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# **GUIDE TO CLAIMING PAYMENT**

**For Legal Aid WA Panel and List members**

## Document Details

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|-----------------------------|------------------------------------------|
| <b>Document description</b> | GUIDE TO CLAIMING PAYMENT - Legal Aid WA |
| <b>Document details</b>     | Version 4                                |
| <b>Publication date</b>     | 1 July 2023                              |

## Document History

| Version | Date           | Author                     | Amendments                                                                                   |            |        |
|---------|----------------|----------------------------|----------------------------------------------------------------------------------------------|------------|--------|
| 1       | 7 March 2019   | LPD and CS Divisions       | First published.                                                                             |            |        |
| 2       | 1 July 2021    | LPD and CS Divisions       | Amended to include Annexures 1, 2 and 3 and additional information about cash contributions. |            |        |
| 3       | 4 January 2022 | Lawyers Engagement Network | Clauses modified or added:                                                                   |            |        |
|         |                |                            | 14.1.1                                                                                       | 14.2.1     | 14.2.2 |
|         |                |                            | 17                                                                                           | 20         | 22     |
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|         |                |                            | 35.4.5                                                                                       | 35.6       | 35.7   |
|         |                |                            | 35.8                                                                                         | 36         | 37     |
| 4       | 1 July 2023    | Lawyers Engagement Network | Clauses modified or added:                                                                   |            |        |
|         |                |                            | 1                                                                                            | 12.3       | 14.1.1 |
|         |                |                            | 14.1.2                                                                                       | 14.2.1     | 14.2.2 |
|         |                |                            | 16                                                                                           | 16.1.1     | 16.1.2 |
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## PART 1: PRELIMINARY

### 1 Interpretation

In this Guide, unless the contrary intention appears:

**Act** means the *Legal Aid Commission Act 1976 (WA)*;

**assigned** or assignment means the allocation of a grant of aid or a disbursement grant to a practitioner to perform legal services;

**assigned matter** means a case matter that is the subject of a grant of aid from Legal Aid WA and which has been allocated to a practitioner for the provision of legal services;

**assigned practitioner** means a practitioner who has been allocated an assigned matter;

**assisted person** means a person who has applied for and is receiving the benefit of a grant of aid;

**audit** means to collect, examine and evaluate information to determine compliance with specified requirements, procedures and standards;

**blank tax invoice** means a recipient created tax invoice that does not have fields automatically populated by the GOL system, as referred to in **12.3** of this Guide;

**CDPP** means the office of the Commonwealth Director of Public Prosecutions;

**contribution** means the monetary amount required to be paid by an assisted person to Legal Aid WA, which goes towards the funding of legal services for the assisted person;

**Costs Rules** means the *Legal Aid Commission (Costs) Rules 1990*;

**Criminal Law Rates and Allowances** means the Legal Aid WA publication listing the rates and allowances applicable to items that may be included in a criminal law grant of aid;

**disbursement grant** means a grant of aid for disbursements only;

**DR** means dispute resolution;

**DSO hearing** means Dangerous Sex Offender hearing under the *Dangerous Sex Offenders Act 2006*;

**Duty Lawyer Service** means duty lawyer services provided by Legal Aid WA in any jurisdiction;

**Family Law Rates and Allowances** means the Legal Aid WA publication listing the rates and allowances applicable to items that may be included in a family law grant of aid;

**firm generated tax invoice** means a tax invoice generated by the Practitioner's firm;

**GOL** means the Grants Online system operated by Legal Aid WA for the purposes of the electronic management of grants of aid;

**GOSAC** means the Government Officers' Salaries Allowances and Conditions Award 1989 as listed on the Western Australian Industrial Relations Commission website;

**grant of aid** means the funding of legal services by Legal Aid WA;

**grant letter** means the written notification of the terms of the grant of aid;

**Guide** means this Guide to Claiming Payment as amended from time to time and any schedules, annexures or attachments;

**ICL** means Independent Children's Lawyer;

**Legal Aid WA** means the Legal Aid Commission of Western Australia, established under the Act;

**legal services** means services provided by a practitioner that are funded by Legal Aid WA;

**list** means a list of private practitioners set up by Legal Aid WA to provide certain legal services and which is not governed by the requirements in s40 of the Act;

**non-panel practitioner** means a practitioner or restricted practitioner who is not a member of the panel or list relevant to the assigned matter;

**panel** means a panel of private legal practitioners set up by Legal Aid WA to provide certain legal services to assisted persons in accordance with s40 of the Act;

**practitioner** means an Australian legal practitioner within the meaning of s 6 of the *Legal Profession Uniform Law*, or a registered Family Dispute Resolution Practitioner;

**private practitioner** means a practitioner who provides legal services in a private capacity and who is not employed by a government agency, the Aboriginal Legal Service or by Legal Aid WA;

**Professional Services Agreement** means the agreement between the Practitioner and Legal Aid WA which makes provision for the terms upon which the Practitioner engages with Legal Aid WA and provides legal services as a member of a panel or list;

**Private Practitioner Manual** means the manual produced by Legal Aid WA detailing how assigned practitioners are to provide legal services under grants of aid and which is to be read together with the Professional Services Agreement;

**PPM** means **Private Practitioner Manual**

**Practitioner** means a private practitioner who is performing legal services in assigned matters under the terms of a Professional Services Agreement with Legal Aid WA;

**recipient created tax invoice** means a tax invoice generated by Legal Aid WA through the GOL system, as referred to at **12** of this Guide;

**section 32 Notice** means a notice under s32 of the *Sentencing Act 1995 (WA)* for pending charges to be dealt with by a superior court.

## **2 Purpose of this Guide**

This Guide is designed to assist the Practitioner with the process of claiming payment from Legal Aid WA for services provided in an assigned matter.

## **3 Private Practitioner Manual and Professional Services Agreement**

This Guide is to be read together with the Professional Services Agreement and the Private Practitioner Manual.

## **4 Variation**

The contents of this Guide may be varied by Legal Aid WA at any time. Legal Aid WA will notify the Practitioner in a timely manner of any such variation.

## **PART 2: REQUIREMENTS FOR ALL CLAIMS**

### **5 Comply with Private Practitioner Manual and this Guide**

All claims for payment from Legal Aid WA must comply with the requirements in the Private Practitioner Manual (PPM), and the requirements in this Guide.

### **6 Payment from Legal Aid WA only**

The Practitioner must comply with **clause 25 PPM** in relation to the acceptance of payment for legal services provided in an assigned matter. Generally, payment may only be accepted from Legal Aid WA.

### **7 Claim within 6 months of finalisation**

The Practitioner must submit a claim for payment as soon as practicable and otherwise within 6 months from the completion of the assigned matter (rule 10(1) *Legal Aid Commission Rules 1990 (WA)*).

#### **7.1 Reduction for late claims**

If a claim for payment is not provided within 6 months of completing the assigned matter, Legal Aid WA may reduce the amount approved for payment by up to 30% of the payment limit for the assigned matter (rule 10(2) *Legal Aid Commission Rules 1990 (WA)*).

### **8 Claim according to terms of grant of aid**

Claims for payment must be in accordance with the maximum costs allowed under the terms of the grant of aid, or any approved extension to the grant of aid.

### **9 Claim from aid effective date**

The Practitioner may only claim payment for legal services performed on or after the grant of aid or any approved extension is effective, which is the date noted in the grant letter or notification of the approved extension, as relevant.

### **10 Only claim for costs actually incurred**

The Practitioner is not entitled to automatically claim payment to the maximum amount allowed under the terms of the grant of aid for the provision of the legal services. The Practitioner may only claim for legal services actually provided or disbursements actually incurred, which may be pro-rata of the maximum amount allowed under the terms of the grant of aid.

Legal Aid WA may seek independent verification of legal services claimed to have been provided, including services claimed to have been provided through the briefing of an agent or another practitioner.

## **11 Information to support claim**

The Practitioner must record and retain information that supports any claim for payment, and must provide information to Legal Aid WA to substantiate any claim for payment, in accordance with **Parts 5 and 6 PPM**.

## PART 3: METHOD FOR CLAIMING

### 12 Generally claim through GOL using recipient created tax invoice

Claims must generally be submitted through the [Grants Online \(GOL\) system](#), using a **recipient created tax invoice generated by the GOL system**, however:

- practitioners who are not GST registered cannot claim through GOL and must instead submit their own firm generated invoice as an attachment to an extension request in GOL (refer to **14.2** of this Guide for more detail),
- practitioners providing DR Chairperson services must submit their claim in person or by email (or by post if no email address is provided by Legal Aid WA);
- practitioners providing services under certain grants of aid may be advised by Legal Aid WA not to submit their claim through the GOL system and instead submit it as specified; and
- in the limited circumstances noted in **12.4** of this Guide, a 'blank tax invoice' may be accepted instead of the usual recipient created tax invoice.

#### 12.1 GOL User Guide

For technical guidance in submitting a claim through the GOL system, refer to the GOL User Guide available under 'Enclosures' in [GOL](#) or from the [Grants Online webpage](#) on the Legal Aid WA website under the heading 'Resources'.

#### 12.2 Request ID into GOL to generate recipient created tax invoice

Practitioners who are GST registered and are therefore claiming through GOL will need to match the Request ID on the top left-hand side of the grant letter with the Request ID on the relevant grant or extension in GOL to enable GOL to create the correct recipient created tax invoice for that grant of aid or extension.

#### 12.3 Item codes relevant to grant automatically populated

As explained at clause **17** of this Guide, the grant letter includes items indicating the maximum amount payable for specified services and disbursements covered by the grant of aid, with associated item codes.

The recipient created tax invoice generated by the GOL system automatically populates the claim screen with the item code relevant to the items covered under that grant of aid or extension. For example 'C2'.

Within GOL the item code is referred to as the 'clause'.

#### 12.4 'Blank tax invoice' not ordinarily used

In GOL it is an option to select what is known as a recipient created 'blank tax invoice'. A blank tax invoice is created through the GOL system, but has no

amounts specified in it and is not automatically populated with the details of the grant or the practitioner who is claiming payment.

Blank tax invoices can only be used in limited circumstances. If a blank tax invoice has been submitted in error it will usually be returned to the Practitioner with a request to instead submit the usual recipient created tax invoice generated through GOL.

The limited circumstances when a blank tax invoice will be accepted are:

- where the Practitioner is unable to access their claim button on the standard grant of aid in GOL and they are requested by Legal Aid WA to submit a blank tax invoice on a specific extension, for a specified amount,
- where the grant was not generated through the GOL system,
- where there has been a calculation error in the claim amount in a recipient created tax invoice submitted for payment (see **13.9** of this Guide), or
- where the Practitioner is claiming payment for GST free items (see **14** of this Guide).

