Instructions to the Criminal Duty Lawyer Service

Protocol for private practitioners

October 2026

LEGAL AID
WESTERN AUSTRALIA

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INSTRUCTIONS TO THE CRIMINAL DUTY LAWYER SERVICE

Private lawyers can instruct the Legal Aid WA Criminal Duty Lawyer Service to appear for a client (whether legally aided or not) in accordance with this protocol.

1 Scope of the Duty Lawyer Service

1.1 Prosecutions within scope

Duty lawyers will only appear on matters that are prosecuted by one of the following authorities:

- WA Police
- Community Corrections
- Office of the Director of Public Prosecutions
- Commonwealth Director of Public Prosecutions
- Public Transport Authority
- Local Government – *Dog Act* or *Animal Welfare Act* prosecutions only

1.2 Appearances within scope

Duty lawyers can assist with requests to:

- Adjourn (including to a State Committal list), subject to 1.2.1;
- Enter pleas of guilty and/or not guilty to matters proceeding summarily and get a date for sentencing, trial allocation or trial;
- Enter pleas of guilty and/or not guilty to matters proceeding on indictment and commit to a superior court;
- Make a simple and uncontested application for bail or variation;
- Make a contested application for bail for an arrested person in accordance with Chapter 3;
- Respond to a Form 6 application made by the prosecution.

1.2.1 Adjournments

If the duty lawyer is instructed to seek an adjournment and the application is refused, with the court requiring the matter be substantively progressed, they will seek leave to be excused from the matter leaving the client unrepresented.

The duty lawyer will not assist the client to enter a plea or make an application for bail unless their instructions also provide for this and are in accordance with the rest of this protocol.

1.3 No substantive advice or representation

Duty lawyers cannot provide substantive advice or representation on a charge that is covered by an active grant of aid or on which a private practitioner has been engaged to act, except in accordance with 1.2 above.

The Duty Lawyer Service will not accept instructions to appear at:

- a trial or other substantive hearing; or
- a sentencing.

2 Duty Lawyer Service locations, days and lists

2.1 Magistrates Court

2.1.1 Lists

Duty lawyers in the Magistrates Court can appear on instructions in the following lists:

- Remand list;
- Police list;
- Committal mention list;
- Arrest In Custody list;
- Video Conferencing lists;
- Start Court and IDDP lists;
- Drug Court list;
- Family Violence list;

2.1.2 Locations and days

Duty lawyers appear in the Magistrates Court sitting at the locations and on the days specified in the following table:

Metro Locations	Days Duty Lawyer Attends
Armadale	Monday – Friday *Duty lawyer does not usually appear in the first hearings list*
Fremantle	Monday, Tuesday*, Friday *Including FV list
Joondalup	Monday, Wednesday, alt Thursdays,* Friday *FV list only
Mandurah	Tuesday, Friday
Midland	Tuesday, alt Thursdays,* Friday *FV list only *Audio link service available for arrested persons on Monday, Wednesday and Thursday*
Northbridge	Saturday, Sunday and Public Holidays
Perth	Monday - Friday
Rockingham	Monday, alt Wednesdays,* Friday *FV list only
Stirling Gardens	Alt Wednesdays

Regional Locations*	Days Duty Lawyer Attends
Albany	Thursday
Broome	Monday
Bunbury	Monday, Thursday
Busselton	Tuesday
Carnarvon	Monday
Geraldton	Thursday
Kalgoorlie	Monday, Thursday
Karratha	Tuesday
Kununurra	Friday
Northam	Monday
South Hedland	Wednesday

* The Duty lawyer service also attends regional court circuit locations. Please contact the relevant Legal Aid WA office for more details (see Appendix A).

