

Consultation paper: proposed improvements to the metropolitan Melbourne Child Protection Private Practitioner Duty Lawyer Scheme

As part of our broad strategic planning function for the provision of child protection legal aid services, the VLA Child Protection Program is considering some changes to the organisation of duty lawyer service provision in metropolitan courts.

It is an opportune time to consider the design of these services, to ensure that:

- any change to current arrangements aligns with the upcoming application process and [introduction of contracts across all VLA-funded duty lawyer and short service schemes](#) (now known as PPSSS)
- the supply and organisation of services is well-matched to demand, particularly with the opening of the Children’s Court in Dandenong in early 2023.

Proposal to create two metropolitan schemes – North-West and South-East

VLA is proposing to move from a single duty lawyer scheme covering all metropolitan courts to two schemes:

- North-West metropolitan (Melbourne and Broadmeadows courts)
- South-East metropolitan (Moorabbin plus Dandenong Court from 2023)

The change is being proposed as the nature of child protection matters at metro courts – with regular urgent, unanticipated hearings requiring duty lawyers to be present – means that practitioners are often called upon to provide an in-person duty lawyer service for a previous client in addition to managing rostered duty lawyer appearances.

This is difficult to manage if practitioners are serving child protection clients across a number of geographically dispersed courts. The opening of a fourth metropolitan Children’s Court at Dandenong in early 2023 will exacerbate this issue.

The North-West and South-East division is proposed due to the geographic split of these courts and the catchment areas they serve. It is beneficial that, wherever possible, practitioners are located reasonably close to the court/s and associated catchment areas they are serving, so they can meet with clients (especially children) in their office, outside of the court environment, between hearings where possible.

While we recognise that each metropolitan court will have unique client and duty lawyer service demands, it is our view that an individual scheme for each court is not appropriate due to the fluctuating number of protection applications and client referrals that may occur at each court from time to time. We believe that having two courts per scheme will better support a fair and more consistent allocation of work between firms within and across schemes.

How would this proposal work in practice?

- There would be separate rosters for each scheme.
- Firms would be able to apply for the scheme they want to join via the PPSSS application process being used for the contract roll out. The application will need to include all Individual Certifiers seeking to deliver duty lawyer services.
- One Individual Certifier would correspond to one scheme position.
- Firms with multiple Individual Certifiers could choose to apply for one or both schemes; for example, a firm with two certifiers could apply for either two scheme positions on the South-East scheme, or one position on the South-East scheme and one on the North-West scheme.
- Sole practitioners would be able to join either the North-West scheme OR the South-East scheme. They would not be able to join both, in line with the goal of ensuring practitioners are, wherever possible, available for urgent in-person appearances for existing clients alongside their rostered duty services. This also aligns with the principle applying to all firms that one certifier corresponds to one scheme position to ensure fair allocation of work between firms.
- Please note that VLA will still prioritise continuity of legal representation and will continue to offer parties a referral to their previous lawyer where applicable, even if the lawyer no longer participates in the scheme for that particular court.

How many positions will be available on each scheme?

To maintain a fair allocation of work, it is anticipated that the North-West scheme would have approximately 35 positions available for private practitioners, and the South-East Scheme would have approximately 20 positions available for private practitioners. The South-East Scheme would initially service Moorabbin Court, but would also service Dandenong from early 2023 as the protection applications currently heard at Moorabbin will be shared across these two courts.

The number of positions in each scheme proposed above is based on a consideration of the current number of roster positions at each court, and duty lawyer referral and protection application data.

Final scheme position numbers will depend upon the number of applications received from eligible practitioners seeking to join the metropolitan schemes and the need to ensure fair distribution of referrals across participants in the schemes. Trends in referrals would continue to be monitored following implementation to assess if any changes are needed to maintain balance across the schemes.

Consultation questions:

Do you envisage any consequences of moving to two metropolitan schemes that are not covered in this paper?

Do you think North-West and South-East is the right way to split the arrangement of services? If not, why? What would you suggest instead?

Roster management

The new standard contracts for Private Practitioner Short Service Schemes set out that, for all PPSSS (including the metropolitan child protection duty lawyer schemes), VLA will appoint a Scheme Coordinator.

This Scheme Coordinator is the primary contact for firms participating in a scheme in relation to the day-to-day running of the scheme, including (for rostered services) “preparing, managing and publishing the roster for the provision of the Services, except where these tasks are delegated to another party by agreement in writing”.

VLA acknowledges that there is long-established practice of private practitioners in the child protection metropolitan scheme electing a rostering manager to take responsibility for roster preparation and distribution (including management of roster swaps). Given the previous feedback to VLA from a number of practitioners expressing strong support for its continuation, we propose that this approach be maintained in future via written delegation from the VLA scheme coordinator to the private practitioner rostering manager (a rotating role, name to be advised to VLA) for each scheme.

Consultation question:

Should VLA delegate the preparation, management and publication of the roster for the child protection metropolitan schemes to the nominated private practitioner rostering manager (i.e. continue the current practice)? If no, what would be your preferred approach?

Transition and monitoring

It is recognised that, if the creation of the North-West and South-East schemes proceeds, there would be a period where practitioners of one scheme may still need to undertake a duty lawyer service when referred a previous client at a court in the other scheme. It is anticipated that this will decline as an issue over time, as the new separate rosters see practitioners’ new referrals being concentrated in a single scheme.

We would monitor any changes made to the metropolitan schemes to ascertain that there is a fair distribution of referrals among participating firms.

Consultation

We are keen to hear your feedback on the proposals set out in this paper. We understand the proposals may have different implications for firms currently delivering duty lawyer services in metropolitan courts, depending on their size and location.

We invite firms to contact us to arrange a meeting to discuss.

Alternatively, you may wish to provide written feedback using the consultation questions provided throughout this paper as a guide.

Please contact Jackie Anders, Manager Child Protection Projects on jackie.anders@vla.vic.gov.au to arrange a meeting or provide written feedback before **COB Friday 15 July 2022**.