



Criminal Law Fee Structure Review

Report August 2010

Contents

1. Executive Summary	5	4. Discussion	21
1.1 Introduction	5	4.1 Summary Crime – Magistrates Court and Children’s Court	22
1.2 Process	5	4.2 Indictable Crime	36
1.3 Summary Crime	5	4.3 Bail	46
1.4 Indictable Crime	8	4.4 Appeals	47
1.5 Bail	10	5. Recommendations	50
1.6 Appeals	10	5.1 Summary Crime fee structure	50
1.7 Underlying Hourly Rate	10	5.2 Indictable crime fee structure	50
1.8 Demand and Funding	11	5.3 Bail fee structure	50
1.9 Summary of costs	11	5.4 Appeals fee structure	50
2. Background	12	5.5 Underlying Hourly Rate	51
2.1 Statutory Objectives	12	6. Cost	52
2.2 Funding and Service Delivery	12	6.1 Financial Impacts	52
2.3 Criminal Law Program and Expenditure	15	6.2 Evaluation and Risks	52
2.4 Criminal Law Fee Structure Review	19	Appendices	54
3. Project Logic	20	Bibliography	106
3.1 Analytical Tools	20		
3.2 Surveys	20		
3.3 Workshops	20		
3.4 Stakeholder feedback	20		
3.5 Other research	20		
3.6 Actuarial analysis	20		

1. Executive Summary

1.1 Introduction

Victoria Legal Aid (“VLA”) initiated a review of its criminal law fee structure in early 2009 in response to a threat of withdrawal by private practitioners from undertaking legal aid work.

Expenditure on criminal law approximates \$56 million per annum. Total external expenditure associated with grants of legal aid for criminal law matters approximates \$33.8 million per annum. Private practitioners assist 63% of legally aided clients in criminal law. The remaining 37% are assisted by staff practitioners.

In July 2006 there was a substantial increase in indictable crime fees at a cost of approximately \$2 million. In July 2007 there was a substantial increase in committal fees at a total cost of approximately \$1 million. Private practitioner fees were last indexed in 2006 and 2007 by 2.5% and 2.4% respectively but have not increased since. In the past three years the real value of fees has been eroded by 9%, which is said to have contributed to the juniorisation of work, late preparation and concerns as to the quality of advocacy.

The criminal law fee structure was last reviewed in 1997. The current lump sum fee structure has failed to keep pace with major changes to criminal practice and procedure and was thought to be an impediment to the timely disposition of cases. The performance of the criminal justice system is dependant on the continued involvement of the private profession in the scheme of legal aid and a Steering Committee drawn from the profession was established to guide the review. The Steering Committee sought to identify good practice interactions between defence lawyers, prosecutorial agencies and to align this with court management initiatives, whilst also identifying the input time or hours that a reasonably competent practitioner ought to apply to a standard category case. In this way the review sought to modernise the lump sum fee structure to facilitate good practice aimed at early preparation and resolution, where appropriate.

The results of the review confirm that systemic benefits, in particular delay reduction will not be realised without additional financial investment to incentivise early preparation and negotiation by suitably experienced practitioners and continuity of representation.

1.2 Process

A Steering Committee was established that included representatives from the Department of Justice (“DoJ”), the Law Institute of Victoria (“LIV”), the Criminal Bar Association (“Bar”), the Office of Public Prosecutions (“OPP”) and VLA’s in-house criminal law practice.

A “problem model” was prepared to depict the causal links between the existing fee structure and various issues or criticisms of the way the criminal justice system was functioning. The hypotheses in the problem model were validated by qualitative surveys and workshops conducted with the profession. These hypotheses formed the basis of this review.

The review engaged with a range of stakeholders including prosecution agencies and the courts. This is because defence effort in obtaining efficiencies through more timely disposition of cases must be aligned to prosecution and court efforts to achieve meaningful system-wide benefits.

Following the consultation process, a set of proposals were formulated and costed by independent actuaries.

1.3 Summary Crime

The review identified that the current fee structure does not appropriately incentivise early resolution and in particular, is not aligned with recent reforms to criminal procedure. Similarly, the current fee structure does not make appropriate allowance for complex cases, which may contribute to poor quality or inadequate preparation, as practitioners are forced to commit more time to a complex matter or client than that for which they are paid.