Note, the certification on the blank tax invoice must be completed by the Practitioner. It must not be completed by administrative staff.

## **13 Submitting claim using recipient created tax invoice**

### **13.1 Entering claim amounts**

Once the correct recipient created tax invoice has been generated in GOL and the claim screen is automatically populated with the item codes relevant to that grant of aid or extension, the Practitioner may enter the claim amounts against each item according to the work performed under the grant.

### **13.2 Remaining commitment**

The claim screen for a particular extension in GOL displays a box showing the 'Remaining Commitment', being the amount still available to be claimed by the Practitioner for work completed under that extension. This box also shows any amount already claimed under that extension.

### **13.3 GST automatically calculated**

The recipient created tax invoice will only deal with items that include GST. Any items that do not include GST cannot be claimed using a recipient created tax invoice and instead, a 'blank tax invoice' must be used. See **12.4** of this Guide regarding the use of blank tax invoices.

All items included in a recipient created tax invoice must be entered exclusive of GST and the GST component of each item will be automatically calculated and visible on the claim screen.

There is more information about GST, including how to deal with GST free items, in **14** of this Guide.

### **13.4 Must select option in recipient created tax invoice when prompted**

The process in the GOL system for submitting a claim requires that when a 'Yes' or 'No' option is presented, one option must be selected and additional information must be provided if prompted. This ensures the claim can be processed accurately and without delay.

### **13.5 Claim for part of grant of aid**

When the Practitioner is submitting a claim, GOL will ask whether the claim is for part of the grant or extension only and whether the Practitioner expects to submit a further claim against the same grant or extension. These yes/no questions must be answered to enable the claim to be processed.

### **13.6 'Disbursement Work Type'**

Under Claim Details, a 'Disbursement Work Type' must be selected from the drop-down menu to enable the claim to be submitted. See [Annexure 2](#) for information about reporting disbursements.

### **13.7 Costs orders**

As part of the process of claiming through GOL, the system will ask the Practitioner whether there has been a Costs Order and a response must be provided. If yes, the Practitioner must provide the information requested, to ensure the amount of the Costs Order is taken into account when the claim for payment is processed.

Full information about Costs Orders in grant of aid matters and the processes the Practitioner must follow, are set out in **16** of this Guide.

### **13.8 Disbursements and solicitor fees in correct column**

In the tax invoice, claims for disbursements must be in the disbursements column and claims for solicitor fees must be in the solicitor fee column.

### **13.9 Incorrect claim amounts**

Where a claim has been submitted with a calculation error in the claim amount, the Practitioner should submit a 'blank tax invoice' (see **12.4** of this Guide) and email [grantscrime@legalaid.wa.gov.au](mailto:grantscrime@legalaid.wa.gov.au) or [grantsfamily@legalaid.wa.gov.au](mailto:grantsfamily@legalaid.wa.gov.au) or [grantscivil@legalaid.wa.gov.au](mailto:grantscivil@legalaid.wa.gov.au) to advise of the error.

## **14 GST issues when claiming fees and disbursements**

Whether GST needs to be added to a claim for **fees** depends on whether the Practitioner's firm is registered for GST. Whether GST needs to be added to a claim

for **disbursements** depends on a number of factors including whether the third-party supplier is registered for GST.

Detailed guidance regarding how to deal with GST when claiming payment for fees and disbursements is provided below. The information is grouped according to whether the Practitioner is registered to collect GST or not.

Please note, this information **does not constitute tax advice**.

## 14.1 Practitioner's firm registered for GST

### 14.1.1 Claim for fees by GST registered practitioner

All fees quoted by Legal Aid WA are quoted **exclusive** of GST, unless specified otherwise.

Where the Practitioner's firm is registered to collect GST, the Practitioner must add GST to the claim for fees.

**For example:**

| Description         | Fee     | GST      | Total Claim |
|---------------------|---------|----------|-------------|
| Solicitor Fee (C13) | \$1,336 | \$133.60 | \$1,469.60  |

### 14.1.2 Claim for disbursements by GST registered practitioner

All practitioners paying disbursements to third-party suppliers are acting as the paying agent for Legal Aid WA.

When the Practitioner is to pay a disbursement as the paying agent for Legal Aid WA, the third-party invoice should be addressed to 'Legal Aid WA care of [the Practitioner]'. This is an especially important requirement where the disbursement is over \$1000.

Whether GST is claimed on a disbursement will depend on whether the third-party supplier is GST registered (ie has a GST component included in the item supplied) and whether the invoice is addressed to 'Legal Aid WA care of [the Practitioner]', as follows:

- Where the third-party supplier is **GST registered** and the **invoice is made out to 'Legal Aid WA care of [the Practitioner]'** the Practitioner must specify the GST component of the item when making a claim to Legal Aid WA. Legal Aid WA will pay the third-party invoice via the Practitioner.

**For example:**

*ABC Legal engage XYZ psychiatrist who is GST registered to provide a service, and the cost is \$4,750 with \$475 GST included in the cost. XYZ psychiatrist address their invoice to Legal Aid WA care of ABC Legal. Legal Aid WA pays the psychiatrist \$5,225 via ABC Legal.*

| Description         | Disbursement | GST   | Total Claim |
|---------------------|--------------|-------|-------------|
| Psychiatrist (FS21) | \$4,750      | \$475 | \$5,225     |

- Where the third-party supplier is **GST registered** and the **invoice is not made out to 'Legal Aid WA care of [the Practitioner]'** the Practitioner must add GST to the cost of the item. Legal Aid WA will pay the third-party invoice via the Practitioner.

**For example:**

ABC Legal purchase an airfare to Kununurra for \$1,500 inclusive of GST from Virgin. They did not request the invoice to issue in the name of Legal Aid care of ABC Legal and they must therefore claim GST on the total cost.

| Description      | Disbursement | GST   | Total Claim |
|------------------|--------------|-------|-------------|
| Travel costs C92 | \$1,500      | \$150 | \$1,650     |

- Where the third-party supplier is **not GST registered** or the **disbursement item is exempted from GST**, a **blank tax invoice must be submitted for the GST free item** and the **invoice should be made out to 'Legal Aid WA care of [the Practitioner]'**. In this case, the Practitioner must not specify any GST in their claim for the item. Legal Aid WA will pay the third-party invoice via the Practitioner.

**For example:**

ABC Legal engage ECF barrister who is not GST registered to provide a service, and the cost is \$209 with no GST included in the cost. ECF barrister address their invoice to Legal Aid WA. Legal Aid WA pays the barrister \$209 via ABC Legal.

| Description   | Disbursement | GST | Total Claim |
|---------------|--------------|-----|-------------|
| Barrister C70 | \$209        | N/A | \$209       |

**Audit requirements – record keeping**

The Practitioner is required to retain copies of third-party invoices in accordance with **clause 23.4 PPM**.

## 14.2 Practitioner's firm not registered for GST

If the Practitioner is not registered for GST, the claim for fees and disbursements cannot be made by the use of a recipient created tax invoice generated through GOL.

Instead, the Practitioner must submit a firm generated tax invoice which must be submitted as an attachment in GOL. To do so, the invoice must be attached to an extension request, however, an extension must not be requested at the same time. Instead, the invoice must be attached and the request must indicate that is for payment of the attached invoice only. Any request for an extension must be submitted separately.

As this is an Australian Taxation Office requirement, no claim will be paid until the correct invoice is received.

### 14.2.1 Claim for fees by non-GST registered practitioner

All fees quoted by Legal Aid WA are quoted **exclusive** of GST, unless specified otherwise.

As the Practitioner's firm is not registered to collect GST, the Practitioner must not add GST to the claim for fees.

**For example:**

| Description         | Fee     | GST | Total Claim |
|---------------------|---------|-----|-------------|
| Solicitor Fee (C13) | \$1,336 | N/A | \$1,336     |

### 14.2.2 Claim for disbursements by non-GST registered practitioner

Legal Aid WA considers that all practitioners paying disbursements to third-party suppliers are acting as the paying agent for Legal Aid WA.

When the Practitioner is to pay a disbursement as the paying agent for Legal Aid WA, the third-party invoice must if possible be addressed to 'Legal Aid WA care of [the Practitioner]'. This is an especially important requirement where the disbursement is over \$1000.

Where the Practitioner's firm is not registered to collect GST, the way in which Legal Aid WA deals with claims for disbursement amounts is to require that the claim be for the total amount of the third-party invoice, with no GST added. This is irrespective of whether the third-party is GST registered or not (and therefore irrespective of whether GST is included in the total amount of the third-party invoice).

**For example:**

ABC Legal engage XYZ psychiatrist who is **GST registered** to provide the service, and the cost is \$4,750 with \$475 GST added to the cost. Total invoice is \$5,225. ABC Legal also engage ECF barrister who is **not GST registered** to provide the service, and the cost is \$209 with no GST. Total invoice is \$209.

| Description         | Disbursement | GST | Total Claim    |
|---------------------|--------------|-----|----------------|
| Psychiatrist (FS21) | \$5,225      | N/A | \$5,225        |
| Barrister (C70)     | \$209        | N/A | \$209          |
| <b>Total Claim</b>  |              |     | <b>\$5,434</b> |

#### Audit requirements – record keeping

The Practitioner is required to retain copies of third-party invoices in accordance with **clause 23.4 PPM**.

## 15 Cash contribution amount will be deducted

If the Practitioner is required to collect a contribution from the assisted person under **clause 9.17 PPM**, when paying the Practitioner, Legal Aid WA will assume

the amount has been collected and deduct the contribution amount from the value of the Practitioner's claim.

A contribution in the form of a memorial against the assisted person's property is not to be collected by the Practitioner (see **clause 9.17 PPM**). In such a case the contribution amount will not be deducted from the value of the Practitioner's claim.

If the Practitioner is required to collect a contribution and is GST registered, the GST component Legal Aid WA will pay will be calculated based on the full value of the claimed amount, rather than the full value less the contribution amount.

***For example:***

*Where the claimed amount is \$1,000 and the assisted person is required to contribute \$200, a practitioner who is GST registered must collect the \$200 from the client and at the end of the matter, must invoice Legal Aid WA for \$1,000 + GST. Legal Aid WA will then pay the practitioner \$800 plus \$100, where the \$100 is the GST component of the full value of the claimed amount.*

The Practitioner should advise Legal Aid WA prior to submitting a claim if they have been unable to collect a cash contribution from their client and advise the reasons why the contribution could not be made. Legal Aid WA will not act where this information is submitted in the report of a claim as the process is automated.

