

Chapter 1

Introduction

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A. Purpose of handbook

1-1 Handbook as a guide

This handbook is a guide for practitioners appearing as duty lawyers in magistrates and childrens courts in Queensland. As a practitioner, you should read this before you appear in court. If used correctly, the handbook will help you with problems that may arise while at court. The comprehensive index provides a quick reference so you can use the handbook as a useful tool during the little time at your disposal at court.

B. History and aims of Criminal Law Duty Lawyer Program

1-2 History

The Criminal Law Duty Lawyer Program in Queensland was initiated by the then Legal Assistance Committee of Queensland and subsequently taken over by the Queensland Law Society. Following this, Legal Aid Queensland took over responsibility for managing the program. Criminal law duty lawyer services are provided by Legal Aid Queensland in-house lawyers and authorised private lawyers who deliver services under roster or tender arrangements.

1-3 Aims

The Criminal Law Duty Lawyer Program provides advice and representation to any unrepresented defendant who seeks the assistance of a duty lawyer in a childrens or magistrates courts in Queensland.

C. Duty lawyer guidelines

1-4 Duty lawyer guidelines

Duty lawyer services are not limited to defendants in custody or a person's first court appearance.

Duty lawyer guidelines state that duty lawyer services will be provided, without a grant of legal aid being made, for:

- guilty pleas for summary matters:
 - includes indictable offences that are dealt with summarily where the defendant does not meet the summary plea guidelines for a grant of legal aid, and

- includes traffic offences where the defendant is at risk of imprisonment and does not meet the summary plea guidelines for a grant of legal aid
- community-based order breaches
- bail breaches
- first appearance on extradition proceedings
- adjournments (remands)
- bail applications
- disqualified driving charges
- traffic offences where mandatory imprisonment must be imposed as part or all of the punishment.

No appearance will be made for:

- civil matters
- traffic and main roads offences where there is no risk of imprisonment unless:
- the defendant is the subject of other charges being heard at the same time where a conviction may result in the defendant being sentenced to a term of imprisonment. In these cases, an appearance is required
- summary trials
- committal proceedings
- interlocutory applications for summary trials and committal proceedings
- matters with a current grant of aid, as these appearances are the legally-aided lawyer's responsibility. If a specific request is made by a private or Legal Aid Queensland lawyer acting for a defendant with a current grant of aid for criminal proceedings, an agency appearance by a duty lawyer can be made on a callover date to:
 - extend bail
 - get a remand, or
 - get a hearing
- a defendant who has arranged to be privately represented.

Legal Aid Queensland provides free guides dealing with applications for restricted work licences. They are available online at www.legalaid.qld.gov.au, from Legal Aid Queensland offices or magistrates courts.

Where possible, you are encouraged to engage in case conferencing with prosecution representatives to help dispose of matters early. Case conferences should be confined to straightforward issues, such as amending, substituting or withdrawing charges, or reaching a common agreement on the factual basis for a plea.

You are not to attempt case conferencing requiring complex and lengthy negotiations. Instead, adjourn these matters and advise defendants to apply for legal aid or, if legal aid is refused, get private legal representation.

A guide entitled '[Have you been charged with an offence?](#)' is available from Legal Aid Queensland. This guide has been published to assist defendants who do not qualify for legal aid and are due to appear in the magistrates court. This guide is available online at www.legalaid.qld.gov.au, from Legal Aid Queensland offices or magistrates courts.

D. Practical requirements of Criminal Law Duty Lawyer Program

1-5 Criminal law duty lawyer form

[Criminal law duty lawyer forms](#) are provided in all courts for duty lawyers to use. It is important that you use these forms. You must keep these forms as a record of a defendant's instructions and any advice you give. Instructions and advice must be legible, so print if necessary.

If a defendant appeals against the severity of a sentence, you may be asked to swear an affidavit as to matters you have mentioned in the court on the defendant's behalf on the plea of guilty. Therefore, you should keep a complete and accurate record of the proceedings.

This has become more important since the amendment to appeal provisions (see [3-9](#) to 3-11).

The criminal law duty lawyer form includes a tear-off slip on the bottom of the front page to hand to defendants whose matters have been remanded. This slip tells defendants the date, place and time of their next appearance and whether it is for mention or hearing. The reverse side of the slip lists the addresses and phone numbers of all the Legal Aid Queensland offices.

1-6 Duty lawyer session report form

You must complete a duty lawyer session report at the conclusion of your appearances on a particular day. You must complete all parts of the duty lawyer session report. Except where special arrangements exist, private practitioners will be paid on the basis of this report.

