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Criminal matters - solicitors 2021/22

Criminal matters (state) solicitor fee scales 1 July 2021 to 30 June 2022

1. Local Court - Solicitor Fees
2. Local and Children's Court Committals - Solicitor fees
3. District Court (Appeals from Local Court & Children's Court) – Solicitor Fees
4. District Court - Solicitor Fees
5. Supreme Court - Solicitor Fees
6. Court of Criminal Appeal - Solicitor Fees
7. High Court - Solicitor Fees
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1. Local Court - Solicitor Fees

Scale of fees for approvals made on or after 1 July 2021

Note: Payment of fees above the lump sum will only be approved in the most *extraordinary of circumstances*: For details of what will be considered *extraordinary*, please see Guidelines .

Defended hearings		
Local Court	Lump sum fee	$1,246
Children's Court	Lump sum fee	$1,246
Interpreter fees **Note**: where an interpreter is required you must ensure court orders an interpreter for the hearing at the court's expense		Up to $200
General disbursements		Up to $100

Gaol visit		$340
Travel Entitlements		

Recovery of costs in criminal matters - Solicitors and Counsel in criminal matters will be paid at a rate of 175% of the legal aid fee rates when;

1. An order for costs is made in favour of the legally aided accused person under the *Crimes (Appeal and Review) Act 2001* and the *Criminal Procedure Act 1986,* or
2. An order for costs is made in favour of the legally aided accused person by the Supreme Court in prerogative writ matters or similar proceedings, or
3. The legally aided accused person is granted a certificate under Section 2 of the *Costs in Criminal Cases Act 1967*.
4. An order for costs is made in favour of the legally aided person in proceedings under:

- the Crimes *(High Risk Offenders) Act* or *Terrorism (High Risk Offenders) Act*
- the *Child Protection (Offenders Registration) Act 2000*, and the *Child Protection (Offenders Prohibition Orders) Act 2004*
- the *Criminal Code 1995* (Cth),
- the *Crimes (Serious Crime Prevention Order) Act*, and
- the *Crimes (Criminal Organisations Control) Act*.

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2. Local Court and Children's Court Committals - Solicitor fees

Solicitor fees for matters charged on or after 30 April 2018.

Fee Scale applies to:

- complex and non-complex strictly indictable matters;
- complex and non-complex Children's Serious Indictable offences;
- indictable offences listed in Table 1 to Schedule 1 of the *Criminal Procedure Act* 1986 (CPA) where an election has been made by the prosecution to proceed on indictment;
- indictable offences listed in Table 1 to Schedule 1 of the *Criminal Procedure Act* 1986 (CPA) where an election has been made by the defence to proceed on indictment where Legal Aid NSW is satisfied that election is appropriate in the circumstances of the case;
- indictable offences listed in Table 2 to Schedule 1 of the CPA where an election has been made by the prosecution to proceed on indictment

A complex criminal matter includes:

- All Supreme Court trials and pleas;
- Manslaughter trials and pleas;
- Matters where the trial is complex because of the nature of the charge or the defence. For example: sex slavery, fraud or money laundering charges where there are more than 30 counts and/or the total value is more than $500,000.00;
- Trials identified by the trial judge as requiring significant case management pursuant to s.141 Criminal Procedure Act 1986;
- Where the trial length is estimated at 20 days or more;
- Where the brief of evidence is more than 5,000 pages;
- All terrorism matters;

- Sexual assault trials where there are multiple complainants and/or multiple defendants.

Fee Structure for non-complex Children's Court or Local Court committals

Pre-charge Certification (Committal) Grant for non-complex matters	
Lump sum fee The lump sum fee covers all necessary work involved at the pre-charge certification stage of proceedings which may include (but is not limited to): > Perusal of the brief; > All conferences with client including gaol visits; > Taking instructions > Negotiations with the prosecution > All court appearances including mentions, summary hearing and summary sentence.	$2400
Post-charge Certification (Committal) Grant for non-complex matters	
Lump sum fee The lump sum fee covers all other necessary work involved in the committal matter post charge certification which may include (but is not limited to): > All conferences with client; > Perusal of any additional brief material; > Briefing counsel (when approved); > Negotiations with the prosecution; > Any application for an order for a witness to attend court to give evidence; > All court appearances including mentions, summary sentence, summary hearing and arraignment; > All preparation.	$2400
Additional Items that can be claimed as applicable	
Attendance at Case Conference and settling of the case conference certificate(only payable where the solicitor attends a case conference in person or via AVL)	$1600
Appearance at a hearing where the Local Court has ordered a witness to attend to give evidence	$1200

The lump sum fees for pre-charge certification and post-charge certification include a component for preparation and reading the brief. These components will be deducted from any trial preparation fee should the matter proceed to trial.