## **16 Costs orders and recovery of costs by Legal Aid WA**

Legal Aid WA has different procedures concerning cost orders, depending on the type of legal assistance being funded. The Practitioner must follow the procedures described below, as relevant.

Legal Aid WA is entitled to recover the costs paid to the Practitioner under the grant of aid, where an order or agreement for costs is made in favour of a successful assisted person or a practitioner funded by Legal Aid WA.

As a grant of aid cannot be withdrawn or cancelled to allow for a costs award, specific processes must be followed to enable Legal Aid WA to account for the costs payable under the grant of aid.

### **16.1 Criminal costs orders**

The Practitioner is permitted to seek an award of costs in a State or Commonwealth criminal matter without the prior permission of Legal Aid WA. However, the Practitioner must follow the procedures described below, as relevant.

#### **16.1.1 State criminal costs orders**

The Practitioner is permitted to seek an award of costs on behalf of a successful accused under the *Official Prosecution (Accused's Costs) Act 1973 (WA)* (OP Act).

Where a costs order is likely to be made in favour of an assisted person under the OP Act the Practitioner must follow the procedures below.

These procedures are consistent with the Goods and Services Ruling GSTR 2001/4 '*Goods and Services Tax: GST consequences of court orders and out of court settlements*'.

**This information assumes that the Practitioner is registered for GST.** If the Practitioner is not registered for GST, any amount paid to the Practitioner by Legal Aid WA will be less the GST component.

- 1) When making an application to the court for recovery of costs, the Practitioner must:
  - a. advise the court that they have been representing the accused under a grant of legal aid;
  - b. include any payments that have already been made by Legal Aid WA to the Practitioner; and
  - c. advise the court that costs have been calculated in accordance with section 5(5) of the OP Act and section 43 of the *Legal Aid Commission Act 1976 (WA)*.
- 2) Once the costs award has been made, the Practitioner must seek a Certificate from the court and forward it to the Department of Justice (DOJ).
- 3) When providing the Certificate, the Practitioner must advise DOJ that the matter was conducted under a grant of aid, request payment be made directly to Legal Aid WA and provide DOJ with the Legal Aid WA file number as a reference so the payment may be reconciled against the correct file.
- 4) The Practitioner must then request an extension to the grant of aid through GOL in the sum of the full costs awarded, indicating that it is a costs award and attaching a copy of the Practitioner's letter to DOJ. The extension request must be for the full amount of the costs award even if it is different to the value of the grant of aid.
- 5) Generally, interim or part payments are not made on Magistrates Court grants of aid. However, if Legal Aid WA has made such a payment, when submitting the extension request, the Practitioner must note any payments already made by Legal Aid WA. The amount approved to be paid under the extension will be adjusted accordingly.
- 6) The Practitioner must then submit a claim against that extension in order to receive payment from Legal Aid WA for the amount approved under the extension.
- 7) All awarded costs are deemed to be inclusive of GST if the Practitioner is registered for GST. In this case it is the Practitioner's responsibility to forward the relevant GST component to the Australian Taxation Office once payment is received from Legal Aid WA.

- 8) DOJ should transfer the amount of the costs award to Legal Aid WA directly. However, if DOJ instead pays the Practitioner, the Practitioner must immediately forward this payment to Legal Aid WA.
- 9) Until payment of the awarded costs is received from either DOJ or the Practitioner, Legal Aid WA will hold the Practitioner responsible for payment of the amount of the awarded costs. If payment is not received from DOJ within a reasonable time (approximately three months), Legal Aid WA will advise the Practitioner that the payment is outstanding and a credit note may be issued. Payment may be made by a deduction from any submitted outstanding invoice from the Practitioner.

### 16.1.2 Commonwealth criminal costs orders

Where a costs order is likely to be made in favour of an assisted person in a Commonwealth criminal matter in the Magistrates Court, the Practitioner must follow the procedures below.

These procedures are consistent with the Goods and Services Tax Ruling GSTR 2001/4 '*Goods and Services Tax: GST consequences of court orders and out of court settlements*'.

**This information assumes that the Practitioner is registered for GST.** In the event that the Practitioner is not registered for GST, any amount paid by Legal Aid WA to the Practitioner will be less the GST component.

- 1) When making an application to the court for costs, the Practitioner must:
  - a. advise the court that they have been representing the accused under a grant of legal aid;
  - b. include any payments that have already been made by Legal Aid WA to the Practitioner; and
  - c. advise the court that costs have been calculated in accordance with section 43 of the *Legal Aid Commission Act 1976 (WA)*.
- 2) Once the costs award has been made, the Practitioner must seek a Certificate from the court and forward it to the Commonwealth DPP (CDPP).
- 3) When providing the Certificate the Practitioner must advise the CDPP that the matter was conducted under a grant of aid, request payment be made directly to Legal Aid WA and provide the CDPP with the Legal Aid WA file number as a reference so the payment may be reconciled against the correct file.
- 4) The CDPP will contact Legal Aid WA and request a copy of the grant letter to confirm Legal Aid WA's entitlement to funds, which will override the usual CDPP policy of paying the client directly.
- 5) The Practitioner must request an extension to the grant of aid through GOL for the full amount of costs awarded, even if this amount is not the same as the amount of costs provided for under the grant of aid. The Practitioner

must obtain a signed authority from the client authorising costs to be paid to Legal Aid WA which is to be forwarded to the CDPP with the request that they direct funds to us.

- 6) When submitting the extension request, the Practitioner must attach a copy of the Practitioner's letter to the CDPP.
- 7) Generally, interim or part payments are not made on Magistrates Court grants of aid. However, if Legal Aid WA has made such a payment, when submitting the extension request, the Practitioner must note any payments already made by Legal Aid WA. The amount approved to be paid under the extension will be adjusted accordingly.
- 8) The Practitioner must submit a claim against this extension in order to receive payment from Legal Aid WA for the amount approved under the extension.
- 9) All awarded costs are deemed to be inclusive of GST if the Practitioner is registered for GST. In this case it is the Practitioner's responsibility to forward the relevant GST component to the Australian Taxation Office once payment is received from Legal Aid WA.
- 10) The CDPP should transfer the awarded costs to Legal Aid WA directly. However, if the CDPP instead pays the Practitioner, the Practitioner must forward this payment to Legal Aid WA immediately.
- 11) Until payment of the awarded costs is received from either the CDPP or the Practitioner, Legal Aid WA will hold the Practitioner responsible for payment of the amount of the awarded costs. If payment is not received within a reasonable time (approximately three months), Legal Aid WA will advise the Practitioner that the payment is outstanding and a credit note may be issued requiring the Practitioner to pay the awarded amount to Legal Aid WA. Payment may be made by a deduction from any submitted outstanding invoice from the Practitioner.

## **16.2 Family law costs orders**

Legal Aid WA does not ordinarily approve requests for a practitioner to make an application for costs in family law proceedings.

The Practitioner must follow the procedures described below, as relevant.

### **16.2.1 Standards grants (parenting and property)**

The Practitioner is **not** permitted to make an application for costs on behalf of an assisted person without the prior permission of Legal Aid WA.

Requests are to be submitted on GOL. If the request is urgent, practitioners are to also email [grantsfamily@legalaid.wa.gov.au](mailto:grantsfamily@legalaid.wa.gov.au) with details of the request. This will enable Legal Aid WA to prioritise the urgent request and process it as quickly as possible.

If costs are awarded to an assisted person by the Family Court of WA, the Practitioner must follow the process outlined in **16.6** of this Guide to facilitate reimbursement to Legal Aid WA.

### **16.2.2 Independent Children's' Lawyer (ICL) grants**

The ICL is **not** permitted to make an application for costs against a party in the proceedings without the prior permission of Legal Aid WA. This includes applications for costs where a party has unsuccessfully requested the discharge of the ICL in the proceedings.

Legal Aid WA may require the ICL to make an application for costs to cover any Single Expert Witness fees funded by Legal Aid WA, and/or to cover the cost of legal services provided by the ICL under the grant of aid. The ICL must seek Legal Aid WA's position on costs prior to the finalisation of the proceedings.

Requests are to be submitted on GOL. If the request is urgent, practitioners are to also email [grantsfamily@legalaid.wa.gov.au](mailto:grantsfamily@legalaid.wa.gov.au) with details of the request. This will enable Legal Aid WA to prioritise the urgent request and process it as quickly as possible.

If costs are awarded to the ICL by the Family Court of WA, the Practitioner must follow the process outlined in **16.6** of this Guide to facilitate reimbursement to Legal Aid WA.

### **16.2.3 Commonwealth Family Violence and Cross-Examination of Parties Scheme (Scheme)**

The Australian Government have advised that costs should not be sought in matters funded under the Scheme.

The Practitioner is **not** permitted to seek costs in matters being funded under the Scheme. This includes costs applications for the benefit of an assisted person and cost applications against an assisted person.

If costs are awarded in proceedings being funded under the Scheme, the Practitioner is to immediately notify Legal Aid WA by emailing [xemscheme@legalaid.wa.gov.au](mailto:xemscheme@legalaid.wa.gov.au).

## **16.3 Restraining order matter costs orders**

Legal Aid WA does not ordinarily approve requests for a practitioner to make an application for costs in restraining order matters and does not ordinarily pursue the recovery of costs in restraining order matters.

The Practitioner is not permitted to make an application for costs on behalf of an assisted person without the prior permission of Legal Aid WA.

Requests are to be submitted on GOL. If the request is urgent, practitioners are to also email [grantsfamily@legalaid.wa.gov.au](mailto:grantsfamily@legalaid.wa.gov.au) with details of the request. This will enable Legal Aid WA to prioritise the urgent request and process it as quickly as possible.

If costs are awarded to an assisted person in a restraining order matter, the Practitioner must follow the process outlined in 16.6 of this Guide to facilitate reimbursement to Legal Aid WA.

Where a costs order is made in favour of an assisted person in a restraining order matter, the Practitioner is not obliged to pursue payment under the order to facilitate the recovery by Legal Aid WA of the costs paid under the grant of aid, as Legal Aid WA does not pursue the recovery of costs in restraining order matters. However, if the Practitioner does pursue the costs order and receives payment, Legal Aid WA is entitled to recover the amount of the costs paid to the Practitioner under the grant of aid. In this case, the Practitioner must follow the process outlined in **16.6** of this Guide.

#### **16.4 Suitor's Fund payment orders**

Legal Aid WA does not ordinarily fund or pursue Suitor's Fund applications. Where the Practitioner receives payment out of the Suitor's Fund in an assigned matter, Legal Aid WA is entitled to recover the amount of the costs paid to the Practitioner under the grant of aid. In this case, the Practitioner must follow the process outlined in **16.6** of this Guide.