2.2 Children's Court

2.2.1 Lists

Duty lawyers in the Children's Court can appear on instructions in the following lists:

- Remand list;
- Arrest In Custody list;
- Video conferencing list;
- Drug Court list;
- In-Roads list

2.2.2 Locations and days

Duty lawyers appear in the Children's Court sitting at the locations and on the days specified in the following table:

Metro Locations	Days Duty Lawyer Attends
Armadale	Friday
Fremantle	Friday monthly
Joondalup	Tuesday fortnightly
Mandurah	Monday monthly
Midland	Wednesday fortnightly
Perth	Monday - Sunday
Rockingham	Thursday fortnightly

Regional Locations*	Days Duty Lawyer Attends
Albany	Friday
Broome	Friday
Bunbury	Friday
Busselton	Tuesday
Carnarvon	Tuesday
Geraldton	Tuesday

Kalgoorlie	Tuesday
Karratha	Friday
Kununurra	Monday
Northam	Monday
South Hedland	Tuesday

*The Duty lawyer service also attends regional court circuit locations. Please contact the relevant Legal Aid WA office for more details (see Appendix A).

2.3 District Court

The Duty Lawyer Service does not accept instructions to appear in the District Court.

In regional locations, a Legal Aid WA lawyer may be able to assist in the Sentence Mention List when the District Court is circuiting. Contact the relevant regional office directly (see Appendix A for contact details).

2.4 Supreme Court

The Duty Lawyer Service does not accept instructions to appear in the Supreme Court.

3 Arrested clients in custody

3.1 Duty lawyer to attempt to contact private lawyer

Where the duty lawyer is assisting an arrested person in custody and becomes aware that there is a private lawyer acting (on a grant of aid or other basis), subject to capacity they will attempt to contact the private lawyer to seek instructions. This does not apply on weekends or public holidays.

3.2 Instructing the duty lawyer to apply for bail

The Duty Lawyer Service will accept instructions from the private lawyer to make a bail application in the Magistrates or Children's Court for an arrested person in custody if:

- the application is simple and uncontested; or
- the application is contested but the private lawyer is unable to appear due to pre-existing court commitments or leave and the client is also instructing the duty lawyer to apply for bail;

3.3 Duty lawyer discretion to apply for bail without instructions

If the duty lawyer is unable to get instructions from the private lawyer (either because they do not have capacity to do so, reasonable attempts to make contact have failed or the client has been arrested on a weekend) they may proceed to make a bail application if:

- The application is simple and uncontested; or
- The application is contested but the duty lawyer has advised the client on their prospects of success and the consequences of refusal, and the client instructs them to apply.

The duty lawyer will not proceed to make a bail application where the private lawyer has instructed them not to, even if the client wants them to.

The duty lawyer also will not assist in relation to District or Supreme Court bail.

4 How to instruct the duty lawyer

4.1 Providing instructions to the Duty Lawyer Service

To instruct the Duty Lawyer Service to appear for a client, a private lawyer must:

- Ensure the request is within the scope of the Duty Lawyer Service (see Chapter 1);
- Ensure the Duty Lawyer Service is available at the court location, on the day and in the list where the client will be appearing (see Chapter 2);
- Complete the appropriate Duty Lawyer Instruction Sheet providing all necessary information (see Appendices B-C);
- Send the completed instruction sheet to the relevant Legal Aid WA office (see Appendix A) **at least one clear business day before the appearance** (eg by 5pm on Friday for an appearance on Tuesday); and
- Copy in the relevant court registry or Judge's Associate in case the duty lawyer is unable to appear.

Failure to meet the above criteria is likely to result in the duty lawyer being unable to assist.

4.2 Providing instructions to the client

The instructing lawyer should advise the client that they must sign up to see the duty lawyer at court by 11am at the latest or they will not receive assistance. The duty lawyer will not seek out the client.

4.3 Notification of outcome

Where the duty lawyer appears on instructions, they will endeavour to notify the private practitioner of the outcome of the appearance as soon as practicable afterwards.

5 Duty Lawyer may decline to represent a client

5.1 Representation subject to duty lawyer capacity

Where instructions are received in accordance with 4.1, this does not guarantee that the duty lawyer will appear for the client. They will make every endeavour to assist, but this is always subject to capacity on the day.

5.2 Representation subject to client capacity

The duty lawyer can decline to enter a plea for a client if they are not satisfied that the client understands the nature of the charge and proceedings. If this occurs, the duty lawyer will seek an adjournment.