Fee Structure for complex Children's Court or Local Court committals

Pre-charge Certification (Committal) Grant for complex matters	
Lump sum fee The lump sum fee covers all necessary work involved at the pre-charge certification stage of proceedings which may include (but is not limited to): > Perusal of the brief; > All conferences with client including gaol visits; > Taking instructions > Negotiations with the prosecution > All court appearances including mentions, summary hearing and summary sentence.	$2400
Post-charge Certification (Committal) Grant for complex matters	
Lump sum fee The lump sum fee covers all other necessary work involved in the committal matter post charge certification which may include (but is not limited to): > All conferences with client; > Perusal of any additional brief material; > Briefing counsel (when approved); > Negotiations with the prosecution; > Any application for an order for a witness to attend Court to give evidence; > All court appearances including mentions, summary sentence, summary hearing and arraignment; > All preparation.	$3200
Additional Items that can be claimed as applicable	
Attendance at Case Conference and settling of the case conference certificate(only payable where the solicitor attends a case conference in person or via AVL)	$1600
Appearance at a hearing where the Local Court has ordered a witness to attend to give evidence	$1200

The lump sum fees for pre-charge certification and post-charge certification include a component for preparation and reading the brief. These components will be deducted from any trial preparation fee should the matter proceed to trial.

Approval to Brief Counsel

In committal proceedings it is a condition of the grant of legal aid that a practitioner must not brief counsel unless Legal Aid NSW has given express approval.

Approval to brief counsel at committal for case conferencing will be granted if:

- A Crown Prosecutor has carriage of the matter and it is anticipated they will attend the case conference; or
- The matter is a complex criminal matter; or

- The matter is a Children's Court committal involving a serious children's indictable offence.

All other applications to brief counsel at committal will be considered on a case by case basis taking into account factors which include whether:

- The brief involves issues of legal or evidentiary complexity;
- The client has a mental illness or an intellectual disability;
- The defence is complex;
- The solicitor, particularly in remote locations, lacks the requisite skill or experience to conduct the matter without Counsel;
- The case involves multiple co-accused;
- The client has given instructions he or she will give evidence against a co-accused

Briefing of Counsel prior to charge certification will not be approved.

Rules for Briefing Counsel in Legally Aided matters

1. A practitioner authorised by Legal Aid NSW to brief a barrister will brief:
    1. A Public Defender; or
    2. If a Public Defender is not available a barrister having appropriate experience.
2. Legal Aid NSW may determine from time to time the circumstances in which it is not appropriate to brief a Public Defender: for example, at District Court Circuit Sittings not serviced by a Public Defender.
3. For a **complex criminal matter**, a barrister having appropriate experience is a barrister who has been appointed to the Specialist Barrister Panel (complex criminal matter), unless there are exceptional circumstances as determined by the Director, Grants or delegate or by the Director, Criminal Law or delegate.

In accordance with the Indictable Criminal Law Panel practice standards it is expected that counsel briefed at committal for case conferencing will be retained in the matter if it proceeds to trial or sentence.

Additional Preparation for solicitors and counsel at committal

Additional preparation will not be considered at committal unless Legal Aid NSW is satisfied that the volume of the brief warrants additional preparation. This will only be granted in extremely exceptional matters. The amount of extra preparation payable will be determined by the Director Criminal Law, Director Grants or their nominee.
Any additional preparation paid will be deducted from any trial preparation fee should the matter proceed to trial.

Complex Criminal Matters

A complex criminal matter includes:

- All Supreme Court trials and pleas;
- Manslaughter trials and pleas;
- Matters where the trial is complex because of the nature of the charge or the defence. For example: sex slavery, fraud or money laundering charges where there are more than 30 counts and/or the total value is more than $500,000.00;
- Trials identified by the trial judge as requiring significant case management pursuant to s.141 Criminal Procedure Act 1986;
- Where the trial length is estimated at 20 days or more;

- Where the brief of evidence is more than 5,000 pages;
- All terrorism matters;
- Sexual assault trials where there are multiple complainants and/or multiple defendants.
- **Counsel to appear at committal instead of practitioner**Legal Aid NSW may grant approval for a practitioner to engage counsel to appear at the committal hearing – subject to the briefing guidelines for complex criminal matters, on the basis that the practitioner will forego their fees and instead, counsel will be paid at solicitor rates.
- **Direct access briefs to counsel at committal**Legal Aid NSW may grant aid for committal proceedings on a direct access basis to counsel, if it appears likely that the proceedings can be resolved by way of a plea of guilty in the Local Court and an instructing solicitor will not be required. Aid will not be granted on a direct access basis to counsel in relation to complex criminal matter.
  Legal Aid NSW may grant aid for committal proceedings on a direct access basis to counsel, if the matter is likely to be a plea of guilty or a trial where an instructing practitioner is unlikely to be required.