#### **16.5 Civil costs orders**

The civil law disbursement grant system relies on Legal Aid WA being reimbursed the amount of the disbursements if the matter settles. To facilitate reimbursement to Legal Aid WA, the Practitioner must follow the process outlined in **16.6** of this Guide.

Where the amount awarded is less than the disbursements paid, Legal Aid WA may, in consultation with the Practitioner, exercise discretion to seek reimbursement of less than the actual disbursement cost.

#### **16.6 Default process for recovery of costs by Legal Aid WA**

Unless an alternative process for recovery of costs by Legal Aid WA is otherwise specified in **16** of this Guide, where a costs order or agreement is made in an assigned matter, the Practitioner must apply the following process:

- 1) As soon as practicable after an order is made or an agreement is reached for an amount to be awarded, the Practitioner must notify Legal Aid WA of the terms of the order or agreement, including the amount to be awarded.
- 2) The Practitioner must collect and retain in a trust account, a sufficient sum of money from the amount awarded to cover all, or as much as possible of, the costs and disbursements paid to the Practitioner under the grant of aid, including any amounts paid to a previous practitioner acting for the assisted person under the grant of aid.
- 3) Legal Aid WA will then make a determination under s44 of the Act for the recovery of costs and disbursements paid to the Practitioner under the grant of aid and will notify the Practitioner of the determination. The determination will require the Practitioner to reimburse Legal Aid WA for

a specified amount, including GST, which will usually be the full amount paid under the grant of aid.

- 4) The Practitioner must not disburse any awarded monies to the assisted person without approval from Legal Aid WA.
- 5) Legal Aid WA will not be responsible for the payment of any costs and disbursements to the Practitioner where the Practitioner disburses awarded monies to the assisted person before obtaining approval from Legal Aid WA.

## PART 4: WHAT MAY BE CLAIMED GENERALLY

### 17 Items in grant letter

Each grant of aid covers the provision of specified legal services. A description of these legal services and the maximum costs payable for providing them, are included as items in the grant letter provided to an assigned practitioner. The items may also specify a nominal disbursement amount.

Each item has a designated letter and number for ease of reference by Legal Aid WA and to facilitate accurate claims by practitioners. The letter and number, called the **item code**, appears in brackets at the end of the description of the service and the associated maximum costs allowed under that item. For example, the prison visiting item code is 'C31' and appears as follows in the grant letter:

*As your client is in custody/hospital the grant also covers your travel time to attend on them in prison, detention or hospital. Time actually spent with the client is covered under the preparation component of the grant of aid. The maximum costs payable for your travel time is limited to 3 hours at \$88.00 per hour: solicitor \$264, disbursements \$144. (C31)*

This item code is used in GOL to identify the work that is being claimed, as noted in **13.1** of this Guide.

The rates and allowances for each item used in criminal and family law grants of aid are published by Legal Aid WA in documents titled [Criminal Law Rates and Allowances](#) and [Family Law Rates and Allowances](#). These are available from the [Legal Aid WA website](#) and the [Grants Online \(GOL\) site](#).

Specific information about these publications in the context of criminal and family law grants of aid is contained in **35.1** and **38.1** of this Guide.

### 18 Nominal disbursement amount

An item in the grant letter may specify a nominal disbursement amount of between \$10 and \$55. This is intended to cover postage and petties and general administrative costs, such as photocopying and File Pro costs (as noted in **33** of this Guide).

### 19 Exceeding the cost of the grant of aid

Any claim for more than the maximum amount specified in the grant letter must be supported by an approved extension to the grant of aid in accordance with **clause 12 PPM**.

## 20 Hourly rates where no other fee applies

There are set fees and hourly rates for a range of services that may be provided under a grant of aid, as noted in this Guide and associated publications. However, where there is no set hourly rate, the following rates will apply:

Solicitor: \$167

Counsel (Barrister): \$209

Senior Counsel: \$315

## 21 Preparation and court attendance allowances

If the services allowed for under the grant of aid cannot be provided and therefore the full allowance for each aspect of the grant cannot be used, preparation and court attendance time may be claimed on a pro-rata basis at the applicable hourly rate.

Preparation time **cannot** be claimed against any unused portion of the court attendance time allocated to a matter unless prior written approval is obtained from Legal Aid WA. However, Legal Aid WA will accept a claim, without prior approval, for court attendance time that includes time spent at court negotiating and liaising with interested parties on the day of the court attendance for that matter, if details of the time spent on specific activities is provided.

## 22 Court waiting time

No fee is payable for court waiting time except as provided by rule 12(2) *Costs Rules*, as noted below, or as specified in **35.4** of this Guide in relation to jury waiting time and criminal regional trials.

Under rule 12(2) *Costs Rules* Legal Aid WA may, where it considers it reasonable, pay up to 2 hours per day at \$88.00 per hour for the Practitioner to wait in court for a trial to commence or resume after an interruption.

## 23 Travel time and mileage generally

Legal Aid WA will cover travelling time in accordance with rule 14 *Costs Rules* at the rate of \$88 per hour plus mileage at 78 cents per kilometre where applicable.

Legal Aid WA will cover travel time where it is considered necessary, the Practitioner is required to attend and, in accordance with Rule 14, the distance travelled is more than 5 kilometres from the place at which the Practitioner practises.

However, Legal Aid WA will not ordinarily cover travel time for court attendances where it is reasonable and appropriate in all the circumstances to brief a local agent to attend.

If the Practitioner is required to travel to attend in person to provide legal services and at the same time provides legal services to other legally aided clients, the

travel costs must be split across the assigned matters, unless otherwise agreed in advance with Legal Aid WA.

## 24 Travel time for prison and hospital visits

Legal Aid WA allows travel time for prison and hospital visits at \$88 per hour plus mileage at 78 cents per kilometre, to a maximum amount as stated in the grant letter.

Criminal law grants will generally allow 3 hours travel time for a plea and 5 hours travel time for a trial, if required. Family law grants will generally allow 3 hours travel time, if required.

Time spent with a client in custody is covered by the preparation component of the grant.

Where the Practitioner attends a prison or hospital but is unable to meet with their client due to unforeseen circumstances e.g. the prison is in lock-down, the travel fee and mileage is still claimable.

Where the Practitioner attends a prison or hospital and meets with more than one legally aided client, the travel time and mileage must be split across each assigned matter, unless otherwise agreed in advance with Legal Aid WA.

In limited circumstances additional travel time and mileage may be allowed, for example where travel is to a prison such as Acacia, which is further away. An extension to the grant of aid must be approved prior to claiming additional travel time and mileage.

Below is an overview of the maximum claimable amount for time and mileage for a return trip for each prison and remand centre, where such travel is required and is actually undertaken. This is subject to any approved extension.

| Metro Start Point | Destination                                 | Travel Time Allowance (return trip) | Maximum Claimable Amount (return trip) | Maximum Claimable Mileage (return trip) |
|-------------------|---------------------------------------------|-------------------------------------|----------------------------------------|-----------------------------------------|
| Perth CBD         | Acacia prison                               | 2 hours                             | \$176                                  | 120km                                   |
| Perth CBD         | Bandyup Women's Prison                      | 1.5 hours                           | \$132                                  | 40km                                    |
| Perth CBD         | Banksia Hill Detention Centre               | 1.5 hours                           | \$132                                  | 55km                                    |
| Perth CBD         | Boronia Pre-release Centre for Women        | 1 hour                              | \$88                                   | 20km                                    |
| Perth CBD         | Casuarina Prison                            | 1.5 hours                           | \$132                                  | 75km                                    |
| Perth CBD         | Graylands Hospital                          | 1 hour                              | \$88                                   | 20km                                    |
| Perth CBD         | Hakea Prison                                | 1.5 hours                           | \$132                                  | 50km                                    |
| Perth CBD         | Karnet Prison Farm                          | 3 hours                             | \$264                                  | 160km                                   |
| Perth CBD         | Melaleuca Remand and Reintegration Facility | 1.5 hours                           | \$132                                  | 50km                                    |

|           |                                |         |       |       |
|-----------|--------------------------------|---------|-------|-------|
| Perth CBD | Wandoo Reintegration Facility  | 1 hour  | \$88  | 35km  |
| Perth CBD | Wooroloo Prison Farm           | 2 hours | \$176 | 120km |
| Perth CBD | Yongah Hill Immigration Centre | 3 hours | \$264 | 185km |

| Regional Start Point | Destination                                | Travel Time Allowance (return trip) | Claimable Amount (return trip) | Maximum Claimable Mileage (return trip) |
|----------------------|--------------------------------------------|-------------------------------------|--------------------------------|-----------------------------------------|
| Albany CBD           | Albany Regional Prison                     | 1 hour                              | \$88                           | 20km                                    |
| Broome CBD           | Broome Regional Prison                     | 1 hour                              | \$88                           | 2km                                     |
| Bunbury CBD          | Bunbury Regional Prison                    | 1 hour                              | \$88                           | 20km                                    |
| Kalgoorlie CBD       | Eastern Goldfield's Regional Prison        | 1 hour                              | \$88                           | 12km                                    |
| Geraldton CBD        | Greenough Regional Prison                  | 1 hour                              | \$88                           | 30km                                    |
| Albany CBD           | Pardelup Prison Farm – Muirs Hwy Mt Barker | 2 hours                             | \$176                          | 170km                                   |
| South Hedland CBD    | Roebourne Regional Prison                  | 5 hours                             | \$440                          | 400km                                   |
| Broome CBD           | West Kimberley Regional Prison             | 5 hours                             | \$440                          | 435km                                   |

**Audit requirements – Prison and hospital visits**

For audit purposes, the Practitioner's file must contain notes detailing the visit and travel time including:

- Date and time of visit
- Location of visit
- Persons attending
- Any split of travel costs across more than one assigned matter
- Kilometres travelled, to support mileage claim.

## 25 Regional travel, accommodation and meals

Where the Practitioner is required to **travel** to regional areas of the State to provide legal services in an assigned matter, costs may only be claimed on the most efficient and cost-effective method of travel and the travel allowance specified in the grant letter will be calculated accordingly.

Where an allowance has been given for airfare travel, the Practitioner can seek permission to travel by car on the basis that the specified travel allowance is not exceeded.

Rates for **meals** and **accommodation** are set in accordance with Schedule J of the GOSAC Award (accessible from the [WA Industrial Relations Commission website](#)) and the maximum amounts claimable are specified in the grant letter.