This review recommends that a whole of job fee be adopted in summary crime (refer 4.1.2). This proposal was raised during consultation process and represents a shift from remunerating practitioners based on court events. Remuneration based on court events inevitably results in some court hearings, such as contest mentions being preferenced ahead of other equally important processes such as summary case conferences, that need not take place at court.

A whole of job fee would be paid regardless of when and how a matter resolves. It would remove any suggestion of incentives for defence practitioners to delay proceedings. Under a whole of job fee it would be more cost effective for practitioners to resolve cases early rather than adjourn cases unnecessarily. This will in turn improve efficiencies in the criminal justice system and reduce court delays in cases finalising. Earlier appropriate resolution benefits accused people by limiting the time in which they are in contact with the criminal justice system. A whole of job fee would encourage flexible legal practice.

A whole of job fee would need to be structured in a way which appropriately determines the fee value of work done by barristers and solicitors respectively in order to encourage continuity of representation and quality preparation and appearance work. The review concludes that a minimum brief fee be specified, but recommends further joint consultation with the arms of the profession to determine the final design and level of that fee (refer 4.1.2).

The preferred model has the following constituent parts:

- a) a separate whole of job fee for complex and non-complex summary cases (refer 4.1.2);
- b) no lower fee for urgent grants (refer 4.1.2);
- c) no reduction in fee for acting for co-accused (refer 4.1.2);
- d) an additional fee will remain payable for consolidated pleas (refer 4.1.2);
- e) a separate fee for contested hearings (refer 4.1.2);
- f) a separate whole of job fee structure for bail applications (refer 4.3.2).

A significant problem distinguishing complex and non-complex cases is how best to formulate the criteria for distinction to avoid administrative costs in the assessment of complexity. The proposed criteria are expected to recognise 25% of summary cases as complex (refer 4.1.2) with any variation from this forecast adding to the total cost burden.

Importantly, the review considers that the assessments made by practitioners of the average hours spent on types of summary cases should form the basis of the whole of job fee structure. Those assessments were that:

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

If an hourly rate of \$125 (GST inc) per hour were adopted, this would produce a minimum fee of \$812.50 for a non-complex case and \$1,687.50 for a complex case (based on the higher average hours). This would cost \$2.7 million to fully implement.

The relevant comparative summary crime GST exclusive fees in other jurisdictions are:

	QLD	NSW	TAS	WA	SA	ACT	NT	VIC
Magistrates' Court Guilty Plea (minimum fee)	\$591	\$225	\$375	\$550	\$470	\$350	\$700	\$547

All fees are GST Exclusive

Eligibility for legal aid for summary cases is more freely available in Victoria than in any other State or Territory. This is a positive feature of the scheme of legal assistance in Victoria, which should be preserved to the maximum extent possible.

Other States and Territories generally limit assistance to persons with special circumstances or who face a real prospect of imprisonment, if found guilty, as the table below shows. In NSW, although the threshold appears to be lower than any other State or Territory, guilty pleas are generally dealt with by the duty lawyer service.

	Summary Crime Penalty Threshold (Guilty)	Summary Crime Penalty Threshold (Not Guilty)
Queensland	High risk of lengthy term of imprisonment	Likelihood of Imprisonment
NSW	Offence carries term of imprisonment.	Offence carries term of imprisonment.
TAS	Likelihood of lengthy term of imprisonment	Likelihood of imprisonment/suspended sentence.
WA	Likelihood of immediate imprisonment (and applicant is on an ICO or suspended sentence currently)	Likelihood of immediate imprisonment (and applicant is on an ICO or suspended sentence currently).
SA	Likelihood of imprisonment	Likelihood of imprisonment
ACT	Likelihood of lengthy term of imprisonment	Likelihood of imprisonment/suspended sentence
NT	Likelihood of imprisonment	Likelihood of imprisonment/suspended sentence.
VIC	Likely penalty imprisonment, ICO, suspended term of imprisonment or CBO requiring more than 200 hours of unpaid community work.	Likely penalty upon conviction is a fine in excess of 7.5 penalty units.

