

## Update on changes to the Child Protection PPDL Scheme

### August 2022

From late June-mid July 2022, Victoria Legal Aid's (VLA's) Child Protection program consulted on [proposed changes to the organisation of duty lawyer service provision in metropolitan courts](#).

During the consultation period we undertook 15 individual consultations with private practitioners and one online group consultation session involving 30 practitioners; received 10 email submissions; spoke with members of our Shared Experience and Support Advisory Group of people with lived experience of the child protection system; and received feedback from representatives of the Victorian Bar, Department of Families, Fairness and Housing, and the Children's Court.

This document outlines feedback received on the proposals we put forward and how VLA intends to proceed in relation to these and several related issues that came out through consultation.

### Creation of two metropolitan duty lawyer schemes

We proposed to move from a single duty metropolitan duty lawyer scheme covering all metropolitan courts to two schemes – North metropolitan (Melbourne and Broadmeadows courts) and South metropolitan (Moorabbin plus Dandenong Court from 2023). This change was proposed so that the schemes better respond to the need for lawyers to frequently provide in-person duty lawyer services for previous clients in addition to managing rostered duty appearances and to ensure rosters are workable as additional courts are opened.

Following consideration of feedback received (see below), we have decided to proceed with this proposal. The North scheme will have approximately 35 positions for private practitioners (PPs), and the South scheme will have approximately 20 positions available for PPs. They will operate in the following way:

- There will be separate rosters for each scheme.
- Firms will 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 will correspond to one scheme position.
- Sole practitioners will need to select either the North or South scheme.
- Firms with multiple Individual Certifiers can apply for one or both schemes; eg two certifiers can apply for either two scheme positions on the South scheme, or one position on the South scheme and one on the North scheme. Each certifier will nominate which scheme will be their primary scheme for rostering purposes.
- VLA 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.

### Feedback received

Through our consultations we heard a diverse range of views from practitioners and other stakeholders about the proposed split. The themes covered in our consultations are outlined below.

### *Ability to appear in-person*

A number of practitioners supported the creation of two schemes as a good way of helping ensure practitioners would be more likely to be able to appear in person for clients. The people with lived experience that we spoke to were also supportive.

Several practitioners felt the split was not necessary as they were able to effectively serve clients across a range of courts by maintaining a manageable caseload and not taking on referrals beyond their capacity. VLA acknowledges that there are multiple factors that contribute to high quality service delivery to clients beyond appearing in-person for duty lawyer services, and we are committed to driving continuous quality improvement through a range of other initiatives including expanding professional development for child protection lawyers.

### *Exposure to a range of courts and clients*

Some practitioners were of the view that the split would lead to a de-skilling of practitioners due to reduced exposure to a diverse range of clients, magistrates and programs in different metropolitan regions. This was seen as a particularly acute issue for sole practitioners whose firms would only be able to select one scheme.

VLA considers that the creation of two schemes will still provide practitioners the opportunity to serve a diverse range of clients given the high population of the regions served by each scheme (over two million people in each region). Structuring services on a regional basis is consistent with VLA's staff practice, and also how DFFH and court staff work. In addition, we consider that the concentration of service in one scheme will give greater opportunity for practitioners to strengthen their knowledge of relevant services which is beneficial to clients. This view was shared by a number of practitioners, as well as VLA staff and representatives from our lived experience advisory group.

Practitioners will continue to have the opportunity for exposure to other client groups and magistrates through best interests representation (not impacted by the PPDL scheme changes); delivering contingency (out of area) duty lawyer services in a regional area; and/or through their work in other areas of law.

### *Referral numbers*

We heard concerns from some practitioners that the split into two schemes would result in a significant reduction in referrals. As the overall pool of practitioners participating across both North and South schemes is anticipated to remain largely the same we do not anticipate that a reduction in referrals as a result of the split. The proposed number of positions in each scheme is based on a consideration of the current number of roster positions at each court, and duty lawyer referral and protection application data. We will regularly monitor referral trends after the new schemes have been implemented to see if any changes are needed to maintain fair allocation of referrals across all scheme participants.

### *Option for practitioners to select which courts they provide duty lawyer services to*

We considered an alternative idea of allowing practitioners to nominate any two metropolitan courts instead of determining the split of courts (North and South) but decided against this approach on the basis that it would be highly unlikely to result in a sufficient number of practitioners applying to meet service demand in each court. This would mean VLA would have to offer many practitioners scheme positions in areas that they did not preference.

## Metropolitan roster management

We sought feedback about whether the current arrangement with rotating private practitioners managing the roster should be maintained.

We did not receive any feedback opposing this proposal so will proceed with this approach. This will occur via written delegation to the rostering manager from the VLA Scheme Coordinator (to be advised) with responsibility for day-to-day running of the scheme.

## Fair allocation of referrals ('the tally')

The consultations involved a strong focus on how to ensure fair allocation of referrals among firms, with particular focus on the use of 'the tally'. This tally is not a practice that is required by VLA, rather it was initiated and is managed by private practitioners. As we understand it, this tally records the number of new client referrals for each practitioner on the metropolitan roster and is used by private practitioners to determine the order of referrals among rostered duty lawyers on a given day. Currently, VLA clerks document the allocation of new referrals to rostered duty lawyers each day and provide this monthly to the nominated private practitioner compiling the tally. This data collection is in addition to HALO data entry that VLA clerks are required to do.

