

Fees for State law matters for approvals made on or after 9 November 2009

Family Matters – Practitioner Fees

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Fee Scales

1. Care and Protection - Practitioner Fees

Scale of fees for approvals made on or after 9 November 2009 pursuant to the *Children and Young Persons (Care and Protection) Act 1998* (NSW) matters

Guidelines

Grants of aid in care and protection matters are subject to the "availability of funds test". This provides that "*in state matters legal aid will only be granted if the Commission determines that sufficient funds are available*".

Fees

Fees are calculated on the basis of an hourly rate of \$150 net per hour.

Lump sum grants have been set for certain stages of matter in care and protection proceedings. Where a lump sum has been set, the Commission does not pay for actual time spent by a solicitor on an hourly basis.

Where no lump sum has been set the Commission will pay practitioners on a pro rata basis for actual Court time spent at hearing.

The maximum amount payable per hearing day is \$750 net.

Court attendance includes waiting time but excludes travel time. Waiting time will not be paid where a practitioner has more than one matter in court on any particular day.

There is no right of appeal against the decision to grant aid by way of a lump sum grant. There can be no appeal against the amount of the lump sum grant or a refusal to increase that lump sum grant.

READING/PREPARATION

A lump sum fee is paid for preparation for final hearings.

A lump sum fee, based on the hourly rate, is calculated for appeals to the District Court and Supreme Court based on estimated preparation time. The Commission sets the lump sum when the grant is approved.

Payments of additional fees outside the fee scale will only be approved in exceptional circumstances.

WITNESS EXPENSES

Witness expenses will only be paid where the Commission has given prior approval.

COUNSEL

Aid will only be granted to brief Counsel where complex issues of fact or law are raised or there are exceptional circumstances.

Counsel may be briefed in a care and protection matter (including appeals to the District Court and Supreme Court) only with the prior approval of the Commission.

Where briefed, Counsel will be paid at the rate of \$150 per hour for court appearances to a maximum of five hours per day. When not briefed, Counsel will be paid at the rate of \$225 per

hour to a maximum of five hours per day.

Preparation fees for Counsel are payable as a lump sum (based on an hourly rate of \$150) and must be negotiated with the Commission. Preparation is only payable where prior approval has been obtained from the Commission.

Stage 1: Alternative dispute resolution	
Where special disadvantage and other policy criteria have been met, a grant is available for: <ul style="list-style-type: none"> . Dispute resolution conferences . External ADR processes . Court initiated ADR processes 	
Taking instructions and general preparation including the preparation of administrative court documents such as a Notice of Address for Service.	\$300
Representing client at ADR process	\$150 per hour to a maximum of 4 hours
Preparation of care plan and/or consent orders, including attendance at court for the making of same	\$150
Stage 2: Applications for interim and other orders fixed for defended hearing	
<p>This grant covers: interim orders in pending care matters (i.e. where a final care order has not been made) and other orders under the <i>Children and Young Persons (Care and Protection) Act</i> that are fixed for a specific defended hearing</p> <p>Eligible hearings include:</p> <ol style="list-style-type: none"> 1. ECPO and extension of ECPO 2. Applications on "threshold issues" except establishment; (eg, a hearing to determine whether there has been a breach of an existing final care order that is heard separately from the final hearing of a breach application) 3. Applications for interim orders 4. Applications for assessment orders 5. Leave of court applications heard separately from application to vary/rescind orders (merit test applies) 6. Relisting of section 82 reports 	
Taking instructions, reading court documents (and other materials), and attendance at all initial court appearances including the preparation of administrative court documents such as a Notice of Address for Service.	\$300
Drafting court documentation including affidavits excluding the preparation of administrative court documents such as a Notice of Address for Service.	\$450
Attendance at each day of hearing	\$150 per hour to a maximum of 5 hours per day
Stage 3: Applications for care orders: establishment phase	

<p>Stage 3 PART A</p> <p>This grant covers: work from the filing of a care application, including preparation and attendance for all preliminary court appearances and conferences prior to the establishment hearing.</p>	
<p>Early settlement payment – where a matter settles early (but after the first court appearance) and involves up to 3 hours work.</p>	\$450
<p>Taking instructions, reading court documents (and other material), preparation of administrative court documents such as a Notice of Address for Service, and attending all court appearances, including preliminary conferences and adjourned preliminary conferences.</p>	\$600
<p>Preparation of court documents including affidavit/s for establishment hearing excluding the preparation of administrative court documents such as a Notice of Address for Service (paid on a pro rata basis).</p> <p>NOTE: practitioners representing a child must apply for this fee as a separate grant.</p>	\$450
<p>Stage 3 PART B</p> <p>This grant covers: preparation for the establishment hearing and attendance at each day of the establishment hearing.</p>	
<p>Preparation for establishment hearing</p>	\$225
<p>Attendance at each day of establishment hearing.</p> <p>NOTE: to be eligible for this portion of the grant, the matter must be fixed for a specific defended establishment hearing.</p>	\$150 per hour to a maximum of 5 hours per day
<p>Stage 4: Applications for care orders: disposition (placement) phase</p> <p>This grant covers: work following an establishment hearing to the completion of a disposition hearing</p>	
<p>Taking instructions, reading court documents (and other material) and attending all court appearances, including preliminary conferences and adjourned preliminary conferences</p>	\$750
<p>Preparation of court documents including affidavit/s for establishment hearing excluding the preparation of administrative court documents such as a Notice of Address for Service.</p>	\$450
<p>Preparation for placement hearing (where placement hearing is held separately from establishment hearing) including the preparation of administrative court documents such as a Notice of Address for Service.</p>	\$225
<p>Attendance at each day of placement hearing (where held separately from establishment hearing)</p> <p>NOTE: to be eligible for this grant, the matter must be fixed for a specific defended placement hearing.</p>	\$150 per hour to a maximum of 5 hours per day