In Victoria, under the current guidelines, there is a distinction between the eligibility criteria for pleas of guilty and pleas of not guilty. The review has concluded that there is no reasonable basis for this distinction, and recommends standardising the eligibility threshold to that which is currently in place for a plea of guilty (refer 4.1.4(a)). This would save \$475,000 but would mean that people who face a low level community based order (“CBO”) or a fine, will no longer qualify for a grant of legal aid, and will be required to either, appear unrepresented, receive limited assistance from a duty lawyer, or pay for a private practitioner. This measure is expected to impact 4% or 950 summary crime cases which are currently eligible for legal aid. This equates to 1.2% of the current duty lawyer population of clients.

The review recommends:

- a) adoption of the whole of job proposal based on reasonable and appropriate time allowances for practitioners;
- b) standardisation of eligibility criteria for guilty and not guilty pleas
- c) further consultation take place over the design of a minimum brief fee.

These recommendations taken together would cost \$2.225 million to fully implement.

1.4 Indictable Crime

Unlike other areas of the criminal law program, VLA can be ordered to fund indictable cases under section 143 of the Confiscation Act 1997 or under section 197 of the Criminal Procedure Act 2009 (formerly section 360A of the Crimes Act 1958). The few ways in which VLA is able to manage costs in indictable crime is to:

- a) impose strict eligibility criteria with respect to contested committals;
- b) not allow legal aid funding for a plea or trial in the County or Supreme court where the offences can be heard in the summary stream in the Magistrates' Court.

VLA's minimum fee currently payable in indictable cases compares favourably with other States. The relevant comparative GST exclusive fees in other jurisdictions are:

	QLD	NSW	TAS	WA	SA	ACT	NT	VIC
County Court Plea (minimum fee)	\$1,834	\$1,050	\$613	\$900	\$834	\$1,900	\$1,000	\$2,247
County Court Trial one day (minimum fee)	\$3,442	\$2,490	\$1,390	\$2,520	\$2,626	\$3,380	\$2,000	\$4,865

All fees are GST Exclusive

A major issue in the design of the indictable crime fee structure is how and when to weight the specialist contributions played by solicitors and barristers. The current fee structure is designed around court events and, as a result, arguably does not value or encourage out of court pre-trial resolution of cases. The variation in practice between solicitors and barristers also makes formulating a scale difficult.

The review identified opportunities for the fee structure to be used to create incentives for early appropriate resolution of cases. As with proposals for the summary crime fee structure, almost all of the proposals for the indictable crime fee structure would add cost and very few potential savings were identified. Although front ending of fees is likely to promote efficiencies, any corresponding reduction in fees at the trial stage is likely to have profound negative impacts on the quality of representation for trials.

Reduction of fees at the trial stage to fund additional fees earlier in the process is likely to create undesirable consequences and instead the review recommends:

- a) [committal changes to encourage resolution and continuity of representation \(refer 4.2.2\(a\)\)](#)

This proposal identifies the period shortly before, during and after committal for trial, as the best point in the process to target early resolution.

This model has the following constituent parts:

- i. increase in the brief fee for contested committals to encourage more senior barristers to accept such briefs. This aims to improve prospects of resolution, and improve the chances of the same barrister conducting both the contested committal and the trial (refer 4.2.2(a));
- ii. add a fee for post committal negotiations to encourage out of court negotiations continuing post-committal so that case knowledge is not lost (refer 4.2.2(a));
- iii. the brief fee for the contested committal to include the first hearing in the trial court following the committal. This would help to ensure that the same barrister appears on that occasion and the prospects of resolution would therefore be increased (refer 4.2.2(a)).

The cost of these proposals is \$507,000. This set of proposals provides a significant opportunity to make systemic changes that could have a meaningful impact on a number of key issues. However, this could only be achieved in collaboration with the courts and the OPP.

b) Introduce a fee for sentence indication hearings (refer 4.2.2(b))

Sentence indications were introduced in July 2008. They are substantially underused. Introducing a fee for sentence indication hearings should provide an incentive for their use. The cost of funding sentence indication hearings is \$34,000.

c) Provide a reading fee for solicitors for voluminous cases (refer 4.2.2(d))

This proposal was raised by solicitors on the basis that to adequately advise their clients and resolve cases in a timely manner, they must read the entire prosecution brief.

Having solicitors familiar with a file pre-committal when cases are often resolved, should increase the likelihood of solicitor led resolution.

