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Family (State) - 1 July 2020 to 30 June 2021

Fees for State law matters for approvals made on or after 1 July 2020

- Care and Protection - Practitioner Fees
- Duty Fee Scale
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Fee Scales

1. Care and Protection - Practitioner Fees

Scale of fees for approvals made on or after 1 July 2020 pursuant to the Children and Young Persons (Care and Protection) Act 1998 (NSW) matters

Guidelines

Funding 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 Legal Aid NSW determines that sufficient funds are available".

Fees

Fees are calculated on the basis of an hourly rate of \$160 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, Legal Aid NSW does not pay for actual time spent by a solicitor on an hourly basis.

Where no lump sum has been set Legal Aid NSW will pay practitioners on a pro rata basis for actual Court time spent at a defended hearing.

The maximum amount payable per hearing day is \$800 net.

Court attendance includes waiting time but excludes travel time. Waiting time is calculated from the time the matter is listed in Court, or the time the practitioner arrives at Court, whichever is the latest. 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.

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READING/PREPARATION

A lump sum fee is paid for preparation for final hearings. This may only be claimed if the matter is listed for a specific defended hearing.

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. Legal Aid NSW sets the lump sum when the grant is approved.

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

PREPARATION OF COURT DOCUMENTS

Preparation of court documents is a separate fee payable at each stage. This fee is paid on a pro rata basis (hourly rate to the maximum allowed) for Stage 3. The fee is a lump sum for Stage 2 (interim application) and Stage 4 (Placement).

The fee for preparation of court documents at any stage excludes preparation of administrative court documents, for example the Notice of Address for Service, Notice to Clinician to attend hearing, Notice for hearing/listing date. Preparation of administrative court documents is covered in the fee for taking instructions.

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. Legal Aid NSW 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 Legal Aid NSW has given prior approval.

ENGAGING AN AGENT In ordinary circumstances, a practitioner is not entitled to claim additional funding 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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COUNSEL

Funding 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 Legal Aid NSW.

Where briefed, Counsel will be paid at the rate of \$160 per hour for court appearances to a maximum of five hours per day. When not briefed, Counsel will be paid at the rate of \$240 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 \$160) and must be negotiated with Legal Aid NSW. Preparation is only payable where prior approval has been obtained from Legal Aid NSW.

Pre-litigation: Contact Dispute Mediation

Preparation for contact dispute mediation (including intake with mediator)	\$400
For child representatives: visit to a child	\$320 plus additional \$160 for each visit to additional child/ren per separate location
Attendance at contact dispute mediation	\$160 per hour to a maximum of 4 hours

Stage 2: Applications for interim and other orders fixed for defended hearing

This stage covers: interim orders in pending care matters (i.e. where a final care order has not been made) and other orders under the *Children and Young Persons (Care and Protection) Act* that are fixed for a specific defended hearing

Eligible hearings include:

- ECPO and extension of ECPO
- 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)
- Applications for interim orders
- Applications for assessment orders
- Leave of court applications heard separately from application to vary/rescind orders (merit test applies)
- 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, Notice to Clinician to attend hearing, Notice for hearing/listing date. \$320

Preparation of court documents including affidavits. **NOTE:** this fee excludes the preparation of administrative court documents such as a Notice of Address for Service, Notice to Clinician to attend hearing, Notice of hearing/listing date. \$480

Attendance at each day of defended hearing **NOTE:** To be eligible for this funding, the matter must be fixed for a specific defended hearing. \$160 per hour to a maximum of 5 hours per day

Stage 3: Applications for care orders: establishment phase

Stage 3 PART A

This stage 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.

Early settlement payment – where a matter settles early (but after the first court appearance) and involves up to 3 hours work. \$480

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. \$640

Preparation of court documents including affidavit/s for establishment hearing. This fee is paid on a pro rata basis. **NOTE:** This funding excludes the preparation of administrative court documents such as Notice of Address for service, Notice to Clinician to attend hearing, Notice for hearing/listing date. \$480

NOTE: Practitioners representing a child must apply for separate funding for preparation of court documents for this stage.

Stage 3 PART B

This stage covers: preparation for the establishment hearing and attendance at each day of the establishment hearing.

Preparation for establishment hearing including the preparation of administrative court documents necessary for an establishment hearing. \$240

NOTE: to be eligible for this funding, the matter must be fixed for a specific defended establishment hearing.