Claims may only be for costs actually incurred.

**Audit Requirements – disbursements**

The Practitioner must keep sufficient records to substantiate all disbursements claimed, in accordance with **clause 23.4 PPM**.

## 26 Briefing agents

When briefing an agent, the Practitioner must agree on the division of fees and ensure any extension requests are approved, prior to engaging the agent, as Legal Aid WA will not otherwise cover any additional costs.

In accordance with rule 16 (1) *Costs Rules*, the agent is entitled to receive the same amount the Practitioner would have been entitled to receive had they performed the legal service themselves. For example, an agent briefed to attend a simple remand would be entitled to the remand rate of \$95.

The Practitioner may also request an extension for an additional fee, under rule 16 (2) *Costs Rules*, of no more than 30% of the preparation allowance, where they are required to brief an agent whose office is more than 65 km from the metropolitan area, or the Practitioner's office is regional and they are required to brief a metropolitan agent. This extension request must be approved prior to engaging the agent and agreeing their fee.

**Audit Requirements – payments to agent and responsibility for legal services**

The Practitioner must retain receipts for any payments made to the agent in accordance with **clause 23.4 PPM**.

The Practitioner must comply with **clause 21.4 PPM** in relation to who may perform legal services in an assigned matter.

The Practitioner's file must contain notes indicating:

- who performed the legal service, and
- if a non-panel practitioner performed the service:
  - the exception that applies under **clause 21.4 PPM**, or
  - confirmation that prior approval was obtained from Legal Aid WA.

## 27 Briefing counsel or engaging instructing solicitor

If the Practitioner wishes to brief counsel or engage an instructing solicitor at additional cost to Legal Aid WA and wishes to claim the cost of doing so, they must seek an extension to the grant of aid before so engaging or instructing. However, an extension request for this purpose will only be approved if it shows that the assigned matter is exceptional and there are particular reasons that justify briefing counsel or engaging an instructing solicitor.

**Audit Requirements – responsibility for legal services**

The Practitioner must comply with **clause 21.4 PPM** in relation to who may perform legal services in an assigned matter.

The Practitioner's file must contain notes indicating:

- who performed the legal service, and
- if a non-panel practitioner performed the service:
  - the exception that applies under **clause 21.4 PPM**, or
  - confirmation that prior approval was obtained from Legal Aid WA.

## **27.1 Criminal matters**

At **35.7** of this Guide there is specific information that should be provided with a request for an extension to brief counsel or engage an instructing solicitor in a criminal matter.

## **27.2 Junior counsel**

Where a grant of aid is extended to allow Queen's Counsel or Senior Counsel to be briefed for trial, this extension does not automatically include the use of junior counsel.

If the Practitioner wishes to claim the costs of engaging junior counsel, the Practitioner must request a further extension to the grant of aid and provide full reasons as to why junior counsel is essential to the proper conduct of the matter.

## **28 Paralegal time**

Where there is a large amount of material to review, Legal Aid WA may allow a paralegal to collate the material at a rate of \$50 per hour. This will normally only be allowed for murder charges, large financial or drug charges or complex family law matters.

An extension to the grant of aid must be approved for this purpose prior to the paralegal undertaking the work.

## **29 Unable to contact client**

Where the Practitioner receives a grant of aid and is unable to contact their client despite all reasonable steps to do so, the Practitioner may submit a claim for the work involved. Legal Aid WA would normally expect a claim of no more than one hour of preparation time (at \$167 per hour), unless there are exceptional circumstances.

## **30 Vouchers for legal advice**

In some circumstances Legal Aid WA may provide a person seeking legal assistance with a voucher for one-off advice from a private practitioner.

Where Legal Aid WA has issued a private practitioner with a voucher to provide legal advice to a person who subsequently receives a grant of legal aid that is assigned to the same practitioner, the voucher becomes void and the time spent with the client is to be claimed under the terms of the grant of aid

## **31 Legal research**

Legal Aid WA will not meet a claim by the Practitioner for time spent on legal research unless Legal Aid WA considers the legal issue is out of the ordinary or not within the scope of normal competent practice in a particular area of law.

## **32 Photocopying costs**

The photocopying rate is 25 cents per page. Photocopying costs must be claimed as part of the nominal disbursement allowance under the grant of aid. If photocopying costs are likely to exceed this amount a request for an extension to the grant of aid will be necessary.

Legal Aid WA does not ordinarily grant an extension of aid for additional copies of the prosecution brief for the accused or for colour photocopying.

## **33 File Pro**

Legal Aid WA will not provide additional funding for File Pro costs, however, it will allow claims for this from the nominal disbursement allowance for postage and petties, as long as the disbursement allowance is not exceeded.

## **34 Non-claimable items**

The following items cannot be claimed:

- communications with Legal Aid WA in submitting an application for aid
- requests for reconsideration or review
- requests to reschedule conferences
- seeking extensions
- submitting accounts
- opening a file (including additional File Pro costs unless within disbursement costs as noted in **33** of this Guide)
- progress reports
- final reports
- communications relating to client contributions and memorials.

## PART 5: WHAT MAY BE CLAIMED IN SPECIFIC JURISDICTIONS

### 35 Criminal law claims

This information should be read in conjunction with the general information contained in **Parts 1 to 4** of this Guide.

#### 35.1 Criminal law items in grant letter

As noted in **Part 4** of this Guide, the grant letter includes items indicating the maximum amount payable for specified services and disbursements. In a criminal matter, these items usually refer to preparation time, specified court appearances and nominal disbursements.

The Legal Aid WA publication titled [Criminal Law Rates and Allowances](#) (also available on the [Legal Aid WA website](#) and the [Grants Online \(GOL\) site](#)) sets out the items which may be inserted into a grant letter for a criminal matter and provides guidance in understanding the payment limit under the grant of aid.

Costs for preparation time, court attendances and disbursements **may only be claimed if the work is actually performed or the disbursement costs are actually incurred**. This is irrespective of the amount allowed under the grant, including any extensions.

#### 35.2 General court attendance

The grant letter for a plea of guilty or trial will include items that cover court attendances leading up to the plea or trial. This is intended to cover all necessary mentions, remands and bail applications. The items will specify the maximum amount that may be claimed for court attendances prior to the plea or trial in any court. For example, for a plea in the District Court, the amount allocated for court attendances covers all court attendances prior to the presentation of the plea in mitigation in the District Court.

The applicable rate for the relevant court attendances which includes mentions and bail applications in particular courts is contained in the published Criminal Law Rates and Allowances. The calculation of the attendances in this document is a suggestion only.

***For example:***

*The C2 item code for a District Court plea notes 4 Magistrates Court mentions and 2 District Court mentions to the value of \$650. This could be claimed as one mention in the Magistrates Court at \$95, and three mentions and one sentence mention in the District Court at \$135 per attendance, totalling \$650.*

If the number of court attendances in any court will result in the maximum court attendances component of the grant being exceeded, an extension request must be submitted and approved in order to claim for the additional appearances.

If the number of court attendances in any court is less than the maximum court attendances component of the grant, the claim may only be for actual

appearances, at the applicable rate for a mention in the relevant court. This may mean the claim is for less than the maximum mentions component of the grant, as specified in the grant letter.

A request for an extension of aid for additional court attendances may be justified if, for example:

- the prosecution was not ready to proceed,
- the magistrate remanded the matter for further updated reports,
- the magistrate referred the client to attend the Drug Court.

The following circumstances will not justify an extension of aid for additional appearances and cannot be included in a claim for payment from the court attendances component of the grant of aid:

- where the Practitioner does not make an appearance in court either in person or by audio or video link,
- where the Practitioner instructs the Legal Aid WA Duty Lawyer Service to make the appearance on their behalf,
- review appearances before the Drug Court, unless the Practitioner's attendance is required by the Court (see further under **35.10** of this Guide).

**Audit requirements – mentions**

For audit purposes, the Practitioner's file must contain notes indicating:

- The date and reason for the court attendance
- The duration of the court attendance
- The outcome of the court attendance
- Whether there was any legal or factual argument
- The Practitioner who attended court, and if a non-panel practitioner was briefed to attend:
  - the exception that applies under **clause 21.4 PPM**, or
  - confirmation that prior approval was obtained from Legal Aid WA.

### **35.3 Pleas of guilty and sentencing**

The following court appearances related to pleas of guilty and sentencing require some additional explanation, beyond the information in the published **Criminal Law Rates and Allowances**.

#### **35.3.1 Adjourned/separate sentencing appearance**

If sentencing is adjourned to a separate date and there is sufficient allowance under the court attendance component of the grant of aid to cover the appearance, it may be claimed under this component. If the court attendance

component of the grant of aid has been exhausted, a request for an extension of aid must be made to cover the additional court attendance.

The additional attendance will be paid at the sentencing rate noted in the published **Criminal Law Rates and Allowances**.

### 35.3.2 Trial of the issues for sentencing

To claim for a trial of the issues for sentencing, a request must be made for an extension to the grant of aid for a plea of guilty.

**Court time** for a trial of the issues is allowed at the same rate as a trial in the relevant jurisdiction (see **35.4** of this Guide). If the trial does not last a full day, the claim must be pro rata.

The amount of **preparation** allowed for a trial of the issues is as noted in the published **Criminal Law Rates and Allowances**. This is intended to be claimed in addition to the original grant for a plea of guilty.

If the plea is presented on the same day as the trial of the issues, then the court attendance component allowed for the presentation of the plea must not be claimed in addition to the court time allowed for the trial of the issues.

### 35.3.3 Plea in mitigation in jurisdiction below that reflected in grant

Where the Practitioner has been assigned a grant of aid for a plea of guilty in a superior court but the matter is ultimately dealt with in a lower court, the claim for costs for the **court appearance** must be based on the rate relevant to the court in which the plea in mitigation is presented.

The rate applicable to costs for **preparation time** will not automatically be based on the rate relevant to the court in which the plea in mitigation is presented. Instead, it will depend on the stage at which, and the reasons, the matter is ultimately dealt with in the lower court. The following examples provide guidance about how to claim for preparation time in the different circumstances that arise.

#### ***Examples of how to claim:***

*Charges were never indictable* – claim preparation and plea at Magistrates Court rate (\$501 preparation, \$334 plea).

*Charges downgraded after substantial negotiations or at committal date* - claim preparation at the relevant indictable rate (e.g. District Court preparation max \$835) and plea at Magistrates Court rate (\$334).

*Charges downgraded shortly after grant issued* – claim for Magistrate Court rate preparation and plea unless substantial negotiations were performed and provide justification for claiming a portion of the indictable preparation rate.