The cost of providing additional reading fees varies greatly according the assumptions of frequency and the caps that might be imposed. For example an additional two hours for 10% of cases would cost \$34,000 whereas an additional 10 hours on 40% of cases would cost \$845,000. The review recommends a total additional investment of \$335,000 for reading fees for solicitors, and that any new arrangements contain a maximum additional reading fee in order to control costs.

There is no doubt that improvements in technology have resulted in briefs of evidence becoming more complex and voluminous. The review recognises that this trend is likely to continue, and this in turn will add to the cost of providing legal aid for such cases. For this reason, the review recommends that a carefully considered formula be developed for additional reading fees for both barristers and solicitors, in order to control costs whilst ensuring that accused people are not disadvantaged.

d) Increase the brief fee in serious cases in the Children's Court (refer 4.2.2(f))

A strong and consistent message throughout the consultation process was that fees for Children's Court indictable crime contested hearings do not adequately compensate practitioners for the time required in the conduct of these serious indictable cases. Existing fees for indictable crime hearings in the Children's Court are considerably lower than the fees payable for indictable crime cases which proceed through the committal stream. The consequences of this are identified as juniorisation of the cohort of barristers available for such cases.

The cost of doubling the brief fee on these cases is negligible.

e) Potential savings

The only area of potential saving in indictable crime identified in the review is to limit instructing in trials.

The proposal is to allow one full day instructing and limit instructing for any subsequent day of trial to half a day. The instructing can be used in any way during the course of the trial e.g. for a five day trial, the maximum instructing that could be claimed is 3 days (1 day + 4 x ½ days) (refer 4.2.3).

Feedback on this proposal revealed that instructing in trials is often delegated to junior solicitors and the role of the instructor is often primarily for the taking of notes.

The saving associated with this proposal is \$608,000.

1.5 Bail

No allowance is currently made in the fee structure for seriousness or complexity of bail applications. Most bail applications relating to both summary offences and indictable offences are heard in the Magistrates' Court.

The proposal is to create a whole of job fee, similar to that recommended for summary crime. The proposal is that there is a whole of job fee for non-complex and complex bail applications in the Magistrates' Court and one whole of job fee for bail applications in the County Court. The proposed criteria are designed to capture approximately 10% of bail applications as complex (refer 4.3). The whole of job fee will be calculated on the assumption that the reasonable average hours for a non-complex bail application is 4 hours, and the reasonable average hours for a complex bail application is 6 hours.

Adopting this proposal will ensure that people held on remand will experience improved quality of representation for bail applications. In turn, this is likely to result in more people being granted bail. If these consequences prove to be true, this will have system-wide benefits flowing through to correctional services authorities.

The cost of this proposal is \$203,000.

1.6 Appeals

During consultation, no stakeholders identified VLAs appeals fee structure as contributing to delays or failing to incentivise good practice. A wholesale review of the approach to appeals funding was not warranted on the evidence available. Only one proposal for change is recommended in this review.

The proposal is to have one whole of job fee for all appeals against sentence in the County Court (refer 4.4.2). It is not proposed to have a whole of job fee for appeals against conviction.

The whole of job fee will be calculated according to the average hours of necessary work involved in summary crime cases. This has been derived from the data obtained from practitioners. The review has assumed that the work required for complex or non-complex appeal is similar to an equivalent summary case.

The cost of introducing a whole of job fee for appeals against sentence based on 9 hours of work would be minimal at \$76,000.

1.7 Underlying Hourly Rate

The review recommends that the fees contained in the new criminal law fee structure be calculated on 80% of the hourly rates contained in the current Civil Law Scales for Magistrates' Court (solicitor rate), County Court "B", and Supreme Court. It is noted that there is no Criminal Law Scale. The rationale for the calculation of the fees at 80% of the Scale originates from section 32 of the original *Legal Aid Act 1978* ("LAA"), which contained the following provision:

*"Subject to sub-section (3) the fee to be paid to a private practitioner for the performance of services on behalf of assisted persons shall be such amount as is equal to eighty per centum of the fees ordinarily payable in respect of similar services provided to a person who is not an assisted person, and the fees offered to private practitioners for the performance of such services shall, so far as practicable, consist of amounts fixed by the Commission in respect of the performance of particular services."*¹

The rationale behind this section of the LAA was that both the State and the profession should make a contribution to the legal aid scheme in Victoria, and that a 20% reduction in fees was the contribution by the profession towards the legal aid scheme.