There were several issues about the tally raised in consultation, specifically that it disadvantages more experienced practitioners with higher tally numbers due to years of practice in the PPDLS, and may lead to manipulations of the roster (eg a practitioner with a lower tally number is used routinely to take up the rostered spot of more experienced practitioners in the same firm).

VLA suggested that in lieu of the tally, VLA could allocate referrals fairly among rostered duty lawyers and monitor referral numbers monthly or quarterly via HALO to ensure there was fair distribution among practitioners. This would include both new and returning clients as HALO does not distinguish between these types of referrals.

The dominant view we heard in consultation among metropolitan practitioners was a preference for maintaining the tally, with the following amendments:

- tally numbers would be reset for all practitioners to zero every six or twelve months
- roster swaps within a firm or between firms would not alter the planned order of referrals on a day (ie order of referrals would be based on tally numbers of the original rostered practitioner)

VLA does not oppose practitioners maintaining a tally and agrees to continue using the tally to determine the order of referrals among rostered duty lawyers, with the following provisos:

- The tally for each scheme is maintained by a designated tally manager decided by the PP group.
- Rostered duty lawyers will report their own new client referral numbers to the tally manager for purposes of keeping the tally up to date; this will not be done by VLA staff as it is additional work beyond the data entry into HALO that VLA requires.
- The above amendments to the operation of the tally (6 or 12-monthly reset and management of swaps) are adopted to maintain fairness of referral allocations.
- A document setting out the tally process is prepared by the tally manager and made available to VLA and all metropolitan private practitioners.

## Referral process for previous clients eligible for duty lawyer service

In consultation we heard feedback about the process for referring clients to their previous lawyer.

As set out in the Child Protection Duty Lawyer Manual, VLA clerks offer clients a referral back to their previous lawyer. This will occur following the split of the metropolitan scheme into North and South, regardless of whether the lawyer concerned is part of the relevant scheme or not.

When an approved duty lawyer is unable to provide a duty service to a previous client of their firm due to competing obligations, VLA is responsible for referring the client to a duty lawyer from the pool of rostered lawyers. This cannot be done as an agent arrangement between lawyers when there is no grant of assistance in place.

VLA recognises that practitioners are concerned to make sure their previous clients receive comprehensive, well-informed representation where they are unable to act. To facilitate this, VLA will update the Duty Lawyer Manual with more detail about the process to be followed in referring clients to a duty lawyer (in rostered schemes) where the previous lawyer is unable to act:

- Where a party wishes to have their previous lawyer (practitioner A) act for them, but practitioner A (or another approved duty lawyer from their firm) is unable to appear as duty lawyer for that previous client, the relevant VLA staff member will advise practitioner A which lawyers are rostered and practitioner A can nominate the lawyer they think is the best fit for the client
- VLA will refer to the nominated duty lawyer (practitioner B) and tell them that the client is a previous client of lawyer A. With client consent, practitioner A and practitioner B can confer about the matter.
- Practitioner B will invoice VLA as per the normal process for the duty lawyer service.
- Practitioner B will refer the client back to practitioner A for assistance applying for aid and representation for future hearings (assuming the case continues and the client is eligible for a grant of assistance).

Where a party contacts their previous lawyer independently in advance of a new hearing, the lawyer can represent them privately or assist with an application for aid. If aid is in place, the lawyer can then appear or brief/use an agent. If there is insufficient time or information to apply for aid, the lawyer can notify VLA, and a duty lawyer referral will be made in accordance with the above process. Duty lawyer services cannot be claimed after the fact or if the referral was not made by VLA.

## Updates to the Duty Lawyer Manual

We communicated some [planned updates to the child protection duty lawyer manual](#) at the same time as consulting on the proposed changes to the metropolitan duty lawyer scheme. We received some useful feedback in relation to the management of entry and exit to duty lawyer schemes. Specific suggestions that we will include in the updated manual are:

- A provision that new Individual Certifiers in a firm can seek approval to deliver duty lawyer services during a contract period. They will not obtain a roster position (unless there is a vacancy which they can apply for), but they can provide duty lawyer services for previous clients and share the rostered duties of an existing scheme member from their firm as a means of upskilling in duty lawyer service provision.
- A process for dealing with scheme membership in situations where a firm dissolves.

## Next steps and key dates

Applications for the metropolitan PPDL schemes (and contingency duty lawyer services for regional areas) will **open on 12 September 2022 and close on 3 October 2022**. The application form, template contract and FAQs are available [here](#).

Contract offers for the metropolitan schemes and out of area services will be made during October-November 2022.

The rosters for the new North and South metropolitan PPDL schemes, and the changes to the tally process will commence from the week starting **Monday 5 December 2022**.

The updates to the Duty Lawyer Manual will be made before the start of the new North and South metropolitan schemes, date to be advised.

VLA will **monitor referrals quarterly** for the new North and South schemes to determine if any changes (eg. the number of practitioners in each scheme) are needed to maintain fairness of allocation of work between approved scheme members.

## Contact

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