#### **Audit requirements – change to assigned matter**

Under **clause 23.5 PPM**, the Practitioner must notify Legal Aid WA if an assigned matter changes in a way that affects the terms of the grant of aid.

## 35.4 Trials

There is some variation in what may be claimed for trials depending on whether a trial commences, how long a trial day lasts and whether the trial is in a regional court. The following provides guidance, beyond what is included in the published **Criminal Law Rates and Allowances**, as to how to claim in the various circumstances that may arise, including how to claim for particular pre-trial appearances.

### 35.4.1 Pre-recording evidence and s 98 CPA appearances

Pre-recording of evidence and pre-trial appearances under s98 *Criminal Procedure Act 2004*, such as an application for an expedited trial, change of venue, separate trials or change of plea, are allowed at the same daily rate as for a trial in the relevant jurisdiction and are inclusive of preparation.

Shorter pre-recordings and appearances are allowed on the basis of half a trial day. Longer pre-recordings and appearances will be granted for the full day. Where the appearance does not last the full day, the grant is to be claimed on a pro-rata basis in accordance with **35.4.4** of this Guide.

### 35.4.2 Trial does not commence

The claim will vary depending on the reason the trial does not commence:

| REASON TRIAL DOES NOT COMMENCE                                                                   | HOW TO CLAIM                                                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Trial discontinued</b>                                                                        | May claim 1 hour for the court attendance at the standard hourly rate of \$167.<br><br>If the attendance is for more than 1 hour, this must be fully explained in the claim and the claim must be made pro rata based on actual time spent, applying the standard hourly rate of \$167.                                                                                                           |
| <b>Charges negotiated or client changes plea to guilty AND plea in mitigation presented</b>      | May claim for the presentation of a plea in mitigation in accordance with the maximum allowable amount - \$668 if Supreme Court, \$501 if District Court or Children's Court before President, \$334 if Magistrates Court or Children's Court.                                                                                                                                                    |
| <b>Charges negotiated or client changes plea to guilty, but plea in mitigation NOT presented</b> | May claim for a mention at the relevant rate for the particular court in which the appearance is made - \$135 if Supreme Court, District Court or Children's Court before President, \$95 if Magistrates Court or Children's Court.<br><br>May also claim for the subsequent presentation of the plea in mitigation at the relevant rate for the particular court in which the plea is presented. |

### 35.4.3 Regional trial does not commence or is delayed

Regional District Court trials are subject to a priority listing and in many cases trials do not commence on the listed day. It is acknowledged that practitioners must

nevertheless remain in the regional location and wait until the trial commences or is adjourned.

In these circumstances, the Practitioner may seek to claim a maximum of 7 hours waiting time as follows:

- up to 3 hours at \$167 per hour, and
- up to a further 4 hours at \$88 per hour.

In making a claim for waiting time in these circumstances, the Practitioner must provide justification for not being able to use the time to engage in other work. As remote access to a range of work tasks is now often possible through the use of electronic devices, it is reasonably expected the Practitioner will be prepared and able to undertake other work while waiting.

#### 35.4.4 Trial commences

Under rule 7 *Costs Rules* a court day is 5 hours.

Generally, where a trial commences:

- The full daily allowance for the relevant court may be claimed for each day of trial that lasts 5 hours,
- Part days are to be claimed by dividing the relevant daily allowance by 5 and multiplying by the actual number of hours in court to a maximum of 5 hours (see tables below),
- Long trial days where more than 5 hours are spent in court may be claimed as a full 5 hour day, plus the additional time at \$167.00 per hour (which must be the subject of an extension request),
- Jury waiting time is paid as provided in **35.4.5** of this Guide.

Where a trial day is **5 hours or less**, the following provides guidance on how to claim:

##### Supreme Court - Daily Allowance \$1,670

(Hourly rate calculated by dividing daily allowance by 5 hours = \$334)

| HOURS IN COURT | CALCULATION   | CLAIM   |
|----------------|---------------|---------|
| 1              | 1 hour x 334  | \$334   |
| 2              | 2 hours x 334 | \$668   |
| 3              | 3 hours x 334 | \$1,002 |
| 4              | 4 hours x 334 | \$1,336 |
| 5              | 5 hours x 334 | \$1,670 |

##### District Court - Daily Allowance \$1,336

(Hourly rate calculated by dividing daily allowance by 5 hours = \$267.20)

| HOURS IN COURT | CALCULATION      | CLAIM      |
|----------------|------------------|------------|
| 1              | 1 hour x 267.20  | \$267.20   |
| 2              | 2 hours x 267.20 | \$534.40   |
| 3              | 3 hours x 267.20 | \$801.60   |
| 4              | 4 hours x 267.20 | \$1,068.80 |
| 5              | 5 hours x 267.20 | \$1,336    |

### Magistrates Court - Daily Allowance \$835

(Hourly rate is the standard hourly rate = \$167)

| HOURS IN COURT | CALCULATION   | CLAIM |
|----------------|---------------|-------|
| 1              | 1 hour x 167  | \$167 |
| 2              | 2 hours x 167 | \$334 |
| 3              | 3 hours x 167 | \$501 |
| 4              | 4 hours x 167 | \$668 |
| 5              | 5 hours x 167 | \$835 |

#### Audit requirements – Trials

For audit purposes, the Practitioner's file must contain notes supporting the claim for trial days, including notes supporting any claim for part days or waiting time.

### 35.4.5 Jury waiting time

Pursuant to rule 12(3) *Costs Rules*, Legal Aid WA will pay \$88 per hour for every hour of waiting time while a jury deliberates, and the Practitioner is required to remain in or near the court. Where the Practitioner returns to their office and works on other billable matters, jury waiting time should not be claimed.

#### Audit requirements – jury waiting time

When submitting a claim for a trial day that includes jury waiting time the Practitioner must advise the number of hours spent in court and the number of hours spent waiting for the jury to deliberate. Transcripts may be requested to substantiate claims.

### 35.4.6 Refresher fees

When a trial does not go ahead as scheduled, or is adjourned part heard, the Practitioner may be allowed a refresher fee for the additional work involved in getting the matter up for trial at a later date. A request for an extension for a refresher fee must be submitted through GOL at the same time as the Practitioner advises Legal Aid WA of the new trial date.

The refresher fee is calculated as a percentage of the standard preparation fee. As a guide, refresher fees may be allocated as follows:

| Length of adjournment | Allowable claim                        |
|-----------------------|----------------------------------------|
| 1 week                | No refresher fee claimable             |
| 1 month               | 20% of preparation fee                 |
| 3 months              | 50% of preparation fee                 |
| 6 months or more      | 50% of preparation fee                 |
| Discontinued          | Between 80 and 100% of preparation fee |

### **35.5 DSO hearings and additional appeal days**

Where a daily rate has been provided in the item in the grant letter for an application under the *Dangerous Sex Offenders Act 2006* or for a second day of an appeal, the daily rate may be claimed for up to 5 hours on a pro rata basis. The hourly rate is calculated by dividing the daily rate by 5.

### **35.6 Viewing electronic material**

The viewing of electronic material such as an Electronic Record of Interview (EROI), will appear as an item in the grant letter. The amount allowed will be set at 1 hour, at the rate of \$115 per hour, unless Legal Aid WA is advised by the Practitioner or has information, such as from the statement of material facts, indicating that the EROI is longer than 1 hour.

No additional fees are allowed for multiple viewings of the same electronic material or for reading a transcript of material that has already been viewed.

Where it is known there are co-accused involved who have all participated in an EROI, additional time may be allowed for the Practitioner to view these. A request for an extension to the grant of aid is required to cover this additional time. If approved, the additional time will be paid at the rate of \$115 per hour.

#### *Audit requirements – viewing material*

For audit purposes, the Practitioner's file must contain notes indicating:

- What material was viewed,
- Who viewed it,
- When it was viewed, and
- How much time was spent viewing it.

### **35.7 Additional preparation time and briefing counsel/engaging instructing solicitor**

Where the Practitioner considers there is a need to seek additional costs for preparation, to brief counsel or to engage an instructing solicitor in a criminal law matter, they may lodge a request for an extension of aid through GOL.

When assessing a request for additional preparation time, Legal Aid WA will consider whether the extension is justified because the matter is out of the ordinary or the nature of the case requires some special level of service. Legal Aid WA will also take into account the allowance for preparation time already provided under the existing grant of aid and any extensions to that grant.

When assessing a request to brief counsel or engage an instructing solicitor, as noted in **27** of this Guide, Legal Aid WA will consider whether the matter is exceptional and whether there are particular reasons that counsel should be briefed or an instructing solicitor engaged.

The request for an extension must include information to support the additional preparation time sought, or for counsel to be briefed or an instructing solicitor to be engaged. The following details should be included in the request, as relevant:

- number of co-accused,
- number and nature of charges,
- legal issue/s being argued/dealt with (such as a novel point of law),
- number of witnesses to be called at trial,
- type and nature of experts to be used, if relevant,
- number of days of trial,
- nature of all materials to be perused and their relevance to the case,
- volume of relevant materials to be perused, including the prosecution brief (see **Note** below) (eg pages of docs, hours of tapes, number of disks, photos etc.),
- format of relevant materials to be perused (eg documents, USB sticks, disks, tapes, photos etc),
- particular reasons that counsel should be briefed,
- special needs of the client impacting on their ability to provide instructions in a timely manner.

**Note:** The standard preparation component of the grant of aid covers a prosecution brief of 250 pages. Where additional preparation time is approved because the prosecution brief exceeds 250 pages, it will be calculated at 60 pages per hour beyond the 250 pages, at the rate of \$167 per hour. Where the brief is very large Legal Aid WA will negotiate an agreed figure to cover the additional preparation time.

## 35.8 Multiple charge loadings and section 32 allowances

There is provision in the *Costs Rules* for payment of additional costs where there are multiple charges, referred to here as ‘multiple charge loading’.

Legal Aid WA will not apply multiple charge loading to matters going to **trial** and instead will consider the number of charges as part of an extension request based on complexity (see **35.7** of this Guide regarding additional preparation time).

Multiple charge loading may apply to a **plea in mitigation** in the Supreme Court, District Court, Magistrates Court or Children’s Court where an allowance is considered appropriate due to the number of charges. Multiple charge loading will not apply to simple traffic charges. The intention of the loading is to provide sufficient time to take instructions and report on any complexity issues.