E. Responsibilities of duty lawyers

1-7 Duty as if to private client

Although, as a duty lawyer, you are not acting for a defendant on a continuing basis, you have the same duties towards that defendant as to a private client under the normal solicitor–client relationship. You should be as vigorous advocating on behalf of the defendant as if the defendant was a private client. For instance, this may extend to contacting relatives or possible sureties about a bail application, or making any other enquiries that helps you represent the defendant in court.

You have no more or less duty to the court than a solicitor appearing in a private capacity.

1-8 No obligation to appear

You have no obligation to appear for every defendant who seeks representation. If you believe that an ethical problem exists and wish to seek further information before acting for a defendant, you should not proceed at that time. You are under no obligation to tell the court why you are not appearing, except perhaps to advise that there is an ethical problem. Of course, you should fully explain the situation to the defendant and advise the defendant about appearing in court unrepresented.

1-9 Appearing as a ‘friend of the court’

In some situations, the magistrate may ask you to appear as a ‘friend of the court’ or you may seek leave to do so. For example, you may not be able to obtain instructions from a defendant who appears to be suffering from a mental illness. However, you may still feel it proper to appear, explain the situation to the court and assist as required to the extent that it is ethically possible to do so.

1-10 Primary duty to defendants

You are not at court purely for the court's or police prosecutor's convenience; although, if performing the role properly, both the court and prosecutor should benefit. You are there primarily to assist defendants.

1-11 Consciousness of time

You should always be conscious of time constraints and not keep the court waiting unnecessarily. If a problem with a particular defendant arises, you should be prepared to advise the court of any likely delay so the magistrate can better organise the matters before the court that day. Alternatively, if a matter requires further investigation, advise the defendant to seek an adjournment to enable you to obtain further legal advice. If appropriate (see guidelines for plea of guilty), you should advise the defendant to apply for legal aid to allow the matter to be further prepared before the next court date.

F. Practical hints for duty lawyers

1-12 Practical hints only

The following practical hints may help you manage what can often be a very difficult task in a busy court.

1-13 Be early

You must be clear about when the court commences and be at court in good time (at least 30 minutes) before proceedings commence. You need to allow time before you attend court as you may need to see defendants in custody (watch-house) before going to court.

1-14 Speak to the police prosecutor or court staff

If possible, first contact the police prosecutor or court staff to obtain information about the number of people before the court and the number likely to need your assistance. At times, the prosecutor will arrive just before proceedings commence. If you are able to speak with the prosecutor on arrival at court, seek copies of charge sheets (QP9s), as many defendants will not know the actual charges that have brought them before the court. Of course, it is also very important that you have this information. Ask also for details of defendants in custody and the prosecutor's attitude towards bail. In most cases, police will not object to bail and finding out the prosecutor's attitude beforehand will save unnecessary instruction taking.

In some courts, you will receive a list showing the defendants appearing that day, which is of great assistance. However, if no list is provided, you should, if possible, obtain the defendants' names and details of charges from the prosecutor.

Some courts have volunteer court assistance workers who liaise with the public and ask those who wish to see the duty lawyer to fill in their personal details on the duty lawyer form, which can save you valuable time. If this service is not available, ensure that defendants' personal details are entered on the duty lawyer form.

1-15 Try to plan time

Try to plan the order of taking instructions and appearing in court. In some courts, defendants in custody are dealt with first, so you should see defendants in custody first followed by defendants bailed to appear or on notices to appear. However, the order of proceedings will depend on a court's practice notes. Instructions from those in custody tend to be more complicated, especially if a bail application is to be made.

You must see as many defendants as possible before court commences because the magistrate may wish you to commence appearances early in the day if there are few other defendants with private representation or representing themselves. Furthermore, once the court commences hearing, if you are prepared to proceed in all matters you are involved in, you will be able to complete duties at court with little delay. As a courtesy to the court, advise the

magistrate or clerk before court commences if you have not been able to take all instructions before the scheduled commencement time.

Before interviewing people, ask those waiting at the court to assess the number who are intending to seek assistance and gauge what sort of assistance they require.

You may be able to establish quickly that several defendants are seeking straightforward adjournments, so you can take their instructions without delay. Some may be able to seek such a remand themselves, leaving you time to undertake more complex matters.