Stage 5: Alteration of existing care orders	
This grant covers: work on applications to alter existing care orders after a final care order has been made	
Eligible applications for this grant include: 1. application for further orders due to breach 2. application for extension of supervision 3. application for variation/rescission	
NOTE: grants for specific defended hearings on threshold issues in post-care order proceedings (eg, applications for leave to bring a variation/rescission matter, hearings regarding whether in fact a breach has occurred) are covered by Stage 2 and require a separate application.	
Taking instructions, reading court documents (and other materials) and attendance at all initial court appearances	\$750
Preparation of court documents including affidavits excluding the preparation of administrative court documents such as a Notice of Address for Service.	\$450
Preparation for final hearing including the preparation of administrative court documents such as a Notice of Address for Service.	\$225
Attendance at each day of final hearing NOTE: to be eligible for this portion of the grant, the matter must be fixed for a specific defended final hearing.	\$150 per hour to a maximum of 5 hours per day
Stage 6: District Court Appeals	
Taking instructions, reading court documents (and other material) interviewing witnesses, preparing affidavits and other court documents, issuing subpoenas and attendance at all court appearances other than the final hearing	Lump sum fee based on estimated preparation time @ \$150 per hour.
Attendance at each day of hearing (where Counsel is not briefed)	\$225 per hour to a maximum of 5 hours per day
Attendance at each day of hearing where Counsel is briefed	\$150 per hour to a maximum of 5 hours per day
Stage 7: Supreme Court Appeals	
Taking instructions, reading court documents (and other material) interviewing witnesses, preparing affidavits and other court documents, issuing subpoenas and attendance at all court appearances other than the final hearing	Lump sum fee based on estimated preparation time @ \$150 per hour.
Attendance at each day of hearing (where Counsel is not briefed)	\$225 per hour to a maximum of 5 hours per day
Attendance at each day of hearing where Counsel is briefed	\$150 per hour to a maximum of 5 hours per day
ADT - Representation in the Community Services Division of the Administrative Decisions Tribunal	\$150 per hour to a maximum of 5 hours per day

Fee Scales

2. Travel Entitlements in State Care and Protection Matters for approvals made on or after 9 November 2009

- A **travel allowance and lump sum payment** is paid if the total return distance travelled from the legal practitioner's office to court exceeds 70 kilometres, and the practitioner is travelling to a court located outside the Sydney metropolitan area.
- The Sydney metropolitan area includes all courts within the area bounded by:
 - Hornsby;
 - Penrith;
 - Campbelltown; and
 - Sutherland.
- Unless there are exceptional circumstances, the travel allowance will not be approved where the matter could be assigned to:
 - a practitioner located within 35kms of the court;
 - a practitioner who is significantly closer to the court;
 - a practitioner who has other matters at the court on the same day.
- Prior approval to claim the travel allowance must be obtained from the Commission.
 - Unless there are exceptional circumstances, the travel allowance will not be approved in circumstances where a practitioner appointed to a panel has nominated their availability for a panel court out outside the geographical area surrounding their office.
 - Pursuant to the Duty Solicitor Scheme Guidelines travel is not generally paid to practitioners rostered to attend court as the Duty Solicitor except where there has been prior approval by the Commission or the duty work is undertaken in one of the regions nominated in the Duty Solicitor Scheme Guidelines.
- If travel allowance is being claimed, approval should be sought in the original application.
- Travel allowance cannot be claimed more than once per day to the same court, regardless of the number of legal aid applicants being represented at that court.
- A local agent or the duty solicitor – where there is no conflict precluding them from appearing – should be asked to appear for appropriate court attendances e.g. mentions.

Travel Allowance

Where approved, travel expenses will be paid at a rate of **\$0.60 per kilometre**, or where appropriate, a return economy airfare (which ever is the cheaper).

Lump sum payment for travel time

A lump sum of **\$100 for travel time** is paid in addition to the travel allowance of \$0.60 per kilometre. The lump sum payment for travel time may only be claimed once per day on which travel allowance is payable.

Accommodation

Where approved, accommodation expenses (including sustenance) will be paid as incurred to the maximum rates determined by the Department of Premier and Cabinet of the NSW government. [Click here](#) to view the current rates.

Frequently Asked Questions

Is travel allowance available for appeals?

Yes, provided the criteria for the travel allowance is met and prior approval is obtained.

If travel allowance is approved for a trial, is an allowance paid for accommodation and meals?

Yes. Actual expenses for meals and accommodation may be payable for each 24 hour period up to the maximum rates determined by the Public Employment Office of the NSW government. If an accommodation and sustenance allowance is approved, the applicable rate will be provided to you at the time of the grant or extension. All receipts must be provided and actual expenses only may be recovered.

My client has asked me to appear for him at a court that is more than 35kms from my office. My client insists that I appear and is unwilling to accept another solicitor. Is the travel allowance available?

Generally a travel allowance will not be approved where a practitioner located within 35 kms of the Court is available to appear for the client. In exceptional circumstances travel may be approved e.g. where the client is a child, or has a disability, and the Commission agrees that continuity of representation is in the interests of the client.

Is travel allowance payable for views (in criminal matters)?

Yes, however, prior approval for the view must be obtained from the Commission and will be limited to views conducted outside the Sydney metropolitan area.

Should I engage an agent for mentions?

Yes, in appropriate cases, e.g. mentions, a practitioners located close to the Court can be engaged as an agent. This could include the duty solicitor where there is no conflict.

How do I calculate the driving/road distance between destinations?

The website <http://www.travelmate.com.au> may assist in calculating distance between destinations.