Guide to Claiming Payment

For Legal Aid WA Panel and List members.

LEGAL AID
WESTERN AUSTRALIA

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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 Legal Aid WA Connect system, as referred to in **12.4** 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 formally 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 Aid WA Connect means the system operated by Legal Aid WA for the purposes of the electronic management of grants of aid, from 2 December 2024;

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 Legal Aid WA Connect 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 of the 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 of completing the legal services required under a legal aid assignment (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 legal services required under a legal aid assignment, 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 Legal Aid WA Connect using recipient created tax invoice

Claims must generally be submitted through Legal Aid WA Connect, using a **recipient created tax invoice generated by the Legal Aid WA Connect system**, however:

- 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); and
- practitioners providing services under certain grants of aid may be advised by Legal Aid WA not to submit their claim through the Legal Aid WA Connect system and instead submit it as specified.

12.1 Legal Aid WA Connect User Guide

For technical guidance in submitting a claim through the Legal Aid WA Connect system, refer to the Legal Aid WA Connect User Guide.

12.2 Grant must be active in Legal Aid WA Connect to generate recipient created tax invoice

Practitioners who are GST registered and are therefore claiming through Legal Aid WA Connect, will need to submit their claims against a funding request which has ‘active’ status.

For more information about submitting a recipient created tax invoice in Legal Aid WA Connect, please refer to the Legal Aid WA Connect User Guide.

12.3 Work items relevant to grant automatically populated

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

The recipient created tax invoice generated by the Legal Aid WA Connect system automatically populates the claim screen with the work items relevant to the legal services and costs covered under that grant of aid or extension.

12.4 'Blank tax invoice' not ordinarily used

Blank tax invoices are not available in Legal Aid WA Connect.

13 Submitting claim using recipient created tax invoice

13.1 Entering claim amounts

Once the correct recipient created tax invoice has been generated in Legal Aid WA Connect and the claim screen is automatically populated with the work items 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.

To claim preparation, the Practitioner must enter the number of hours claimed.

When claiming court attendances, the Practitioner must enter the details outlined in the recipient created tax invoice including the date of the appearance and the person who appeared.

13.2 Remaining commitment

The claim screen for a particular extension in Legal Aid WA Connect 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

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 clause **14** of this Guide.

13.4 Must select option in recipient created tax invoice when prompted

The process in the Legal Aid WA Connect 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, Legal Aid WA Connect 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.

Where it is the final claim for an extension or file, the Practitioner must report it to Legal Aid WA by selecting the relevant tick box/es.

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 Legal Aid WA Connect, 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.

Practitioners must attach the Certificate from the court when applying to Legal Aid for extensions.

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

13.8 Fees in correct column

In the recipient created tax invoice, claims for disbursements must be in the disbursements column and claims for solicitor fees must be in relevant 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 email the relevant Grants team leader group at their earliest opportunity to advise of the error, being grantscrime@legalaid.wa.gov.au or grantsfamily@legalaid.wa.gov.au or grantscivil@legalaid.wa.gov.au.

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	$1,000	$100	$1,100

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 $1,000.

Whether GST is claimed on a disbursement will depend on whether the third-party supplier is GST registered (i.e. 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	Fee	GST	Total Claim
Psychiatrist	$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	Fee	GST	Total Claim
Travel costs	$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 $214 with no GST included in the cost. ECF barrister address their invoice to Legal Aid WA. Legal Aid WA pays the barrister $214 via ABC Legal.

Description	Fee	GST	Total Claim
Barrister	$214	N/A	$214

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 Legal Aid WA Connect.

Instead, the Practitioner must submit a firm generated tax invoice which must be submitted as an attachment in Legal Aid WA Connect. 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	$1,000	N/A	$1,000

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 $1,000.

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 $214 with no GST. Total invoice is $214.

Description	Fee	GST	Total Claim
Psychiatrist	$5,525	N/A	$5,225
Barrister	$214	N/A	$214
Total Claim			$5,439

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

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.

***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).

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.

The Practitioner may claim ordinary professional costs in accordance with section 5 of the *OP Act* and sections 43 and 44 of the *Legal Aid Commission Act 1976* (WA).

1. When a costs award has been made, the Practitioner must seek a Certificate from the court and forward it to the Department of Justice (DOJ).
2. When providing the Certificate to DOJ, 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.
3. The Practitioner must then request an extension to the grant of aid through Legal Aid WA Connect 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 and the Certificate. The extension request must be for the full amount of the costs awarded even if it is different to the value of the grant of aid.
4. 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.
5. 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.
6. 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.

7. 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.
8. 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.

The Practitioner may claim ordinary professional costs in accordance with section 5 of the *OP Act* and sections 43 and 44 of the *Legal Aid Commission Act 1976* (WA).

1. When a costs award has been made, the Practitioner must seek a Certificate from the court and forward it to the Commonwealth DPP (CDPP).
2. 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.