Section 32 of the LAA was subsequently amended and the reference to 80% of the Scale was removed. VLA has however continued to apply this rationale when considering any changes to its fees.

¹ *Legal Aid Act 1978*

The current hourly rate underlying the lump sum fee scale in the Magistrates' Court is \$111 (GST inc). It is recommended that the Magistrates' Court hourly rate be increased to \$125 (GST inc) which equates to 80% of the current Civil Law Scale.

Furthermore, the review recommends indexing the fees annually, in line with the State and Commonwealth indexation on base funding and for a review of the allowance for hours and underlying hourly rates to be conducted every five years.

1.8 Demand and Funding

An independent Functions and Funding Review ("FFR") conducted in 2008 identified that funding for legal assistance services had not kept pace with demand brought about by:

- a) increases in police and child protection workers, as well as other policies that increase justice system throughput by modernising legislation and court procedures; and
- b) socio-economic factors, including increased incidences of mental health problems and substance abuse presenting amongst VLA clientele.

The extent of underfunding was calculated at \$12.1 million. In response, the State Government allocated one-off funding of \$24.7 million in 2009/10. This comprised \$10.5 million to meet the existing unfunded demand, \$8.5 million to meet demand projected in the FFR; and \$5.5 million to underwrite expected shortfalls in Public Purpose Funding (PPF). A similar amount has been approved by the State government for the next two years, which includes funding to meet previous growth forecasts of demand and increased complexity.

Under the terms of the relevant government agreement, Commonwealth monies may not be used to fund State crime. This has not changed in the new National Partnership Agreement.

The *Swifter Justice and Keeping Communities Safe* initiatives announced in this year's State budget will add to previous forecasts of demand. For instance, the FFR estimated that an additional police officer would lead to 3.5 additional criminal cases and 12 additional duty lawyer services per year. The proposals to increase fees contained in this report will add to the cost of providing services. A structural deficit will re-emerge over time as the full impact of the *Swifter Justice and Keeping Communities Safe* initiatives blend with rising input costs of meeting this heightened level of demand.

1.9 Summary of costs

The recommended proposals are valued at \$4.6 million and would cost \$3.5 million to fully implement. This equates to a 13.6% increase on aggregate payments to the private profession for criminal law cases.

The difference in the cost of financing the increase and the 'value to the profession' lies in costs avoided for work foregone (e.g. reduction in days of instructing at trial) and a proposed standardisation or upward shift in eligibility to restrict aid in less serious matters, that would also produce costs savings.

The summary crime suite is the significant portion of the total package valued at \$2.7 million, equating to an increase of 22% on the current investment in summary crime. The indictable crime proposals are valued at \$876,000. The bail proposal is costed at \$203,000 and the appeal proposal is costed at \$76,000. In total, the overall package of changes increases VLAs criminal law expenditure by 10.4% or \$3.5 million.

2. Background

2.1 Statutory Objectives

VLA is an independent statutory authority established by the LAA. The objectives of VLA are:

- a) to provide legal aid in the most effective, economic and efficient manner;
- b) to manage its resources to make legal aid available at a reasonable cost to the community and on an equitable basis throughout the state;
- c) to provide the community improved access to justice and legal remedies;
- d) to pursue innovative means of providing legal aid directed at minimising the need for individual legal services in the community.²

An independent Funding and Functions Review conducted in 2008 concluded that:

