

Lawyer's role

Lawyers have an overriding duty to the court and the administration of justice. Next to this, lawyers' duties are to:

- advocate strongly in clients best interest
- be competent and ethical.

Lawyers must get client consent before they disclose any confidential client information. Clients should sign an authority to allow their lawyer to speak to workers about their case. An example is the [Legal Aid Client Authority](#).

Lawyers can disclose client information without the client's consent only if it's to avoid probable commission of a serious criminal offence; or to prevent imminent serious physical harm to the client or another person (Australian Solicitor's Conduct Rules).

Lawyers can't act for people if there's an actual or possible conflict of interest which makes it difficult to fully advocate for their client.

Lawyers and community workers

Lawyers can't take instructions from a community worker unless the worker is a formal litigation guardian for the client.

Workers can't advocate for clients in court. A magistrate may allow a worker to speak, but it would be unusual. Workers, through their agencies, can provide reports to the court if required. In Domestic Violence courts, which are closed to the public, the aggrieved can have a support person with them.

If a worker thinks the lawyer is failing their client, the worker should talk directly with the client and get them to raise the issue with the lawyer. If the client is reluctant, the worker can get the client's written consent for them to talk to the lawyer about the issue.

Workers can:

- help clients make and attend appointments
- help them with tasks a lawyer has asked them to do
- speak to lawyers about the case if the client has given written authority to do that
- support the client emotionally
- work with the client to support them to feel empowered.

Getting Legal Aid

Legal Aid provides free duty lawyers on the day for family law and domestic violence cases and in Magistrates Courts for criminal guilty pleas or bail.

To get further Legal Aid representation, a client must apply for a grant of aid.

Workers should encourage clients to make such applications themselves, so as to promote their independence. Workers could explain about providing financial information (bank statements, Centrelink, etc.) and the need to include in the form any special needs or vulnerabilities they may have.

Only in those cases where it is clearly within guidelines, beneficial to building client relationships, and there is capacity, should the worker help to fill in the form.

Legal Aid front counter staff will not normally help people fill in grant of aid forms, but could do so depending on capacity and circumstances. Legal Aid duty lawyers and DV Protection workers in Brisbane may be able to assist to complete forms, again depending on capacity.

Respondents in DV cases will get legal aid only in special circumstances.

Interpreters

Legal Aid provides free interpreters. If a duty lawyer for respondents in DV cases has no access to an interpreter, they can approach the Legal Aid duty lawyer to use the Legal Aid TIS code.

Free TIS interpreters are provided at court registry counters. The court also pays for interpreters in criminal and DV cases, but in civil cases the parties have to pay for their own interpreters if needed.

If a DV application indicates an interpreter is needed, the court registrar must engage one for the first mention. If the Magistrate then decides that it is in the interests of justice that an interpreter is needed for the aggrieved or applicant for further court appearances, the court will arrange and pay.

Competent interpreters must be used by courts. If an interpreter in court is inadequate the client should tell their lawyer or the Magistrate as soon as this becomes apparent. It's better to complain at the time if possible, not later. That way it gets on the transcript. A new hearing may need to be held.

If an interpreter is not used when one is needed, then a complaint should be made to registry or Magistrate by the client or through their lawyer or a worker. It needs to be shown that the person will not get a fair hearing because of a lack of understanding. It can be argued that the interests of justice require a fair hearing and courts have policies that recognise this by providing free interpreters in criminal and DV cases. In the end, if an interpreter isn't used, or is incompetent, and it can be shown that this would or has led to an unfair hearing, it can be a ground for a successful appeal.

This Fact Sheet is legal information, not legal advice.

Clients should always be referred to a registered migration agent/lawyer for specific advice.