The following is a guide to the calculation of multiple charge loadings for a plea in mitigation, according to the number of charges:

| <b>Magistrates/Children's Court</b>                    | <b>Plea in mitigation</b>     |
|--------------------------------------------------------|-------------------------------|
| 4 or less charges                                      | NIL loading                   |
| 5-10 charges                                           | 1hr/\$167                     |
| 11-20 charges                                          | 2hr/\$334                     |
| 21-30 charges                                          | 3hr/\$501                     |
| Over 31 charges                                        | At discretion of Legal Aid WA |
| <b>District Court or President of Children's Court</b> |                               |
| 2 or less charges                                      | NIL loading                   |
| 3-5 charges                                            | 1hr/\$167                     |
| 6-10 charges                                           | 2hr/\$334                     |
| 11-20 charges                                          | 3hr/\$501                     |
| Over 21 charges                                        | At discretion of Legal Aid WA |
| <b>Supreme Court</b>                                   |                               |
| Per charge                                             | 1hr/\$167                     |

### Section 32 matters

A multiple charge loading may also apply where summary charges are before the court pursuant to a **section 32 Notice** and arise out of a different set of circumstances than the other matter(s) before the court. A multiple charge loading in this instance will be calculated by applying the Magistrates Court plea rate (\$334) plus an amount as follows:

| <b>Magistrates/Children's Court</b> | <b>Section 32</b>             |
|-------------------------------------|-------------------------------|
| 1-10 charges                        | NIL loading                   |
| 11-20 charges                       | 1hr/\$167                     |
| 21-30 charges                       | 2hr/\$334                     |
| Over 31 charges                     | At discretion of Legal Aid WA |

Where a **section 32 Notice is not prepared**, the Practitioner may still claim the multiple charge loading to dispose of the summary matter(s) in the Magistrates Court if the client does not qualify for a grant of aid in that court. To claim the loading in this circumstance, the full plea must be presented in the Magistrates Court for the relevant number of charges.

#### Audit requirements – multiple charges and s 32 matters

For audit purposes, the Practitioner's file must contain notes indicating:

- The date the plea was presented and the outcome
- The number of charges dealt with
- The name of the practitioner that attended
- The number of charges and outcome of the matters dealt with under a s 32 notice (if applicable).

### **35.9 Representing multiple co-accused**

Pursuant to rule 11 *Costs Rules*, where the Practitioner represents more than one co-accused on the same charges, they are only entitled to 50% of the preparation component of the additional grants of aid and no allowance for remands, procedural attendances or for taking sentence where they occur simultaneously for all co-accused represented.

As provided in **clause 14.2 PPM**, when the Practitioner accepts a grant for a co-accused it is on the basis that no costs are payable if a conflict arises and the grant or grants must be transferred.

### **35.10 START Court and Drug Court attendances**

Legal Aid WA will not ordinarily pay for the Practitioner to attend START and Drug Court review hearings as the accused will normally be represented by the Legal Aid WA duty lawyer.

However, START and Drug Court attendances will be allowed, at the rate that applies to the relevant jurisdiction, for the following:

- Application to be assessed for inclusion in the program
- Return of assessment for inclusion
- Indicated sentence
- Entry of plea
- Committal hearing
- Final sentence
- Contested bail application
- District Court review hearing
- Appearance for new charge
- Return of warrant
- Fitness to plead hearing.

### **35.11 Criminal costs orders**

See **16.1** of this Guide.

## **36 Restraining Order claims**

Restraining order grants may be made in one of two ways. Either the grant is for advice only and a single mention appearance, or it is for preparation and representation at a defended final order hearing

An advice only grant allows up to 5 hours (\$835) for advice investigations and negotiations and can include a separate allowance for a mention appearance in court (\$167). If the grant is structured in these terms the Practitioner is required to seek an extension of aid if the matter is to go to a defended final order hearing.

If any additional court time is required to cover mentions or call over mentions, an extension to the grant of aid must be requested. If approved, they are paid at the rate of \$167 per appearance.

A grant for a defended final order hearing allows up to \$501 for preparation and up to \$668 for court time. The court time amounts to 4 hours at \$167 per hour. If the time spent in court is less than 4 hours, the claim will be paid on a pro-rata basis. Where the matter settles through a negotiated agreement on the morning of the hearing, the Practitioner must provide sufficient evidence of the work undertaken and the time taken.

*Audit requirements – Restraining Order claims*

For audit purposes, the Practitioner's file must contain notes indicating:

- The date and reason for the court attendance
- The Practitioner who attended court and if a non-panel practitioner attended, confirmation that prior approval was obtained in accordance with **clause 21.4 PPM**
- The duration of the court attendance
- The outcome of the court attendance
- Details of any negotiation undertaken to settle the matter

## 37 Care and protection and child representation claims

**Care and protection grants of aid** provide for limited advice and investigation into whether an application may be successfully defended, reporting to Legal Aid WA and up to 1 hour of court time.

Mentions are paid at \$167 per attendance to account for the negotiations that take place on mention days.

The terms of the grant should be checked carefully to ensure any necessary extension to the grant of aid is received prior to any additional work being undertaken.

**Child representation grants** include items for lump sum amounts. This means the allowance is for a discrete parcel of work and there is no differentiation between the court time and the preparation.

These grants are currently transitioning from paper files to GOL. All grants that were issued after 1 July 2018 are managed through GOL and any extensions and claims for such grants must be submitted through GOL. Some grants issued prior to this date may also appear in GOL. If a grant does not appear in GOL, extensions and claims must be submitted via email to the relevant assessor.

Claims for child representation matters must clearly indicate the outcomes achieved.

**Signs of Safety (SOS) conference grants** include an allowance for a convenor/facilitator fee. This allowance must not be claimed by the Practitioner as Legal Aid WA will pay the facilitator directly.

*Audit requirements – care and protection and child representation claims*

For audit purposes, the Practitioner's file must contain notes and records indicating:

- The date and reason for the court attendance
- The practitioner who attended court and if a non-panel practitioner attended, confirmation that prior approval was obtained in accordance with **clause 21.4 PPM**
- The duration of the court attendance
- The outcome of the court attendance
- Any negotiations undertaken to settle the matter
- Any claim for disbursement costs incurred.

## **38 Family law and ICL claims**

This information should be read in conjunction with the general information contained in **Parts 1 to 4** of this Guide.

### **38.1 Family law and ICL clauses**

As noted in **Part 4** of this Guide, the grant letter includes items indicating the maximum amount payable for specified services and disbursements. In a family law grant most items are designed to cover a stage of the proceedings in the Family Court and provide an allocation for court time and preparation. The preparation component is based on an estimate of the average time taken to prepare for each stage.

There are also items that provide for a lump sum allowance (for example, to cover representation from a pre-hearing conference to the eve of trial) that do not separate the grant of aid into court time and preparation. Grants of aid for family law matters may include a lump sum item. Grants of aid for ICL matters will always include a lump sum item.

Payment of a lump sum item relies on the work being completed, irrespective of time spent. If a further extension is sought in relation to a lump sum item because it was not possible to complete all the work allowed for under the grant, Legal Aid WA will need details of the work that was completed and the reasons it was not possible to complete the work allowed for under the grant of aid.

The Legal Aid WA publication titled [Family Law Rates and Allowances](#), (also available on the [Legal Aid WA website](#) and the [Grants Online \(GOL\) site](#)), sets out the items which may be inserted into a grant letter for a family law matter or an ICL matter and provides guidance in understanding the breakdown of costs allocated for court attendance and preparation, under a lump sum grant of aid.

*Audit requirements – Family Law and ICL claims*

For audit purposes, the Practitioner's file must contain notes and records indicating:

- The date and reason for the court attendance
- The practitioner who attended court and if a non-panel practitioner attended, confirmation that prior approval was obtained in accordance with **clause 21.4 PPM**
- The duration of the court attendance
- The outcome of the court attendance
- Any negotiations undertaken to settle the matter
- Any claim for disbursement costs incurred.

## **38.2 DR grants**

Grants of aid for dispute resolution provide a lump sum fee for preparation and representation at the conference, to a maximum of 4 hours.

Practitioners must not claim the chairperson fee component as Legal Aid WA will pay the chairperson directly.

If the conference runs over 4 hours or the Practitioner is tasked with finalising the minute of consent orders after the conference, a request for an extension of aid should be submitted on GOL as soon as possible after the conference. Usually, 1 hour will be allowed to finalise the consent order, at the rate of \$167 per hour.

## **38.3 Form 13 preparation**

Legal Aid WA will not ordinarily pay for the preparation of a Form 13 unless it is specifically included in the grant of aid.

The preparation of a Form 13 for a party to an ICL matter must not be included in the preparation component of the claim unless it is specifically included in the grant of aid, as the client should be directed to complete it themselves.

## **38.4 Subpoenas and inspecting documents**

Where the Practitioner receives a grant of aid to issue subpoenas and to inspect documents at the Family Court, the claim must provide a description of the documents inspected, the date they were inspected and who inspected them.

### **38.5 Process servers**

Where process servers are used, their fees will have GST included. Practitioners must add GST in the conduct money component of their claim to Legal Aid WA even though the process server does not add GST.

The Practitioner must retain proof of payment of process server fees in order to substantiate their claim to Legal Aid WA.

### **38.6 Extensions which specify preparation and court time allowances**

The majority of items used in family law grants of aid separate court time from preparation time. These items also state that court time will be paid on a pro-rata basis at the rate of \$167 per hour.

As noted in **21** of this Guide, unused court time cannot be claimed as extra preparation time. However, it is accepted that court time may include time spent negotiating the matter at court.

## **39 Civil law claims**

This information should be read in conjunction with the general information contained in **Parts 1 to 4** of this Guide.

### **39.1 Disbursement only grants**

Grants of aid in civil law matters are often for disbursements only. A disbursement only grant of aid will specify the maximum amount payable for all disbursements in the matter. The total amount may be broken down into maximum amounts for different types of disbursement, such as the cost of obtaining a report. Every claim against the disbursement only grant must clearly indicate what the payment was for and include a copy of the paid invoice.

If the actual amount for a disbursement is likely to exceed the amount allocated to it in the grant, the Practitioner must request an extension to the grant of aid and indicate why the original amount is no longer sufficient. The Practitioner must also indicate the steps taken to negotiate the new quote.

Legal Aid WA will not pay a claim for disbursements that exceeds the full disbursement allowance provided in the grant of aid, unless the additional amount has been approved as an extension to the grant of aid.

### **39.2 Civil costs awards**

See **16.5** of this Guide.

## **40 Crime and Corruption Commission claims**

This information should be read in conjunction with the general information contained in **Parts 1 to 4** of this Guide.

Crime and Corruption grants are for a lump sum fee to cover a 5 hour hearing. Where the hearing does not last 5 hours, costs must be claimed pro-rata at the rate of \$167 per hour.