5.3 Representation subject to safety considerations

The duty lawyer can decline to assist a client who presents as aggressive, abusive, threatening or with a communicable illness.

Appendix A: Legal Aid WA Offices and Contact Details

Office	Locations Serviced	Email for Instructions
Perth	• Armadale • Fremantle • Joondalup • Midland • Mandurah • Merredin • Northam • Northbridge • Perth • Stirling Gardens	dutylawyerinstructions@legalaid.wa.gov.au
Albany (Great Southern)	• Albany • Katanning • Narrogin	AlbanyOfficeAdmin@legalaid.wa.gov.au
Broome (West Kimberley)	• Broome • Bidyadanga • Dampier Peninsula • Derby • Fitzroy Crossing • Looma	Broome.Admin@legalaid.wa.gov.au
Bunbury (South-West)	• Bunbury • Busselton • Collie • Harvey • Manjimup • Margaret River	Admin.Bunbury@legalaid.wa.gov.au
Christmas Island	• Christmas Island • Cocos Islands	christmasandcocos@legalaid.wa.gov.au
Geraldton (Mid-West and Gascoyne)	• Geraldton • Three Springs	Geraldton.Admin@legalaid.wa.gov.au
Carnarvon	• Carnarvon • Cue • Exmouth • Meekatharra • Onslow • Tom Price • Wiluna • Shark Bay	Regionalremoteadmin@legalaid.wa.gov.au

Kalgoorlie (Goldfields)	• Kalgoorlie • Esperance • Leonora • Laverton • Warburton • Warakurna • Blackstone	KalgoorlieAdmin@legalaid.wa.gov.au
Karratha	• Karratha	Karratha@legalaid.wa.gov.au
Kununurra (East Kimberley)	• Kununurra • Halls Creek • Kalumburu • Warmun • Wyndham	kununurraofficeadmin@legalaid.wa.gov.au
South Hedland (Pilbara)	• Port Hedland • Jigalong • Newman	hedland@legalaid.wa.gov.au
Wheatbelt	• Moora • Southern Cross	regionalremoteadmin@legalaid.wa.gov.au

Appendix B: Instructions to Duty Lawyer Form

Magistrates Court & Children's Court (excluding Committals)

Court Location	Court Number/List	Court Date

Instructing Lawyer	Phone	Email

Client Name	DOB	Phone
		☐ Safe to call

Client appearance: ☐ Notice ☐ Summons ☐ Bail ☐ Non-appearance ☐ Custody

Prison (if client is in custody):

Charge No./s	Charge/s	Plea (N, NG, ENP)

Further Instructions/Information: *eg co-accused, (un)available dates, reports required, etc*

Declaration for Instructions to Enter a Plea

I confirm that:

- ☐ I act on behalf of the client on the above charge/s and the Duty Lawyer is acting as agent on this court appearance only;
- ☐ I am satisfied that the client understands the charge/s
- ☐ I have provided all proper advice to the client and the plea/s are appropriate

Signed:

Date:

Appendix C: Instructions to Duty Lawyer Form

State Committal Hearing (including Stirling Gardens)

Court Location	Number of prior DCHs	Court Date

Instructing Lawyer	Phone	Email

Client Name	DOB	Phone
		☐ Safe to call

Client appearance: ☐ Notice ☐ Summons ☐ Bail ☐ Non-appearance ☐ Custody

Prison (if client is in custody):

Charge No./s	Charge/s	Plea (N, NG, ENP)

Disclosure:

- ☐ Has not been received, please seek adjournment of weeks.
- ☐ Has been recently received on and an adjournment of weeks is needed to obtain further instructions from the client
- ☐ Has been received and pleas can be entered
- ☐ Is not relevant/required (eg discontinuance agreed)

Further Instructions/Information: *eg co-accused, (un)available dates, reason for adjournment*

Declaration for Instructions to Enter a Plea

I confirm that:

- ☐ I act on behalf of the client on the above charge/s and the Duty Lawyer is acting as agent on this court appearance only;
- ☐ I am satisfied that the client understands the charge/s
- ☐ I have provided all proper advice to the client and the plea/s are appropriate

Signed:

Date:


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