

SUMMARY MATTERS

Proposed 'Whole of Job' fee

MAIN FEATURES

A single fee for a whole summary crime case regardless of when and how it resolves. This represents a shift from remunerating practitioners based solely on court events, to remunerating the outcomes of discussions with prosecutorial agencies, that need not take place at court.

- Encourages flexible legal practice by promoting earlier appropriate resolution, which benefits clients.
- A separate fee for complex and non-complex summary cases.
- No lower fee for urgent grants.
- No reduction in fee for acting for co-accused.
- An additional fee payable for consolidated pleas.
- A separate fee for contested hearings.
- A separate whole of job fee structure for bail applications.

Complements the recent changes to summary criminal procedure by removing incentives to resolve cases at contest mention and increasing incentives to use early resolution processes through preliminary briefs and summary case conferencing.

Encourages practitioners to resolve cases early rather than adjourn cases unnecessarily, thereby improving efficiencies in the criminal justice system and reducing court delays in cases finalising.

Total additional investment in summary crime of 22% at a cost of \$2.7 million, when fully implemented.

BACKGROUND

The current median case cost for summary crime cases is \$645. The current average case cost for summary crime cases is \$802.

Chart 1 below depicts the spread of privately assigned case costs in summary crime.

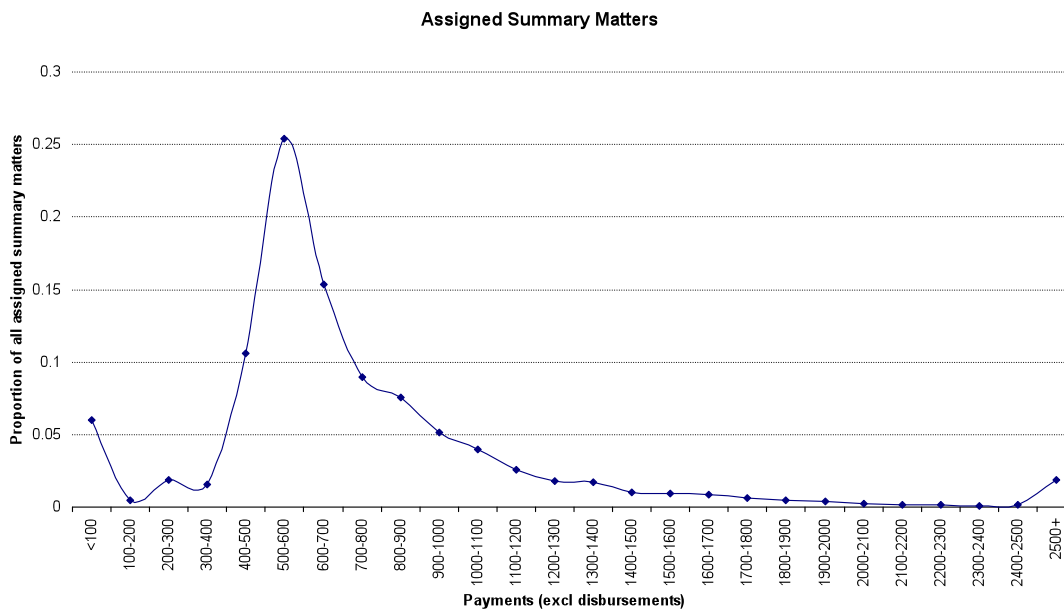
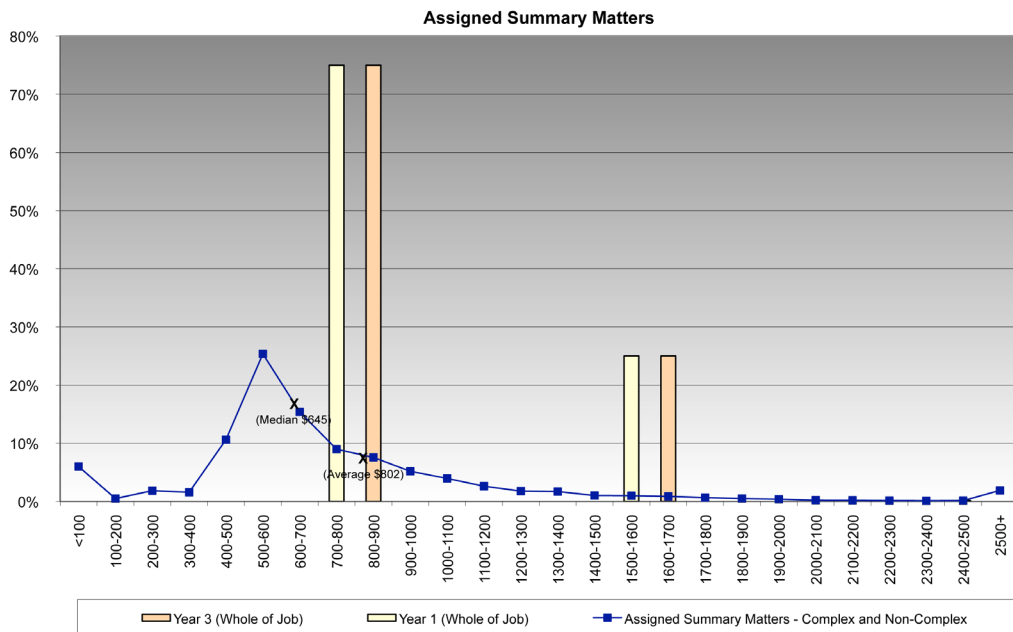