  Counsel will be paid at solicitor rates.

  Where a committal is assigned on a direct access basis to counsel, if an instructing solicitor is required in the District Court and the case has not been assigned because of conflict, the instructing solicitor will be an employee of Legal Aid NSW, if available.

- **Counsel to advise on defence**

Table B - Counsel to advise on defence

Counsel to advise on defence Counsel	$1,048

1) Briefing Counsel

A specific grant may be made to counsel to advise on defence where a solicitor is not able to advise the client on how they should plead. A practitioner must not brief counsel to advise on defence unless Legal Aid NSW has given express approval. Legal Aid NSW will not grant approval unless there are exceptional circumstances.

Legal Aid NSW will require from the solicitor, details of the nature of the matter and an explanation of the legal or evidentiary issues about which advice is to be sought. This advice should be obtained before the Case Conference, if possible.

Approval for counsel to advise on defence is at the absolute discretion of Director Criminal Law, Director, Grants or their nominee.

2) Additional preparation

Counsel may make an application for payment of fees for additional preparation (including reading and conferences). Approval for additional preparation and the fee payable is at the absolute discretion of the Director Criminal Law, Director Grants or their nominee. Where additional preparation is allowed, counsel will be required to keep a record of time spent on preparation and a synopsis of material read.

The fee for counsel to advise will be deducted from the fee for preparation for trial.

Table C – Fee scale where matter committed to the District

Court - Standard Sentence

Standard Sentence Practitioner fee Preparation including conference Gaol visit	 $340 $340
Appearance Per ½ day Full day (up to a maximum of five hours per day)	 $425 $850
Per co-accused Per ½ day Full day (up to a maximum of five hours per day)	 $113 $225
Arraignment/mention (including where matter listed but does not proceed) and taking sentence	$170

1) Lump sum fee

A lump sum fee is payable where a practitioner represents a client on sentence in the District Court. The lump sum fee covers all necessary work involved in preparing the plea, including conferences with the client.

The lump sum fee includes an allowance for two client conferences. (An additional amount may be claimed for travel where the client is in custody in a gaol outside the metropolitan area, with prior approval).

2) Sentence Hearing

The appearance fee for the plea (making submissions on sentence) will be paid at the ½ day rate.

3) Co-accused

Where a practitioner represents more than one co-accused on sentence proceedings, a fee will be paid for each additional co-accused at the ½ day rate.

4) Arraignment, Mentions, Taking Sentence

A fee will be paid for attending at arraignment, and for every necessary mention.

This fee applies where the matter is listed for sentence but does not proceed. This fee (as opposed to the refresher rate) also applies where sentence is adjourned for judgement and the practitioner attends to take sentence.

5) Requests for briefing counsel in sentence proceedings

It is a condition of the grant of legal aid that a practitioner must not brief counsel unless Legal Aid NSW has given express approval.

1) A practitioner authorised by Legal Aid NSW to brief a barrister will brief:

a. a Public Defender, unless a Public Defender is not available or it is not appropriate: see point 2; or

b. a barrister having appropriate experience: see point 3.

2) Legal Aid NSW may determine from time to time the circumstances in which it is not appropriate to brief a Public Defender: for example, at District Court Circuit Sittings not serviced by a Public Defender.

3) For a complex criminal matter, a barrister having appropriate experience is a barrister who has been appointed to the Specialist Barrister Panel (complex criminal matters), unless there are special circumstances as determined by the Director, grants or delegate or by the Director, Crime or delegate.

Complex Criminal Matters

A complex criminal matter includes:

- All Supreme Court trials and pleas;
- Manslaughter trials and pleas;
- Matters where the trial is complex because of the nature of the charge or the defence. For example: sex slavery, fraud or money laundering charges where there are more than 30 counts and/or the total value is more than $500,000.00;
- Trials identified by the trial judge as requiring significant case management pursuant to s.141 Criminal Procedure Act 1986;
- Where the trial length is estimated at 20 days or more;
- Where the brief of evidence is more than 5,000 pages;
- All terrorism matters;
- Sexual assault trials where there are multiple complainants and/or multiple defendants.
- Counsel to appear instead of practitioner at sentence proceedings Legal Aid NSW may grant approval for a practitioner to engage counsel to appear on the basis that the practitioner will forego their fees and, instead, counsel will be paid at practitioner rates.
- Direct access brief to counsel
  Legal Aid NSW may grant aid for sentence proceedings on the basis of a direct access brief to counsel in accordance with Legal Aid NSW Business Rules and Practice Standards. In such circumstances counsel will be paid in accordance to Table C

- Request for briefing counsel in Sentence proceedings
  In all other circumstances, Legal Aid NSW will not approve a solicitor to brief counsel in sentence proceedings unless there are exceptional circumstances.

