or at liberty—**all fields on the form must be addressed without exception**.

22. At the end of each day, once all bail matters are completed, the practitioner must ensure that **all** related papers and the Duty Form are forwarded to the appropriate administrative address(es) as designated by Legal Aid NSW. All documentation must be submitted to the relevant Legal Aid NSW office on the same day as the bail appearance.

- *Please note: multiple locations may be involved depending on the jurisdiction or specific matters addressed*.

Record-Keeping and Digital File Management in Bail Matters

23. VBCS practitioners must maintain detailed and legible digital notes clearly documenting the advice provided and instructions received for each bail matter.
    - Where a plea of guilty is to be entered, the practitioner should obtain the client's instructions and record them clearly in their notes, along with an explanation if a signature could not be obtained (e.g. client in custody).
24. The outcome of court proceedings must be recorded promptly, either within the electronic duty form or in accordance with the digital file management practices of the Legal Aid NSW office where duty is being performed.

Submission of Documentation – Bail Duty Work

25. For all duty back-up work conducted under the virtual practice model, the VBCS practitioner must ensure that all digital files, duty forms, and legal aid applications resulting from the day's work are submitted to the Legal Aid NSW office servicing the relevant court by the end of the duty day. Prompt and accurate file transfer supports continuity of service and client follow-up
26. To maintain confidentiality and assist administrative processes, client papers should be submitted to the Legal Aid office in separate emails (one email per client). Practitioners should not combine clients' papers and should not send papers for multiple clients in one email.
27. All applications, regardless of whether the matter was adjourned or completed on the day, should be returned to Legal Aid NSW. The VBCS practitioner is not authorised to retain **any** matter resulting from a VBCS appearance.
28. Where a matter is adjourned to a Duty Solicitor Scheme (DSS) court, the papers must be forwarded to Legal Aid NSW for processing and distributing to the appropriate rostered DSS practitioner. A DSS practitioner is not authorised to retain a matter resulting from their VBCS appearance without sending the papers to Legal Aid NSW first. If the DSS practitioner is the rostered practitioner on the date that the matter is adjourned to, Legal Aid NSW will return the papers to them once they have been processed. This applies to **all** matters, including committal or EAGP.
29. No applications for Legal Aid should be submitted following a Virtual Bail Court appearance, this is inclusive of any EAGP matters heard before a Virtual Bail Court. The practitioner who represents a person on a duty basis at their **first in-person** court appearance following a Virtual Bail Court appearance may submit an application for Legal Aid on behalf of the client if they satisfy the Legal Aid NSW eligibility policies and guidelines for a grant of legal aid.
30. As per the Legal Aid NSW Service Agreement, practitioners are not entitled to a lien over any papers, files or documents received by them while undertaking legal aid work, this is inclusive of VBCS work.

Distribution and Confidentiality of Court Papers

31. Court papers for the entire hub will generally be provided electronically by Police NSW. In some cases, however, the responsibility for forwarding these documents may fall to a Legal Aid NSW representative. All such emails and attachments must be treated as strictly confidential:

    - Only the intended recipient or an authorized individual may access, share, or act upon the contents.
    - If you are not the designated solicitor for the day or have received the information in error, do not read, store, distribute, or use the materials in any way.
    - In such cases, promptly notify the sender via reply email and delete the message—including any attachments—from your system.

Who must the VBCS Practitioner appear for?

32. Unless otherwise directed by the in-house practice, the VBCS practitioner must represent clients who qualify for legal aid in the following matters:

    - Release (bail) applications, bail variations, detention applications and breach of bail proceedings (noting that the Means Test does not apply to first bail applications)
    - Pleas of guilty and sentence matters in summary State and Commonwealth charge matters and indictable charge matters which may be dealt with summarily
    - 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

33. If the client is the recipient of a Centrelink income support payment, the VBCS practitioner should ensure that the Centrelink Consent on the duty form has been signed.

34. All applications, regardless of whether the matter was adjourned or completed on the day, should be returned to Legal Aid NSW. A VBCS practitioner will not be authorised to retain any matter resulting from a VBCS appearance.

Section 14 Applications (formerly section 32s)

35. The VBCS 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.

36. 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 VBCS 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.

Setting down Defended Hearings

37. When the VBCS practitioner is asked to fix a date for a defended summary hearing, or any other matter which requires expenditure, the VBCS practitioner must be satisfied that the client either:

- already has a grant of legal aid for that specific matter, or
- is eligible to be granted legal aid by satisfying the Simplified Means Test,

and either

- if convicted, there is a real possibility of a term of imprisonment being imposed for the matter, or
- there are exceptional circumstances. For what may constitute exceptional circumstances, please see the criminal law guidelines.

38. If the VBCS practitioner is not satisfied that the client has a grant, or is eligible to be granted legal aid, the VBCS practitioner must obtain instructions from the client to adjourn the proceedings so as to allow the client to provide verification documents to confirm their eligibility for legal aid.

Section 4 Annulment applications

39. Where the VBCS practitioner is instructed to file a section 4 annulment application, the VBCS practitioner should file the application with the court during the course of the duty day where reasonably practicable to do so. This can be done via electronic means either to the Virtual Bail Court during the proceedings or afterwards at the adjourned court. The annulment application and proof of filing should be sent with the other paperwork.

Duty as if to private client

40. A VBCS practitioner has the same duties towards the Legal Aid NSW client as would apply to a private client under the normal practitioner-client relationship.

41. If the VBCS practitioner believes they are unable to act for the client for ethical reasons, the VBCS 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.

Removal or suspension from the VBCS

42. Legal Aid NSW's Criminal Law Executive monitors the quality of legal aid work undertaken by VBCS practitioners, as well as compliance with these Guidelines, and handles complaints against them.

43. 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 VBCS.

44. Where there is a complaint or suspected breach of the Guidelines subject to investigation, the Crime Executive may suspend a practitioner from undertaking further VBCS work pending the outcome of the investigation and any subsequent determination made.

45. A practitioner will be removed from the VBCS by the Executive Director Criminal Law or their delegate in the following circumstances:

    - after a Review of Appointments is conducted and a determination is made not to re-appoint a practitioner;
    - for breach of the VBCS Guidelines and/or or Legal Aid NSW Quality Standards;
    - if the practitioner becomes ineligible to undertake legal aid work on the Summary Crime Panel; or
    - at the practitioner's request.

46. Where a Virtual Bail Court Scheme practitioner fails to meet the working arrangements required of the Virtual Bail Court, Legal Aid NSW may require a practitioner to undertake training, be subject to supervision or be provided with support in a manner Legal Aid NSW Crime Executive deem appropriate in order to remain on the scheme.

47. 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.

48. 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

49. If a practitioner has been offered but has not accepted Virtual Bail Court 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.

50. Practitioners can request to have their VBCS membership temporarily deactivated at any time if they are unavailable to accept VBCS work for an extended period. If a practitioner has been deactivated from the VBCS and wishes to undertake VBCS work again, there is no requirement to reapply for the scheme. They simply have to notify us they wish to undertake the work again.

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.

First Appearance

For the purposes of applying for a grant of Legal Aid for a defended hearing, committal or EAGP matter, the first in-court in-person court appearance is when the application for aid can be completed. No application for Legal Aid can be submitted before the first in-court in-person court appearance. Any appearance before a Virtual Court or where a practitioner appears in a matter remotely does not count as the first in-court in-person court appearance.

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.

Exceptional Circumstances

Exceptional circumstances for the purpose of determining eligibility for Legal Aid 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. For what may constitute exceptional circumstances, please see the criminal law guidelines.

Verification

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