Chart 2 below depicts the points at which the whole of job fee would apply.



QUESTIONS & ANSWERS

What would be considered a “complex” case?

- there are four or more sets of charges all of which fall within the guidelines for assistance;
- the police brief consists of more than 250 pages;
- a case proceeds to a contested hearing extending beyond one day;
- a case is accepted into the Assessment and Referral Court List;
- the accused person has a diagnosed mental illness, acquired brain injury or intellectual disability.

How have the hours for “complex” and “non-complex” summary cases been determined?

In surveys, all practitioners on VLA summary and indictable panels were asked about the average hours spent on types of summary cases and these results were validated through workshops. Those assessments were that:

- on average, complex summary crime cases involve 13 hours of work (including preparation, conferences, travel to prison and appearances excluding contested hearings);
- on average, non-complex cases involve 6.5 hours of work (including preparation, conferences, travel to prison and appearances excluding contested hearings).

What rates would apply?

- **6.5 hours** has been assessed as a reasonable average amount of time for a non-complex case.
- **13 hours** has been assessed as a reasonable average amount of time for a complex case.
- It is expected that **25% of cases will be categorised as complex**.
- The **underlying hourly rate should be \$125** assessed at 80% of the Magistrates’ Court Civil Scale.
- In year one the complex fee would be **\$1,508** and the non-complex fee would be **\$754**.
- In year three the complex fee would be **\$1,625** and the non-complex fee would be **\$812.50**.



Would mention hearings/adjournments be funded?

A single complex or non-complex fee relates to the conduct of the whole summary crime case regardless of when and how it resolves. There is no additional fee for any particular type of hearing.

What would be the fees payable if the case proceeded to a contest?

Under the current fee structure, the practitioner would be entitled to claim a total of \$929. Under the whole of job fee structure, the practitioner would be entitled to claim the whole of job fee of \$754 for a non-complex case or \$1,508 for a complex case, in year 1 of the proposal, plus an additional fee of \$116 for the contest.

Would lower fees still be payable for urgent cases?

The whole of job fee would not have an urgent grant fee. So, regardless of timing, the fee would be either the complex or the non-complex fee. An urgent grant currently attracts a fee of \$475. Under the whole of job fee structure, the fee would be \$754 for a non-complex case and \$1,508 for a complex case, in year 1 of the proposal. This would rise to \$812.50 and \$1,625 in Yr 3 when the proposal was fully implemented.