3. 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.
4. The Practitioner must request an extension to the grant of aid through Legal Aid WA Connect 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.
5. When submitting the extension request, the Practitioner must attach a copy of the Practitioner's letter to the CDPP.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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 Legal Aid WA Connect. If the request is urgent, practitioners are to also email 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 clause **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 Legal Aid WA Connect. If the request is urgent, practitioners are to also email 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 clause **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 costs 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.

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 Legal Aid WA Connect. If the request is urgent, practitioners are to also email 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 **clause 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 clause **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 clause **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 clause **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 **work item or work package**, appears in brackets at the end of the description of the service and the associated maximum costs allowed under that item.

This work item is used in Legal Aid WA Connect to identify the work that is being claimed, as noted in clause **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.

Specific information about these publications in the context of criminal and family law grants of aid is contained in clauses **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 legal practice management software such as File Pro and LEAP costs (as noted in **clause 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:	$175
Counsel (Barrister):	$219
Senior Counsel:	$330

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 **clause 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 $92 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 $92 per hour plus mileage at 82 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 *Costs Rules*, 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 $90 per hour plus mileage at 80 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 Mileage (return trip)
Perth CBD	Acacia prison	2 hours	120km
Perth CBD	Bandyup Women's Prison	1.5 hours	40km
Perth CBD	Banksia Hill Detention Centre	1.5 hours	55km
Perth CBD	Boronia Pre-release Centre for Women	1 hour	20km
Perth CBD	Casuarina Prison	1.5 hours	75km
Perth CBD	Graylands Hospital	1 hour	20km
Perth CBD	Hakea Prison	1.5 hours	50km
Perth CBD	Karnet Prison Farm	3 hours	160km

Metro Start Point	Destination	Travel Time Allowance (return trip)	Maximum Claimable Mileage (return trip)
Perth CBD	Melaleauca Remand and Reintegration Facility	1.5 hours	50km
Perth CBD	Wandoo Reintegration Facility	1 hour	35km
Perth CBD	Wooroloo Prison Farm	2 hours	120km
Perth CBD	Yongah Hill Immigration Centre	3 hours	185km

Regional Start Point	Destination	Travel Time Allowance (return trip)	Maximum Claimable Mileage (return trip)
Albany CBD	Albany Regional Prison	1 hour	20km
Broome CBD	Broome Regional Prison	1 hour	2km
Bunbury CBD	Bunbury Regional Prison	1 hour	20km
Kalgoorlie CBD	Eastern Goldfield's Regional Prison	1 hour	12km
Geraldton CBD	Greenough Regional Prison	1 hour	30km
Albany CBD	Pardelup Prison Farm – Muirs Hwy Mt Barker	2 hours	170km
South Hedland CBD	Roebourne Regional Prison	5 hours	400km
Broome CBD	West Kimberley Regional Prison	5 hours	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 $97.

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 clause **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 King'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.

27.3 Counsel rates

The Counsel rate is only available to those who meet the definition of a barrister under section 6 of the *Legal Profession Uniform Law WA*; that is, "an Australian legal practitioner whose Australian practising certificate is subject to a condition that the holder is authorised to engage in legal practice as or in the manner of a barrister only."

The Counsel rate is not automatically available to those who practise as barristers only and will only be approved in exceptional circumstances where there are particular reasons to justify the Counsel rate. Ordinarily, the rate will only be approved for trials of sufficient factual and/or legal complexity, that are to be heard before a superior court, and where the involvement of Counsel is reasonable in all the circumstances.

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 $52 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 $175 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 must be submitted.

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 Legal Practice Management Software

Legal Aid WA will not provide additional funding for legal practice management software such as 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 legal practice management software costs unless within disbursement costs as noted in clause **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) 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 and in Annexure 1 of this Guide. The calculation of the attendances in this document is a suggestion only.

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 clause **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 clause **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 is 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 ($513 preparation, $342 plea).

Charges downgraded after substantial negotiations or at committal date - claim preparation at the relevant indictable rate (e.g. District Court preparation max $855) and plea at Magistrates Court rate ($342).

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
Trial discontinued	May claim 1 hour for the court attendance at the standard hourly rate of $175. 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 $175.
Charges negotiated or client changes plea to guilty AND plea in mitigation presented	May claim for the presentation of a plea in mitigation in accordance with the maximum allowable amount - $700 if Supreme Court, $525 if District Court or Children's Court

Reason Trial Does Not Commence	How To Claim
	before President, $350 if Magistrates Court or Children's Court.
Charges negotiated or client changes plea to guilty, but plea in mitigation NOT presented	May claim for a mention at the relevant rate for the particular court in which the appearance is made - $141 if Supreme Court, District Court or Children's Court before President, $100 if Magistrates Court or Children's Court. 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 $175 per hour; and
- up to a further 4 hours at $92 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 $175.00 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 $1,750
(Hourly rate calculated by dividing daily allowance by 5 hours = $350)