  Approval for counsel to appear on sentence is at the absolute discretion of the), Director Criminal Law, Director Grants or their nominee. Factors that must be present before Legal Aid NSW will give consideration to briefing counsel are set out in Part C of Schedule 1. The amount that will be paid to both practitioner and counsel shall be at the absolute discretion of the Director Criminal Law, Director Grants or their nominee.

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3. District Court (Appeals from the Local and Children's Court) - Solicitor Fees

Court Appearances	
Attendance at court (excluding mentions)	
Per hour at court (up to a maximum of five hours per day)	$170
Per half hour at court (part thereof)	$85
Mentions	
Per half hour at court to a maximum of 1 hour	$85
Waiting time is not payable	
Conferences	
Conference with client	$131
Gaol visit	$340
View	
Per hour while at the site of the view. **Prior approval** for the view must be obtained from Legal Aid NSW.	$170
Additional Approvals No other fees or allowances will be paid unless prior approval is obtained.	
Travel Entitlements	

Legal Practitioners, whether solicitor or counsel, will be paid at the above rates.

Recovery of costs in criminal matters - Solicitors and Counsel in criminal matters will be paid at a rate of 175% of the legal aid fee rates when;

1. An order for costs is made in favour of the legally aided accused person under the *Crimes (Appeal and Review) Act 2001* and the *Criminal Procedure Act 1986,* or
2. An order for costs is made in favour of the legally aided accused person by the Supreme Court in prerogative writ matters or similar proceedings, or
3. The legally aided accused person is granted a certificate under Section 2 of the *Costs in Criminal Cases Act 1967*.
4. An order for costs is made in favour of the legally aided person in proceedings under:

- the *Crimes (High Risk Offenders) Act* or *Terrorism (High Risk Offenders) Act,*
- the *Child Protection (Offenders Registration) Act 2000*, and the *Child*

Protection (Offenders Prohibition Orders) Act 2004
- the *Criminal Code 1995* (Cth)
- the *Crimes (Serious Crime Prevention Order) Act*, and
- the *Crimes (Criminal Organisations Control) Act*.

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Complex Criminal Matters

A complex criminal matter includes:

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- Matters where the trial is complex because of the nature of the charge or the defence. For example: sex slavery, fraud or money laundering charges where there are more than 30 counts and/or the total value is more than $500,000.00;
- Trials identified by the trial judge as requiring significant case management pursuant to s.141 Criminal Procedure Act 1986;
- Where the trial length is estimated at 20 days or more;
- Where the brief of evidence is more than 5,000 pages;
- All terrorism matters;
- Sexual assault trials where there are multiple complainants and/or multiple defendants.
- **Counsel to appear at committal instead of practitioner**Legal Aid NSW may grant approval for a practitioner to engage counsel to appear at the committal hearing – subject to the briefing guidelines for complex criminal matters, on the basis that the practitioner will forego their fees and instead, counsel will be paid at solicitor rates.
- **Direct access briefs to counsel at committal**Legal Aid NSW may grant aid for committal proceedings on a direct access basis to counsel, if it appears likely that the proceedings can be resolved by way of a plea of guilty in the Local Court and an instructing solicitor will not be required. Aid will not be granted on a direct access basis to counsel in relation to complex criminal matter.

  Legal Aid NSW may grant aid for committal proceedings on a direct access basis to counsel, if the matter is likely to be a plea of guilty or a trial where an instructing practitioner is unlikely to be required.

  Counsel will be paid at solicitor rates.

  Where a committal is assigned on a direct access basis to counsel, if an instructing solicitor is required in the District Court and the case has not been assigned because of conflict, the instructing solicitor will be an employee of Legal Aid NSW, if available.

- **Counsel to advise on defence**

Table B - Counsel to advise on defence

Counsel to advise on defence Counsel	$1048

1) Briefing Counsel

A specific grant may be made to counsel to advise on defence where a solicitor is not able to advise the client on how they should plead. A practitioner must not brief counsel to advise on defence unless Legal Aid NSW has given express approval. Legal Aid NSW will not grant approval unless there are exceptional circumstances.