Would higher fees still be payable where charges are consolidated?

Yes, it is proposed to maintain an additional payment for consolidated pleas.

Would the fee be reduced where a practitioner acts for co-accused?

There would be no reduction in fee for acting for co-accused. Practitioners would receive the full complex or non-complex fee for each subsequent co-accused without diminishing returns. So if a practitioner acts for three co-accused in a non-complex case, the fee will be three times the non-complex fee. If a practitioner acts for four co-accused in a complex case, the fee will be four times the complex fee.

Would travel fees still be paid?

Yes, where a practitioner practices more than 50 kilometres from the court a fee equivalent to 1 hour would be paid, which would cover either travel to court or briefing an agent.

Can I still brief a Barrister?

Yes, there is nothing preventing a practitioner from briefing a barrister. The new fee scale will provide for a minimum brief fee set in a way that encourages early briefing and good preparation.



COMMON SCENARIOS

Urgent Grants

Under the current fee structure, the practitioner would be entitled to claim a total of \$475.

Under the proposed structure, the practitioner would be entitled to claim the whole of job fee of \$754 for a non-complex case and \$1,508 for a complex case, in year 1 of the proposal. This would rise to \$812.50 and \$1,625 in Yr 3 when the proposal was fully implemented.

Standard plea

Under the current fee structure, the practitioner would be entitled to claim \$602.

Under the proposed structure, the practitioner would be entitled to claim the whole of job fee of \$754 for a non-complex case or \$1,508 for a complex case, in year 1 of the proposal. This would rise to \$812.50 and \$1,625 in Yr 3 when the proposal was fully implemented.

Case proceeds to a contest of one day

Under the current fee structure, the practitioner would be entitled to claim a total of \$929.

Under the proposed fee structure, the practitioner would be entitled to claim the whole of job fee of \$754 for a non-complex case or \$1,508 for a complex case, in year 1 of the proposal, plus an additional fee of \$116 for the contest.

Consolidated Case – Client has four or more sets of charges which satisfy VLA's summary crime guidelines. Case proceeds to a consolidated plea of guilty.

Under the current fee structure, the practitioner would be entitled to claim a total of \$721 under a consolidated grant of aid.

Under the proposed fee structure, the practitioner would be entitled to claim the complex whole of job fee of \$1,508 in year 1 of the proposal.

Practitioner acts in a case where the police brief is more than 250 pages and the case proceeds as a plea of guilty.

Under the current fee structure, the practitioner would be entitled to claim a total of \$602.

Under the proposed fee structure, the practitioner would be entitled to claim the complex whole of job fee of \$1,508.

Practitioner acts for two co-accused in a complex case

Under the current fee structure, the practitioner would be entitled to claim a total fee of \$903.

Under the proposed fee structure, the practitioner would be entitled to claim the complex whole of job

Practitioner acts for four co-accused in a non-complex case.

Under the current fee structure, the practitioner would be entitled to claim a total fee of \$1,204.

Under the proposed fee structure, the practitioner would be entitled to claim the non-complex whole of job fee of \$754 (in year 1 of the proposal) for each accused, equal to \$3,016.

Summary hearing where client initially in custody then bailed and placed on the CISP program, case proceeds to a summary case conference then to contest mention, plea proceeds on one day and is adjourned for further plea and sentence.

Under the current fee structure, the practitioner would be entitled to claim a total fee of \$1,227 for the summary hearing which is calculated as follows: \$301 (preparation), \$116 (jail visit), \$208 (contest mention), \$301 (plea), \$301 (further plea and sentence).

Under the current fee structure, the practitioner would be entitled to claim a total fee of \$444 for the bail application.

Under the proposed fee structure, the practitioner would be entitled to claim the whole of job fee of \$754 for a non-complex case or \$1,508 for a complex case in year 1 of the proposal.

Under the proposed fee structure, the practitioner would be entitled to claim the whole of job fee of \$500 for a non-complex bail application or \$750 for a complex bail application.