1-16 Taking instructions—working out the issue

When taking instructions, attempt to work out the nature of the defendant's appearance as quickly as possible. Does the defendant simply want an adjournment? Is it a matter that will have to be adjourned for hearing (e.g. an indictable offence that can not be dealt with summarily)? Will there be a plea of guilty with some complications? Is bail in issue? If the matter is simply to be adjourned for further mention, or must be set down for hearing and bail is not in issue, do not spend too much time taking instructions.

1-17 Do not rush

Do not rush through the process of taking instructions but attempt to do so as efficiently as possible. While keeping time to the necessary minimum is important, it is equally important to obtain all relevant details for two reasons:

- to assess what advice you will give to the defendant (in relation to a plea etc)
- to ensure that all relevant information is put to the court if you are applying for bail or entering a plea of guilty.

Where possible, it may help to take instructions from a defendant in private, as the presence of friends and relatives can often delay the procedure.

1-18 Obtain further information from prosecutor if necessary

If the defendant cannot provide all relevant information regarding the charge or previous convictions etc, you should not hesitate to again consult with the prosecutor to seek further information. Approaches to the prosecutor should be courteous at all times. If bail is in issue, it is particularly important to obtain the prosecutor's attitude to bail. An initial opposition to bail may be overturned if certain conditions are put in place. There is little point taking detailed instructions from a defendant regarding bail if it is not opposed, though you should always take brief details of relevant facts.

You should also find out why a particular defendant is in custody. The defendant may have been arrested shortly before the court commenced and, therefore, bail is not in issue. Alternatively, the court could be holding the defendant on a warrant relating to a separate matter to their appearance before the court that day.

1-19 Deal only with the prosecutor

Deal only with the prosecutor when seeking information about a particular defendant. While arresting officers will often be at court and may be able to assist with matters such as attitude to bail or unclear aspects about warrants, it is best to check with the prosecutor. While the prosecutor will act on instructions from an arresting officer, the prosecutor will have the final say about what position they will take in court.

1-20 Organise appearances

Once you have seen all defendants requiring assistance, organise for adjournments and short appearances to be dealt with first and more complex ones left until later.

1-21 Follow-up advice

If follow-up advice is necessary due to the court appearance result, it will often be difficult for you to give that advice if you have further matters in court. In this situation, ask the client to wait outside the court so you can give proper advice as required.

1-22 Remands for further advice

If you do not have enough time to obtain detailed instructions because of the nature of the charges, seek a remand. In such cases, it is imperative that you instruct the client to seek legal advice before the remand date. The client's failure to seek such advice in the interim only transfers the problem to the next duty lawyer and creates a backlog in the court.

G. Referrals from duty lawyers

1-23 Referring defendants for further legal advice or assistance where necessary

Throughout this handbook, it has been stressed that, when in doubt, you should obtain a remand and refer the defendant on for more detailed investigation, advice or assistance than you can reasonably give in a short interview.

If you, as a duty lawyer, are approached to provide ongoing legal representation (after your appearance as duty lawyer has concluded), you must give the person requiring further representation the names of three law firms, one of which can be your own firm or, if you are appearing on behalf of a consortium, a firm of the consortium.

1-24 Prisoners

Legal Aid Queensland conducts regular duty lawyer services to all prisons in Queensland. If you consider that a defendant or other person (e.g. prohibited non-citizen) held in custody at a prison requires further advice or legal assistance that you have been unable to give due to time constraints or lack of information, contact the Legal Aid Queensland office nearest that prison and request that a prison duty lawyer visit the detainee. You should also tell the prisoner to ask the superintendent about seeing a prison duty lawyer.

1-25 Criminal charges against Aboriginal and Torres Strait Islander people in all jurisdictions

All such applications for legal assistance, which would normally be referred to Legal Aid Queensland, should instead be directed to the nearest office of the Aboriginal and Torres Strait Islanders Corporation for Legal Services.

If the defendant is eligible for aid in prescribed criminal matters, the defendant may, instead of attending the nearest office of the Aboriginal and Torres Strait Islanders Corporation for Legal Services, apply directly to Legal Aid Queensland. The Aboriginal and Torres Strait Islanders Corporation will not act if there is a conflict, e.g. the victim of the alleged offence is also an Aboriginal or a Torres Strait Islander.

1-26 Legal advice and assistance

Advice on legal matters may be obtained from any Legal Aid Queensland office. If Legal Aid Queensland is unable to provide advice because of a conflict of interest, the applicant will be referred to a private solicitor on the Legal Aid Queensland panel for that advice.