



Family Violence & Cross-Examination Scheme

Frequently Asked Questions – Panel Lawyers

Legal aid commissions are administering a scheme on behalf of the Commonwealth Government to prevent the personal cross-examination of parties in matters involving allegations of family violence. Legal Aid NSW will provide funding under the scheme in matters which are listed for final hearing in courts located in NSW.

A number of panel lawyers have attended training provided by Legal Aid NSW and have been placed on a list of lawyers available to undertake these matters. These FAQs are aimed at these lawyers.

1. I have been acting for my client for some time but he has run out of money (or his grant of legal aid has been terminated). He is likely to be eligible for funding under the Scheme – can that funding be allocated to me?

No. In most cases the matter will be allocated to a lawyer on our list of lawyers undertaking this work via an automatic offer system. If you believe that there are exceptional circumstances eg where the party is a victim of family violence and wishes to avoid telling her story again, you should tell us about those reasons by emailing Grants.Family@legalaid.nsw.gov.au. You should also consider whether your client might be eligible for a grant of legal aid instead of Scheme funding.

2. How will matters be allocated?

Matters will be allocated via the Grants electronic offer system. Matters will be allocated based on the court location in most cases.

3. I have been allocated a matter but the client has not made contact or responded to me. What now?

It is a condition of the funding that the banned party make contact with their lawyer and provide them with court documents immediately upon that lawyer's appointment. Advise Grants that you have been unable to obtain instructions and the funding will be terminated. File a notice of ceasing to act if you are on the record.

4. It has been difficult for me to find a barrister available to accept this brief in Newcastle at short notice. Can I brief a barrister from Sydney?

Yes. Apply for an extension of funding to cover the travel and accommodation costs.

5. I have found a barrister for my client's hearing but she has not undertaken the training. Is that okay?

Yes. While training for barristers is being provided via the Bar Association it is not compulsory. A list of the barristers who have undertaken this training will be provided to lawyers.

6. I need to completely redo my client's material and 20 hours is not enough. Can I apply for an extension of funding?

No. The funding will cover preparation for the hearing and the hearing itself. You are funded to provide services under a limited retainer. As set out in the terms and condition of the funding of matters under the scheme your retainer is limited to representing the client from the date the matter is allocated to you and to continue the matter as it has been prepared to date. The Family Law Courts have been made aware of the limited nature of the representation.

7. The hearing was not reached. Can I stay in the matter?

Yes. If new hearing dates have been set you should continue to act in the matter and, if necessary, submit an extension request to cover any additional work. If no hearing dates have been set you should finalise the matter. The matter may be reallocated to you when a new section 102NA order/notation is made.

8. I don't think the client has any prospects of success. Do I continue?

Yes. The usual Legal Aid NSW merit test does not apply to matters funded under the scheme. If your lawyer-client relationship with the client breaks down or you believe the client is not following reasonable advice the funding may be terminated. You should contact Grants if you are in this situation. Depending on the circumstances Grants will either transfer the funding to a new lawyer on the list or terminate the funding.

9. The matter is part-heard and I require a transcript of the previous four days of hearing of the matter. Will Legal Aid NSW pay for this?

No. Legal Aid NSW will generally not pay for significant disbursements such as transcripts or expert costs. The court may make a transcript available in these circumstances. The client can pay for his own transcript.

10. My client wants me to engage a particular barrister for the hearing. As that barrister does not accept payment in accordance with the Legal Aid NSW fee scale my client has instructed me he is prepared to pay that barrister privately. Can he do this?

No. Your client needs to decide whether he wants the limited funding under the scheme or to pay privately for all legal representation. The scheme is available to assist parties to comply with the court order by making legal representation available under a limited retainer. A condition of the scheme is that the lawyer and barrister accept the Legal Aid NSW fee scale and no additional costs are sought from the client in relation to legal costs.

11. My client has told me he is prepared to pay me privately to undertake additional preparation. Can he do this?

No. Your client needs to decide whether he wants the limited funding under the scheme or to pay privately for all legal representation. The scheme is available to assist parties to comply with the court order by making legal representation available under a limited retainer. A condition of the scheme is that the lawyer and barrister accept the Legal Aid NSW fee scale and no additional costs are sought from the client in relation to legal costs.

12. My client wishes to oppose an application for costs made by the independent children's lawyer (or other party)? What is my role?

Your client has funding under the Scheme and does not have a grant of legal aid. Accordingly, section 117(4)(a), which prevents the making of a costs order in favour of an independent children's lawyer where the party has received legal aid, does not apply. If the costs application is dealt with in the course of the hearing you can respond to that application in accordance with your instructions. If it is dealt with separately, funding will not be extended to cover your appearance or the preparation of submissions in relation to the application for costs.