

Guide to

Claiming FEES

General Criminal Law



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1. Introduction

Legal Aid NSW has a long association with the private profession. This partnership provides an opportunity for thousands of individuals to receive legal assistance who would otherwise be disadvantaged. Legal Aid NSW has the responsibility of ensuring that public funds are used in the most cost effective manner. This is achieved by applying appropriate policies and guidelines to requests for legal aid.

Legal Aid NSW has introduced some new initiatives in recent times such as Panels, the new Grants Online system and Start Up grants in Criminal Law matters.

These developments bring with them changes in the way private practitioners deal with Legal Aid NSW. For example, practitioners appointed to a Panel have a responsibility to observe and adhere to the Legal Aid NSW Panel

Service Agreement and the relevant Practice Standards, Policies and Guidelines.

The purpose of this document is to assist practitioners in their dealings with Legal Aid NSW by bringing information on a range of issues together as your reference when applying for aid or submitting claims for payment.

This document may be referred to online at the Legal Aid NSW web site under For Lawyers, Important Documents and Tools, or used as a hard copy guide. Various Internet links are provided at point 7 for your use.

2. Fees Payable to Private Practitioners

The Legal Aid Commission Act 1979 allows Legal Aid NSW to determine scales of payment to private practitioners for the performance of legal services on behalf of assisted persons.

Whilst acting under a grant of legal aid a private legal practitioner is not entitled to charge or recover from a legally assisted person any amount by way of costs in respect of work assigned by Legal Aid NSW to the private legal practitioner on behalf of that person, or by way of disbursements incurred on behalf of that person in connection with that work.

This provision is outlined under [Section 41](#) of the Act.

Start Up grants

In November 2009 Legal Aid NSW introduced "Start Up Grants". The purpose of the new style of grants is to streamline the grants process by packaging certain common work items associated with Summary Criminal law matters.

- Summary criminal law matters

There are two types of Start Up grants available.

Start Up Grant only

Select this option if you only need a grant for the following items:

Preparation - inclusive of an initial conference with the client

Mentions - inclusive of waiting time - up to 2.5 hours

Interpreter fees - if required - up to \$200;

Appearance fee - up to three hours on hearing

General disbursements - up to \$150

Start Up Grant plus Extra

This option includes a basic Start Up Grant with additional work items.

The "Other" option

Choose this option if the standard Start Up Grant does not apply to your application.

Further information may be found in the [Newsletter](#) sent to all General Criminal law Panel practitioners.

- **Committal Proceedings**

The Start Up Grant for committal proceedings contain the following work items:

Preparation (reading, viewing and analysing the brief) - \$825 (5.5 hours)

Conference with client - \$190 (2 conferences)

Visit to correctional centre - \$230 (2 visits)

Mentions (inclusive of waiting time) - Up to \$600 (\$75 per half hour up to 4 hours)

Appearance fee for: Local Court sentence, paper committal including submissions, or waiver of committal - \$150 per hour up to 2 hours

Interpreter fees

General disbursements - up to \$150

Cost ceilings

In the proper administration of public funds it is necessary to “cap” expenditures in matter types.

The cost ceilings are set “per trial” and are as follows:

State Criminal Law matters:

\$50K plus \$25K for each co accused

Note: Legal Aid NSW has discretion in deciding how the costs are disbursed between the co accused

Commonwealth Criminal Law matters:

\$40K

If further funds are required beyond the capped amount submissions need to be made to Legal Aid NSW outlining the circumstances in support of the request.

3. Agents, Travel & Disbursements

Funding for an agent, Travel or other additional Disbursements requires prior approval from Legal Aid NSW.

Circumstances where these types of requests are allowed are governed by the appropriate policies and guidelines.

■ Agents

In ordinary circumstances, a practitioner is not entitled to claim an additional grant of aid to instruct an agent. Where an agent is retained because the assigned practitioner is unavailable, the agent must be a panel practitioner and must be paid out of the assigned practitioner’s lump sum fee for any court attendance up to the hearing stage.

Mentions: An additional allowance to instruct an agent at a mention will not be approved unless the practitioner can show that the matter is complex enough to justify an instructing allowance and:

- Legal Aid NSW is satisfied that engaging an agent is an economical use of legal aid funds; or
- exceptional circumstances exist.