Legal Aid NSW will require from the solicitor, details of the nature of the matter and an explanation of the legal or evidentiary issues about which advice is to be sought. This advice should be obtained before the Case Conference, if possible.

Approval for counsel to advise on defence is at the absolute discretion of Director Criminal Law, Director, Grants or their nominee.

2) Additional preparation

Counsel may make an application for payment of fees for additional preparation (including reading and conferences). Approval for additional preparation and the fee payable is at the absolute discretion of the Director Criminal Law, Director Grants or their nominee. Where additional preparation is allowed, counsel will be required to keep a record of time spent on preparation and a synopsis of material read.

The fee for counsel to advise will be deducted from the fee for preparation for trial.

3. Table C – Fee scale where matter committed to the District Court - Standard Sentence

Standard Sentence Practitioner fee Preparation including conference Gaol visit	 $340 $340
Appearance Per ½ day Full day (up to a maximum of five hours per day)	 $425 $850
Per co-accused Per ½ day Full day (up to a maximum of five hours per day)	 $113 $225
Arraignment/mention (including where matter listed but does not proceed) and taking sentence	$170

1) Lump sum fee

A lump sum fee is payable where a practitioner represents a client on sentence in the District Court. The lump sum fee covers all necessary work involved in preparing the plea, including conferences with the client.

The lump sum fee includes an allowance for two client conferences. (An additional amount may be claimed for travel where the client is in custody in a gaol outside the metropolitan area, with prior approval).

2) Sentence Hearing

The appearance fee for the plea (making submissions on sentence) will be paid at the ½ day rate.

3) Co-accused

Where a practitioner represents more than one co-accused on sentence proceedings, a fee will be paid for each additional co-accused at the ½ day rate.

4) Arraignment, Mentions, Taking Sentence

A fee will be paid for attending at arraignment, and for every necessary mention.

This fee applies where the matter is listed for sentence but does not proceed. This fee (as opposed to the refresher rate) also applies where sentence is adjourned for judgement and the practitioner attends to take sentence.

5) Requests for briefing counsel in sentence proceedings

It is a condition of the grant of legal aid that a practitioner must not brief counsel unless Legal Aid NSW has given express approval.

1) A practitioner authorised by Legal Aid NSW to brief a barrister will brief:

a. a Public Defender, unless a Public Defender is not available or it is not appropriate: see point 2; or

b. a barrister having appropriate experience: see point 3.

2) Legal Aid NSW may determine from time to time the circumstances in which it is not appropriate to brief a Public Defender: for example, at District Court Circuit Sittings not serviced by a Public Defender.

3) For a complex criminal matter, a barrister having appropriate experience is a barrister who has been appointed to the Specialist Barrister Panel (complex criminal matters), unless there are special circumstances as determined by the Director, grants or delegate or by the Director, Crime or delegate.

4. District Court - Solicitor Fees

Table C – Fee scale where matter committed to the District Court - Standard Sentence

Standard Sentence Practitioner fee Preparation including conference Gaol visit	$340 $340
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5) Requests for briefing counsel in sentence proceedings

It is a condition of the grant of legal aid that a practitioner must not brief counsel unless Legal Aid NSW has given express approval.

1) A practitioner authorised by Legal Aid NSW to brief a barrister will brief:

a. a Public Defender, unless a Public Defender is not available or it is not appropriate: see point 2; or

b. a barrister having appropriate experience: see point 3.

2) Legal Aid NSW may determine from time to time the circumstances in which it is not appropriate to brief a Public Defender: for example, at District Court Circuit Sittings not serviced by a Public Defender.

3) For a complex criminal matter, a barrister having appropriate experience is a barrister who has been appointed to the Specialist Barrister Panel (complex criminal matters), unless there are special circumstances as determined by the Director, grants or delegate or by the Director, Crime or delegate.

Trials	
Initial Trial Preparatiion fee	$340
Mention/not reached: per hour in Court	$170
Attendance at court ordered case conference	$170 per hour up to 2 hours
Attendance on first day of trial (up to a maximum of five hours per day)	$850
thereafter per hour	$170
maximum per day (up to a maximum of five hours per day)	$850
Co-accused	
Each co-accused represented per day	$238
Conferences	
Per accused/witness	$154
Gaol visit	$340
With accused where trial exceeds 1 week (up to 2 per week during trial)	$154
Sentence Matters (Does not include Committal for sentence matters refer to Table C committal fee scale)	
Preparation fee	$340
Appearance in Court:	
Per hour	$170
Per day maximum (up to a maximum of five hours per day)	$850
No-Bill Application/Notice of Motion/other Interlocutory Applications (where prior approval has been obtained): per hour	$170