Attendance at each day of establishment hearing. **NOTE:** to be eligible for this funding, the matter must be fixed for a specific defended establishment hearing. \$160 per hour to a maximum of 5 hours per day

Stage 4: Applications for care orders: disposition (placement) phase

This stage covers: work following an establishment hearing to the completion of a disposition hearing

Taking Instructions, reading court documents (and other material), preparation of administrative court documents, attending all court appearances, and preparation for the Dispute Resolution Conference \$800

Preparation of court documents including affidavit/s for placement hearing excluding the preparation of administrative court documents such as a Notice of Address for Service, Notice to Clinician to attend, Notice for hearing/listing date. \$480

Preparation for placement hearing (where placement hearing is held separately from establishment hearing) including the preparation of administrative court documents necessary for a placement hearing, Notice to Clinician to attend, Notice for hearing/listing date. \$240

NOTE: to be eligible for this funding, the matter must be fixed for a specific defended placement hearing.

Attendance at each day of placement hearing (where held separately from establishment hearing) **NOTE:** to be eligible for this funding, the matter must be fixed for a specific defended placement hearing. \$160 per hour to a maximum of 5 hours per day

Dispute Resolution Conference

This covers: attendance at a Dispute Resolution Conference

NOTE: Preparation is covered under the substantive grant of aid.

Attendance at the Dispute Resolution Conference. \$160 per hour to a maximum of 3 hours

External Care and Protection Mediation

This stage covers: attendance at external care and protection mediation at the Family Dispute Resolution Service following referral from the Children's Court (Legal Aid NSW Pilot).

NOTE: Preparation is covered under the substantive grant of aid.

Attendance at external care and protection mediation \$160 per hour to a maximum of 3 hours

Stage 5: Alteration of existing care orders

This stage covers: work on applications to alter existing care orders after a final care order has been made

Eligible applications for this funding include:

- application for further orders due to breach
- application for extension of supervision
- application for variation/rescission

NOTE: funding 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 funding approval.

Taking instructions, reading court documents (and other materials), attendance at all initial court appearances and preparation for the Dispute Resolution Conference. \$800

Preparation of court documents including affidavits excluding the preparation of administrative court documents such as a Notice of Address for Service, Notice to Clinician to attend, Notice for hearing/listing date. \$480

Preparation for final hearing including the preparation of administrative court documents such as a Notice of Address for Service, Notice to Clinician to attend, Notice for hearing/listing date. \$240

Attendance at each day of final hearing **NOTE:** to be eligible for this funding the matter must be fixed for a specific defended final hearing. \$160 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 @ \$160 per hour.

Attendance at each day of hearing (where Counsel is not briefed) \$240 per hour to a maximum of 5 hours per day

Attendance at each day of hearing where Counsel is briefed \$160 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, Notice to Clinician to attend, Notice for hearing/listing date issuing subpoenas and attendance at all court appearances other than the final hearing

Lump sum fee based on estimated preparation time @ \$160 per hour.

Attendance at each day of hearing (where Counsel is not briefed) \$240 per hour to a maximum of 5 hours per day

Attendance at each day of hearing where Counsel is briefed \$160 per hour to a maximum of 5 hours per day

NCAT - Representation in the Administrative and Equal Opportunity Division of the NSW Civil and Administrative Tribunal \$160 per hour to a maximum of 5 hours per day

Alternative dispute resolution (Includes Care Circle Pilot)

This covers: preparation and attendance at a conference under the Care Circle Pilot. Also, in situations where there are no current proceedings under the *Children and Young Persons (Care and Protection) Act, 1998 (NSW)* and where special disadvantage and other policy criteria have been met, funding is available for:

- . 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, Notice to Clinician to attend, Notice for hearing/listing date. \$320

Representing client at ADR process \$160 per hour to a maximum of 4 hours

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Fee Scales

2. Duty Fee Scale

	Hourly rate
Duty Lawyer Scheme	\$160 per hour (for the number of hours approved on the duty purchase order)

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3. Travel Entitlements in State Care and Protection Matters for approvals made on or after 1 September 2010

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 Legal Aid NSW.

Unless there are exceptional circumstances, the travel allowance will not be approved to attend the following Children's Courts:

- > Metropolitan Sydney (including Paramatta and Surry Hills)
- > Nowra
- > Broadmeadow
- > Campbelltown
- > Port Kembla
- > Woy Woy
- > Lismore
- > Tamworth
- > Wyong

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 Legal Aid NSW 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.

Travel Entitlements

Travel allowances

Where approved, travel will be paid at a rate of **\$0.68 per kilometre**, 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 \$80.

Distance each way	
Example distances only	0.68 per km after 35 km plus time at \$80/hour
50 km	\$113
100 km	\$275
150 km	\$437
200 km	\$599
250 km	\$760

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, 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.

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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 hours 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 Legal Aid NSW 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 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.travelnate.com.au> may assist in calculating distance between destinations.

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