Hearings: The use of an agent at a hearing will only be approved in exceptional circumstances. If a practitioner cannot attend a hearing it will generally be considered more appropriate for the matter to be reassigned to an available panel practitioner.

The agent's fee policy is set out in each of the fee scales documents.

■ Travel

Travel will be funded in assigned matters if the distance to be travelled is a minimum of 70 Kilometres round trip and prior approval has been given and the practitioner is travelling to a court located outside the Sydney metropolitan area.

Unless there are exceptional circumstances, travel allowance will not be approved where the matter could be assigned to:

- a practitioner located within 35 kilometres 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.

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

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.

Additional Disbursements such as specialist reports must be approved by Legal Aid NSW prior to you acquiring them. Requests of this kind are considered on a case by case basis.

4. Submitting your claims

Before a claim for payment is submitted you must ensure that the claim accurately reflects the work performed. Most work items are claimed on a pro rata basis which means that the actual time spent on the task must be claimed. For example time spent in court should be claimed to the nearest half hour. Waiting time should only be claimed if applicable.

NOTE: When submitting the claim you certify that the claim is accurate.

Legal Aid NSW assumes that the person who has been assigned the grant has substantively performed the work. If a matter is to be run by someone other than the assigned practitioner a transfer request should be submitted to Legal Aid NSW through Grants Online so that the grant may be reassigned.

The person who submits the invoice certifies that the claim made accurately reflects the work performed. Therefore it is implied that this certification could only reasonably be made by the person who performed the substantive work in the matter. Further information may be obtained by referring to the [Panels Service Agreement at 3.4](#).

All claims for work performed must be submitted after you have completed the particular task. For example a conference with the client should not be claimed until after it has occurred.

5. Practitioners Responsibilities

■ Practice Standards and Service Agreements

Upon appointment to a Panel, practitioners sign a Service Agreement. The agreement covers issues such as compliance with Legal Aid NSW Practice Standards, Policies and Guidelines. In certain circumstances practitioners who do not abide by the Service Agreement may be removed from a Panel.

■ Recording work performed

The General Criminal Law Practice Standards include a number of record

keeping requirements under File Management. The following sections in particular are targeted during audits;

1.17 Advise the client on the law, procedure and practice that applies to their case, including the charges and potential penalties, and the likely time their matter will take to be heard and completed. Before entering a plea the practitioner should have all relevant prosecution evidence including the charge sheet/court attendance notice/summons, the police facts sheet, the brief of evidence where appropriate and the client's criminal record. The client should be fully appraised of the case against him or her.

2.17 Maintain files in an order that will allow the Legal Aid Professional Practices Manager, the Audit Officer or such other officer nominated by the Director of Grants to quickly and easily understand the factual basis of the matter, the clients instructions, attendances and work undertaken in the matter, the stage the matter has reached and any further action this is required. Files well maintained will allow another practitioner, if necessary, to quickly take over the file.

2.20 Make a note on a file of any advice given to a client that is not confirmed in writing.

■ Audit

The Legal Aid Commission Act 1979 at Section 52B provides that Legal Aid NSW may audit Practitioners appointed to a Panel. The audits check for compliance with Legal Aid NSW policies and guidelines as well as being an opportunity to offer information to practitioners which will assist in managing future grants of legal aid.

The audit process identifies areas where practitioners may require guidance or clarification about various issues. As part of the audit process practitioners receive a report outlining any issues noted after reviewing their files. The report includes relevant excerpts from documents such as the Practice Standards, Service Agreement or policies and guidelines. In addition Audit Newsletters are sent to Panel practitioners on a regular basis.

All fees claimed by practitioners must represent the work performed and a record of the work in the form of a file note must be retained on file.

Please see the Panels Practice Standards under File Management for further information.

6. The Fee Scales

Legal Aid NSW publishes a [scale of fees](#) paid to private practitioners in legally aided matters. Any enquiries about the Fee Scale may be directed to the Grants Divisions Criminal Law solicitors:

Steven Doumit - 9219 5077

Ann Miller - 9219 5142

Stephen Eccleshall - 9219 5078

Scott Kirkwood - 9219 5168