Per hour while at the site of the view. **Prior approval** for the view must be obtained from Legal Aid NSW.	$170
Clerks; **The Prior written consent of the client, counsel and Legal Aid is required**	Clerk instructing Counsel will be paid up to 70% of Solicitor fee
Solicitors Conducting District Court Trial without Counsel; Prior approval from Legal Aid is required	Solicitor Advocate fee
Additional reading/ preparation fee: (only allowed in exceptional circumstances)	By negotiation
Travel Entitlements	

Recovery of costs in criminal matters - Solicitors and Counsel in criminal matters will be paid at a rate of 175% of the legal aid fee rates when;

1. An order for costs is made in favour of the legally aided accused person under the *Crimes (Appeal and Review) Act 2001* and the *Criminal Procedure Act 1986,* or
2. An order for costs is made in favour of the legally aided accused person by the Supreme Court in prerogative writ matters or similar proceedings, or
3. The legally aided accused person is granted a certificate under Section 2 of the *Costs in Criminal Cases Act 1967*.
4. An order for costs is made in favour of the legally aided person in proceedings under:

- the *Crimes (High Risk Offenders) Act* or *Terrorism (High Risk Offenders) Act*
- the *Child Protection (Offenders Registration) Act 2000*, and the *Child Protection (Offenders Prohibition Orders) Act 2004*
- the *Criminal Code 1995* (Cth)
- the *Crimes (Serious Crime Prevention Order) Act*, and
- the *Crimes (Criminal Organisations Control) Act*.

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5. Supreme Court - Solicitor Fees

Scale of fees for approvals made on or after 17 Sep 2012

Trials

Initial trial preparation fee	$340
Mention/not reached: per hour in Court	$170
No-Bill Application/Notice of Motion/other Interlocutory Applications (where prior approval has been obtained): per hour	$170
Attendance at court ordered case conference	$170 per hour up to 2 hours
first day (up to a maximum of five hours per day)	$850
thereafter per hour	$170
maximum per day (up to a maximum of five hours per day)	$850
Co-accused	
Each co-accused represented per day	$238
Bail applications	
Preparation fee	$340
Appearance in Court: per hour	$170
Conferences	
Per accused/witness	$154
Gaol visit	$340
With accused where trial exceeds 1 week (up to 2 per week during trial)	$154
Sentence Matters	
Preparation fee	$340
Appearance in Court:	

Per hour (up to a maximum of five hours per day)	$170
Per day maximum	$850
View: Per hour while at the site of the view. **Prior approval** for the view must be obtained from Legal Aid NSW.	$170
Clerks: The prior written consent of the client, counsel and Legal Aid NSW is required.	Clerk instructing Counsel will be paid up to 70% of Solicitor fee
Additional reading/ preparation fee: (only allowed in exceptional circumstances)	By negotiation
Travel Entitlements	

Recovery of costs in criminal matters - Solicitors and Counsel in criminal matters will be paid at a rate of 175% of the legal aid fee rates when;

1. An order for costs is made in favour of the legally aided accused person under the *Crimes (Appeal and Review) Act 2001* and the *Criminal Procedure Act 1986,* or
2. An order for costs is made in favour of the legally aided accused person by the Supreme Court in prerogative writ matters or similar proceedings, or
3. The legally aided accused person is granted a certificate under Section 2 of the *Costs in Criminal Cases Act 1967*.
4. An order for costs is made in favour of the legally aided person in proceedings under:

- the *Crimes (High Risk Offenders) Act* or *Terrorism (High Risk Offenders) Act*
- the *Child Protection (Offenders Registration) Act 2000*, and the *Child Protection (Offenders Prohibition Orders) Act 2004*
- the *Criminal Code 1995* (Cth)
- the *Crimes (Serious Crime Prevention Order) Act*, and
- the *Crimes (Criminal Organisations Control) Act*.

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6. Court of Criminal Appeal - Solicitor Fees

Scale of fees for approvals made on or after 17 Sep 2012

Briefing counsel to obtain his/her opinion on the prospects of success or to prepare submissions	Sentence	$850
	Interlocutory	$510
	All Grounds	$1,020
	Other: including appeal under Part 5, 7 or 8 Crimes (Appeal and Review) Act 2001 or Supreme Court Act 1970	$850
Crown appeal – brief counsel to prepare submissions	$850	
Conference with the appellant	$154	
Mention/not reached: per hour in Court	$170	
Gaol visit	$340	
Instructing Counsel in Court: first day (up to a maximum of five hours per day)	$850	
· thereafter per hour	$170	
· maximum per day (up to a maximum of five hours per day)	$850	
Preparation / Reading Fee - By negotiation		
Travel Entitlements		