Hours in Court	Calculation	Claim
1	1 hour x 350	$350
2	2 hours x 350	$700
3	3 hours x 350	$1,050
4	4 hours x 350	$1,400
5	5 hours x 350	$1,750

District Court - Daily Allowance $1,400
(Hourly rate calculated by dividing daily allowance by 5 hours = $280)

Hours in Court	Calculation	Claim
1	1 hour x 280	$280
2	2 hours x 280	$560
3	3 hours x 280	$840
4	4 hours x 280	$1,120
5	5 hours x 280	$1,400

Magistrates Court - Daily Allowance $875
(Hourly rate is the standard hourly rate = $175)

Hours in Court	Calculation	Claim
1	1 hour x 175	$175
2	2 hours x 175	$350
3	3 hours x 175	$525

Hours in Court	Calculation	Claim
4	4 hours x 175	$700
5	5 hours x 175	$875

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 $92 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 Legal Aid WA Connect 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

Length of adjournment	Allowable claim
6 months or more	50% of preparation fee
Discontinued	Between 80 and 100% of preparation fee

35.5 HRSO hearings and additional appeal days

Where a daily rate has been provided in the item in the grant letter for an application under the *High Risk Serious Offenders Act 202* (WA) ("HRSO Act), 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 $119 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 $119 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 Legal

Aid WA Connect.

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 number of documents, hours of tapes, number of disks, photos etc.);
- format of relevant materials to be perused (e.g. 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 $175 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 clause **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:

Magistrates/Children's Court	Plea in mitigation
4 or less charges	NIL loading
5-10 charges	1hr/$175
11-20 charges	2hr/$350
21-30 charges	3hr/$525
Over 31 charges	At discretion of Legal Aid WA

District Court or President of Children's Court	Plea in mitigation
2 or less charges	NIL loading
3-5 charges	1hr/$175
6-10 charges	2hr/$350
11-20 charges	3hr/$525
Over 21 charges	At discretion of Legal Aid WA

Supreme Court	Plea in mitigation
Per charge	1hr/$175

35.8.1 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 ($350) plus an amount as follows:

Magistrates/Children's Court	Section 32
1-10 charges	NIL loading
11-20 charges	1hr/$175
21-30 charges	2hr/$350
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; and
- the number of charges and outcome of the matters dealt with under a section 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 clause **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 ($875) for advice, investigations and negotiations and can include a separate allowance for a mention appearance in court ($175). 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 $175 per appearance.

A grant for a defended final order hearing allows up to $525 for preparation and up to $700 for court time. The court time amounts to 4 hours at $175 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; and
- 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 $175 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.

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

Child protection mediation-style 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; and
- 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), 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; and
- any claim for disbursement costs incurred.

38.2 DR grants

Grants of aid for dispute resolution include preparation before a conference, representation at the conference and preparation of consent orders following a conference.

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

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 $175 per hour.

As noted in clause **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 clause **16.5** of this Guide.

40 Corruption and Crime Commission claims

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

Corruption and Crime Commission 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 $175 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 6204.

ANNEXURE 1 CRIMINAL LAW COURT ATTENDANCE RATES

Supreme Court Attendances

(see Magistrates Court for attendances in Stirling Gardens)

Description	Fee
Mentions/remands	$141
Bail application/variation	$525
Status Conference	$175
Section 98 (full day – includes preparation)	$1,750
Section 98 (half day – includes preparation)	$875
Presentation of plea in mitigation	$700
Sentencing (on different day to plea in mitigation)	$141
Trial attendance – daily rate (pro rata based on 5-hour court day)	$1,750

District Court Attendances & Attendances Before the President of The Children's Court

(where applicable)

Description	Fee
Mentions/remands	$141
Bail application/variation	$175
Trial Listing Hearing	$141
Status Conference	$175
Section 98 (full day – includes preparation)	$1,400
Section 98 (half day – includes preparation)	$700
Presentation of plea in mitigation	$525

Description	Fee
Sentencing (on different day to plea in mitigation)	$141
Trial attendance – daily rate (pro rata based on 5-hour court day)	$1,400

Magistrates Court & Children's Court Attendances

(including Stirling Gardens)

Description	Fee
Mentions (including committal mentions and sentence mentions)/remands	$100
Bail application /variation	$175
Presentation of plea in mitigation	$350
Sentencing (on different day to plea in mitigation)	$131
Trial attendance – daily rate (pro rata based on 5-hour court day)	$875

For any attendances not listed above please seek assistance from a 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 (e.g. Murder grants)
ICL Supervising Agency Reports	ICL agency disbursements

Disbursement Type	When To Use
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 four fields practitioners need to complete on the Legal Aid WA Connect tax invoice: 'reason', 'finalised stage', 'legal outcome' and 'is the client's legal matter still ongoing?'

Finalisation Reason

Reason	When To Use
Finalised	Matter is competed.
Withdrawn at Client's 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,

Reason	When To Use
	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.

LEGAL AID

WESTERN AUSTRALIA