## PART 6: METHOD OF PAYMENT

### 41 Method of payment by Legal Aid WA

As provided in **clause 27 PPM**, Legal Aid WA will pay the Practitioner by Electronic Funds Transfer to the bank account of the firm in which they were practising at the time the service was provided, using the details noted in the most recent Legal Creditor Registration Form submitted to Legal Aid WA for that firm.

The Practitioner must submit an updated form if any details in the form change. To access and submit an updated Legal Creditor Registration Form go to the Legal Aid WA webpage [For lawyers – Managing grants of aid – Practitioner payments](#) and see under the heading **How does Legal Aid WA pay my claim?** Legal Aid WA requires 14 days' notice to effect any changes to the details in the form.

## **PART 7: HELP WITH CLAIMS**

### **42      Contact assessor**

For assistance in submitting a claim for payment, the Practitioner may contact the assessor managing the particular grant of aid in the Assessing section of Legal Aid WA using the details contained in the grant letter or Assessing administrative staff on (08) 9261 6530.

## ANNEXURE 1: CRIMINAL LAW COURT ATTENDANCE RATES

### Supreme Court Attendances

(see Magistrates Court for attendances in Stirling Gardens)

| DESCRIPTION                                                        | FEE   |
|--------------------------------------------------------------------|-------|
| Mentions/remands                                                   | 135   |
| Bail application                                                   | 501   |
| Status Conference                                                  | 167   |
| Section 98 (full day – includes preparation)                       | 1670  |
| Section 98 (half day – includes preparation)                       | 835   |
| Presentation of plea in mitigation                                 | 668   |
| Sentencing (on different day to plea in mitigation)                | 135   |
| Trial attendance – daily rate (pro rata based on 5 hour court day) | 1,670 |

### District Court Attendances & Attendances Before the President Of The Children's Court

(where applicable)

| DESCRIPTION                                                        | FEE   |
|--------------------------------------------------------------------|-------|
| Mentions/remands                                                   | 135   |
| Bail application                                                   | 167   |
| Trial Listing Hearing                                              | 135   |
| Status Conference                                                  | 167   |
| Section 98 (full day – includes preparation)                       | 1336  |
| Section 98 (half day – includes preparation)                       | 668   |
| Presentation of plea in mitigation                                 | 501   |
| Sentencing (on different day to plea in mitigation)                | 135   |
| Trial attendance – daily rate (pro rata based on 5 hour court day) | 1,336 |

### Magistrates Court & Children's Court Attendances

(including Stirling Gardens)

| DESCRIPTION                                                           | FEE |
|-----------------------------------------------------------------------|-----|
| Mentions (including committal mentions and sentence mentions)/remands | 95  |
| Bail application                                                      | 167 |
| Bail variation                                                        | 167 |
| Presentation of plea in mitigation                                    | 334 |
| Sentencing (on different day to plea in mitigation)                   | 125 |
| Trial attendance – daily rate (pro rata based on 5 hour court day)    | 835 |

For any attendances not listed above please seek assistance from the Legal Aid WA assessor.

## ANNEXURE 2: REPORTING DISBURSEMENTS

Where possible, a claim should not use the same disbursement type twice on the invoice as this causes the claim to pass to an assessor to pay manually.

This commonly occurs when 'miscellaneous' is listed twice on an invoice, where one of the line items should have been claimed as 'mileage' in criminal grants.

In family grants, a common error occurs when 'miscellaneous' is listed twice when the second disbursements should be 'process servers' or 'filing/search fees'.

| DISBURSEMENT TYPE              | WHEN TO USE                                                      |
|--------------------------------|------------------------------------------------------------------|
| Counsel Fees                   | Briefed counsel                                                  |
| Agents Fee                     | Briefed practitioner                                             |
| Interpreter                    | Interpreter fees                                                 |
| Expert Non-Medical             | Expert witness e.g. crash expert, handwriting expert             |
| Medical                        | Doctors, DNA tests, Medical Reports                              |
| Psychiatrist                   | Witness fees, Reports and Single Expert Witness reports and fees |
| Psychologist                   | Witness fees, Reports and Single Expert Witness reports and fees |
| Process Server                 | Service fees                                                     |
| Transcripts                    | Court transcript fees                                            |
| Miscellaneous                  | Postage and petties; no other description available              |
| Filing/Search Fees             | Court fees, search fees                                          |
| Social Worker                  | Witness fees, Reports and Single Expert Witness reports and fees |
| Video Link                     | Remote access fees                                               |
| Appeal Books                   | Appeal book costs                                                |
| Instructing Solicitor          | Use where instructing has been approved (eg Murder grants)       |
| ICL Supervising Agency Reports | ICL agency disbursements                                         |
| Paralegal                      | Paralegal costs approved by Legal Aid WA in exceptional cases    |
| Reportable Family Therapy      | Approved therapy costs in ICL matters                            |

## ANNEXURE 3: FINALISATION CODES

The following guide has been prepared to assist practitioners in submitting their final account to Legal Aid WA to ensure that the payments and outcome of files are reported correctly and the payments issue within 5 working days.

### Finalisation Reasons on the Final Tax Invoice

These finalisation reasons are not for use on 'Disbursements Only Grants'.

When the practitioner submits their final tax invoice of a matter, they advise Legal Aid WA by selecting 'yes' to the question, 'is this the final claim for this extension?' and 'yes' to the question, 'is this the final claim for this matter?'.

Files will not be removed from your active file list unless the practitioner selects these tick boxes, or the assessor manually processes the finalisation. Where practitioner's active file lists become too high, file capping action may be taken.

It is important that practitioners correctly report the outcome of their files so that our recorded outcomes are accurate. This should complement the report that the practitioner includes on their final claim for the services provided and costs incurred. There are three boxes practitioners need to complete on the Grants Online tax invoice: 'reason', 'finalised stage' and 'legal outcome'.

### Finalisation Reason

| REASON                       | WHEN TO USE                                                                                                                                                                                                                                                                         |
|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Finalised                    | Matter is competed.                                                                                                                                                                                                                                                                 |
| Withdrawn at Clients Request | The Practitioner has submitted an extension request to advise that the client no longer wishes to have a grant or is instructing privately and the practitioner has received the formal notification from Legal Aid WA that the grant is withdrawn.                                 |
| Aid Refused                  | Ongoing aid has been refused. If the grant is terminated, please use 'discontinued'.                                                                                                                                                                                                |
| Transferred                  | Not for practitioner use. If you have been advised the grant has been transferred, please simply tick yes to 'is this the final claim for this extension'.                                                                                                                          |
| Discontinued by Commission   | The grant has been terminated by Legal Aid WA due to the Practitioner advising via extension request that the client is not following advice, the client dismissed practitioner and the matter is not transferred, there has been no contact from client or the client is deceased. |

### Finalised Stage

| REASON                                   | WHEN TO USE                                                                                                                                                        |
|------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| After Appeal Hearing                     | The appeal was heard.                                                                                                                                              |
| After Criminal Case Conference           | Settled as a result of an Indictable case conference.                                                                                                              |
| After Injunction or Recovery Application | Grant does not proceed past the initial recovery order /injunction.                                                                                                |
| After Leave For Appeal                   | Leave to appeal was refused.                                                                                                                                       |
| After Prep for Trial                     | The trial was fully prepared, client entered guilty plea (crime) or the trial was fully prepared negotiations settled the matter before the trial (family).        |
| After Proceedings Commenced              | Family grants that did not proceed to trial or DR or the grant was refused for ongoing assistance.                                                                 |
| After DR                                 | Matter settled or ongoing aid refused after DR conference.                                                                                                         |
| After Late Intervention DR               | Conference with ICL late in the proceedings.                                                                                                                       |
| After Opinion                            | Aid was refused after an opinion (usually criminal appeal).                                                                                                        |
| After SOS Conference                     | After a conference in protection proceedings.                                                                                                                      |
| At or After Trial                        | Trial commenced.                                                                                                                                                   |
| Before Proceedings Commenced             | After negotiations, no court proceedings commenced.                                                                                                                |
| Before Plea                              | Charges discontinued before a plea entered.                                                                                                                        |
| Guilty Plea                              | Guilty plea entered.                                                                                                                                               |
| No Court Proceedings                     | Advice only grants, no further assistance required.                                                                                                                |
| Terminated/No Instructions               | The Practitioner has submitted an extension request to advise that the client is no longer providing instructions and a refusal of aid has issued for this reason. |
| Withdrawn/ No Proceedings                | Proceedings were discontinued or withdrawn.                                                                                                                        |

## Legal Outcome

| REASON                     | WHEN TO USE                                                                                                                                          |
|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| Appeal Allowed             | Appeal succeeded or partially succeeded.                                                                                                             |
| Appeal Dismissed           | Appeal was refused or dismissed.                                                                                                                     |
| Application Granted        | The application commenced in court was granted or partially granted.                                                                                 |
| Application Refused        | The application commenced in court was refused.                                                                                                      |
| Consent Orders             | Matter settled with formal agreement consent orders or conduct orders (restraining orders).                                                          |
| Guilty All Charges         | Pleaded or found guilty of all charges in the grant.                                                                                                 |
| Guilty – Part              | Guilty plus other charges reduced or discontinued or acquitted.                                                                                      |
| Leave To Appeal Dismissed  | Leave to appeal was not granted.                                                                                                                     |
| Negotiated Agreement       | Agreement reached without formal consent orders.                                                                                                     |
| No Agreement               | No agreement reached.                                                                                                                                |
| No Merit                   | The Practitioner submitted an extension request advising that there is no ongoing merit or an appeal has no merit and aid has been formally refused. |
| Not Applicable/ Not Known  | No outcome reached.                                                                                                                                  |
| Not Guilty                 | Found not guilty after trial.                                                                                                                        |
| Terminated/No Instructions | Grant formally terminated after client fails to follow conditions of the grant.                                                                      |
| Withdrawn/Nolle            | Matter withdrawn, charges discontinued.                                                                                                              |

## Final Claims Due to Client Not Engaging, Negative Appeal Opinion and Costs Orders

The Practitioner must submit an extension request and receive a decision from Legal Aid WA in relation to that request in the following circumstances:

- an appeal opinion is negative
- the client is not providing reasonable instructions
- the client cannot be located
- the client does not have ongoing merit in a matter
- the client is engaging a practitioner on a private basis
- a transfer is requested by the client or the practitioner
- costs were awarded
- the Practitioner considers that further aid will be refused

This allows the client to be formally advised of the status of their grant of aid and will save any confusion if they contact Legal Aid WA in the future.