Recovery of costs in criminal matters - Solicitors and Counsel in criminal matters will be paid at a rate of 175% of the legal aid fee rates when;

1. An order for costs is made in favour of the legally aided accused person under the *Crimes (Appeal and Review) Act 2001* and the *Criminal Procedure Act 1986*, or
2. An order for costs is made in favour of the legally aided accused person by the Supreme Court in prerogative writ matters or similar proceedings, or
3. The legally aided accused person is granted a certificate under Section 2 of the *Costs in Criminal Cases Act 1967*.
4. An order for costs is made in favour of the legally aided person in proceedings under:

> the *Crimes (High Risk Offenders) Act* or *Terrorism (High Risk Offenders)*

Act

- the *Child Protection (Offenders Registration) Act 2000*, and the *Child Protection (Offenders Prohibition Orders) Act 2004*
- the *Criminal Code 1995* (Cth)
- the *Crimes (Serious Crime Prevention Order) Act*, and
- the *Crimes (Criminal Organisations Control) Act.*

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7. High Court - Solicitor Fees

Scale of fees for approvals made on or after 17 Sep 2012

Special leave application: Briefing counsel to obtain opinion on the prospect of success of the proposed appeal	$850
Preparation for the appeal to the High court	$1,190
Conference with the appellant	$154
Gaol visit	$340
Mention/not reached: per hour in Court	$170
Instructing Counsel in Court: first day (up to a maximum of five hours per day)	$850
· thereafter per hour	$170
· maximum per day (up to a maximum of five hours per day)	$850
Preparation / Reading Fee - By negotiation, but only in exceptional circumstances	
Travel Entitlements	

Recovery of costs in criminal matters - Solicitors and Counsel in criminal matters will be paid at a rate of 175% of the legal aid fee rates when;

1. An order for costs is made in favour of the legally aided accused person under the *Crimes (Appeal and Review) Act 2001* and the *Criminal Procedure Act 1986*, or
2. An order for costs is made in favour of the legally aided accused person by the Supreme Court in prerogative writ matters or similar proceedings, or
3. The legally aided accused person is granted a certificate under Section 2 of the *Costs in Criminal Cases Act 1967*.
4. An order for costs is made in favour of the legally aided person in proceedings under:

- the *Crimes (High Risk Offenders) Act* or *Terrorism (High Risk Offenders)*

Act

- the *Child Protection (Offenders Registration) Act 2000*, and the *Child Protection (Offenders Prohibition Orders) Act 2004*
- the *Criminal Code 1995* (Cth)
- the *Crimes (Serious Crime Prevention Order) Act*, and
- the *Crimes (Criminal Organisations Control) Act.*

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8. Additional Preparation

Committal

Legal practitioner (including counsel on a direct access brief)

A legal practitioner (including counsel on a direct access brief) appearing for a legally aided client at committal may make an application for payment of fees for preparation (including reading, conferences, listening to tape recordings, inspection of exhibits, views) in addition to the brief fee paid in the standard committal grant. However, additional preparation will not usually be considered at committal unless there is something extraordinary about the brief. Approval for additional preparation and the fee payable is at the absolute discretion of the Director Criminal Law or the Director Grants or their nominee.

Following committal, a legal practitioner may seek additional preparation in relation to material not served prior to committal.

Approval is subject to the Additional Preparation Guidelines.

Counsel (where approval has been obtained for counsel to advise on the brief and/or approval has been given for counsel to be briefed at committal)

Where approval has been obtained for counsel to advise on the brief and/or appear for a legally aided client, counsel may make an application for payment of fees for preparation (including reading, conferences, listening to tape recordings, inspection of exhibits, views) in addition to the fee paid to advise on the brief. However, additional preparation will not usually be considered at committal unless there is something extraordinary about the brief. Approval for Additional Preparation and the fee payable is at the absolute discretion of the Director Criminal Law or the Director Grants or their nominee.

All fees paid at committal will be paid at the Legal Practitioner rate.

Where additional preparation is allowed, counsel will be required to keep a record of time spent on preparation and a synopsis of material read.

The fee for counsel to advise on the brief and/or any fee paid as preparation at committal will be deducted from the fee for preparation for trial.

Approval is subject to the Additional Preparation Guidelines.

Trial

Solicitor

Following committal, a legal practitioner may seek additional preparation in relation to material not served prior to committal.

Approval is subject to the Additional Preparation Guidelines.

Counsel

A fee for reading the brief will be paid to counsel once only. Counsel **engaged at committal either on a direct access basis, or to advise on the brief and/or to appear at committal will not be eligible to claim the initial trial grant brief fee as this fee will have already been paid.**

Preparation in addition to the fee at committal or the initial trial grant will generally not be considered before arraignment unless there is something extraordinary about the brief.

Approval is subject to the Additional Preparation Guidelines.

Guidelines for Additional Preparation

An application for payment of fees for additional preparation (including reading, conferences, listening to tape recordings, inspection of exhibits, views) are subject to the following guidelines:

4. Before additional fees for preparation will be considered, Legal Aid NSW will require:

(a) an estimate of the amount of time it will take to read and prepare the case;

(b) details of the nature and extent of preparation, including the nature of documents to be perused;

(c) where counsel is briefed, details about which preparation is to be undertaken by counsel and which preparation will be undertaken by the solicitor; and

(d) an estimate of the court time if the matter goes to hearing/trial.

5. If necessary, Legal Aid NSW will independently examine the documents and may require further and better particulars about the amount of preparation necessary.

4. Requests for additional preparation must be made within sufficient time for the request to be considered by Legal Aid NSW.

5. A practitioner must comply with the file management procedures outlined in the Practice Standards.

6. A practitioner is presumed to know the law. A fee will not be paid for researching the law.

7. Additional fees for preparation will only be allowed where the preparation is necessary and in exceptional circumstances.

Method for calculating additional preparation

1. Applications for additional reading may be considered if the brief contains more than 600 pages of reading/scanning material or, preparation sought is greater than a total of 6 hours (where there is a combination of reading/scanning, viewing), and

the trial will have one or more of the following characteristics:

a) the trial is likely to exceed 10 days, or has taken more than 10 days and the conviction/sentence is appealed;

b) the trial involves multiple accused or multiple offences;

c) the trial involves complex legal issues, such as

i) charges relating to relatively untested law (e.g. terrorism),

ii) complex fraud or money laundering trials,

iii) commercial manufacture or supply of a prohibited drug,

iv) multiple offences against complainants

v) contested expert evidence

2. The method of calculating the fee rate for preparation will apply:

a) Reading by both practitioners

i) Statements

ii) Record of interview

iii) Viewing the record of interview

b) Reading by the barrister only

i) Committal transcript

c) Reading/watching/listening by solicitor or barrister only, but not both

i) Transcripts of telephone intercepts

ii) Transcripts of listening devices

iii) Transcripts of surveillance logs

d) Scanning by either solicitor or barrister but not both practitioners

i) Previous trial transcript

ii) Surveillance logs other than surveillance logs transcribed

iii) Photographs

iv) Financial documents

v) Video/audio tapes other than video/audio tapes transcribed

vi) Medical reports

3. The fee for reading the brief will be paid at the applicable practitioner hourly rate.

4. The fee for scanning the brief will be paid at ½ the applicable practitioner hourly rate.

Note: The amount of additional preparation payable is at the absolute discretion of the CEO, Executive Director Criminal Law, Executive Director, Grants & Community Partnerships, Director Grants or their nominee.

9. Duty Fee Scale

	Hourly rate
Duty Lawyer Scheme	$170 per hour (for the number of hours approved on the duty purchase order)

10. Travel Entitlements

Travel Allowance for approvals on or after 1 Jan 2020

- A **travel allowance and lump sum payment** may be 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 must be sought for any travel allowance
- 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.

Travel allowances

Where approved, travel will be paid at a rate of **$0.68 per kilometre** over 35km, or where appropriate, a return economy airfare (whichever is cheaper).

Payment for travel time

Payment for travel will only paid where the private lawyer is travelling over 35 kilometres (one way). The hourly fee rate is paid at $85.

Note: Travel allowances will be paid at actual kilometre rates submitted

Note: Lawyers travelling for duty and case work on the same day can only claim the travel allowance for either duty or the case work.

Accommodation

Where approved, expenses for accommodation and sustenance will be paid to the maximum rates determined by the Department of Premier and Cabinet of the NSW government in accordance with comparable public sector award rates based on the reasonable benefit limits set by the Australian Tax Office (as updated annually).

Duty

For information about when travel is payable to a practitioner to attend court under the Duty Solicitor Scheme, please refer to online duty guidelines.

11. 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 Department of Premier and Cabinet of the NSW government in accordance with comparable public sector award rates based on the reasonable benefit limits set by the Australian Tax Office (as updated annually). 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 Legal Aid NSW agrees that continuity of representation is in the interests of the client.

Is travel allowance payable for views?

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

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

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

Am I allowed to engage an agent?

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.

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Quick links

- Factsheets & resources
- Find a Legal Aid NSW advice service
- Translating and Interpreting Service **131450**
- National Relay Service