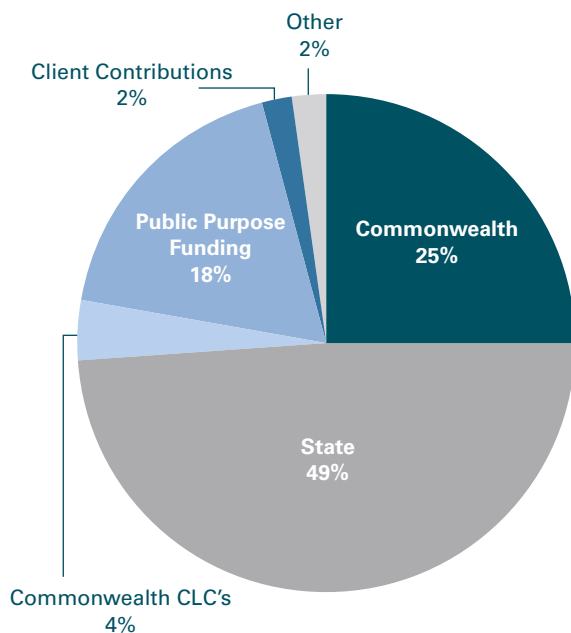
- a) VLA is an efficient provider of legal aid services;
- b) VLA operates its operational support functions at a comparable level to other jurisdictions (call centre, family dispute resolution, grants administration and facilities) and, in some areas (such as library), provides a greater level of service for similar costs;
- c) VLA performs its support functions (human resource, information systems and finance) at a comparable level to other jurisdictions in terms of efficiency and cost, and is above 'best practice' in some areas.

This means there are limited options to extract efficiencies from overhead or business support functions, which means some service choices will need to be made to finance the various fee proposals recommended by the review.

2.2 Funding and Service Delivery

The pie charts below demonstrate VLA's total budgeted revenue and expenditure for 2009 - 2010.

Victoria Legal Aid
Budgeted Revenue 2009/2010



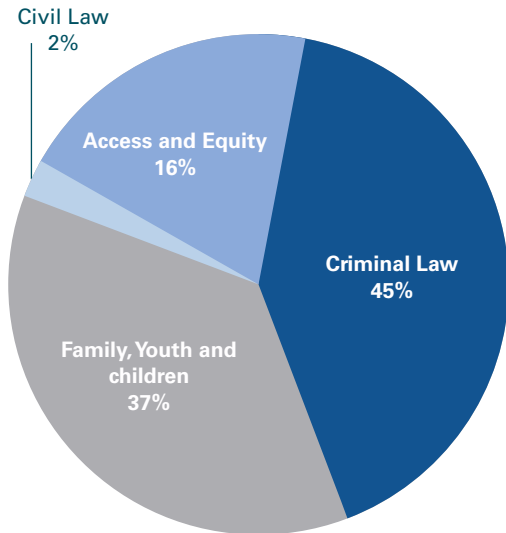
Victoria Legal Aid
Budgeted Expenditure 2009/2010



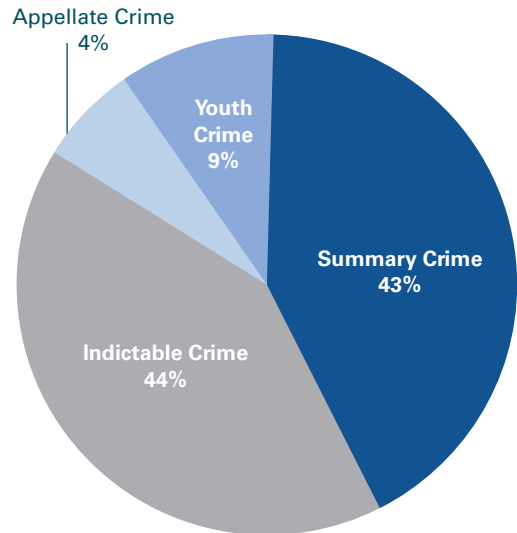
² Legal Aid Act 1978, section 4

VLA delivers four key programs, of which criminal law is the largest.

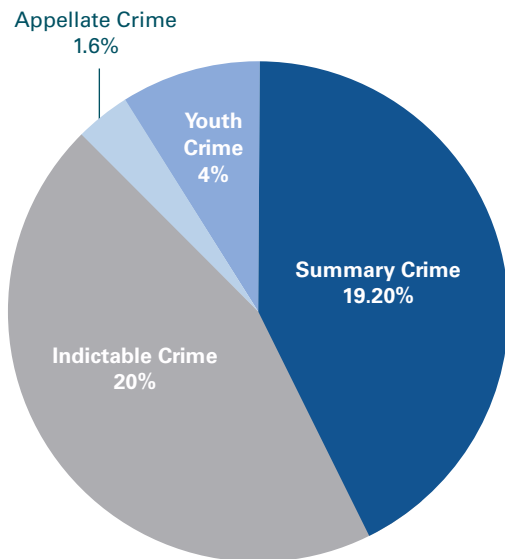
Allocation by funding program



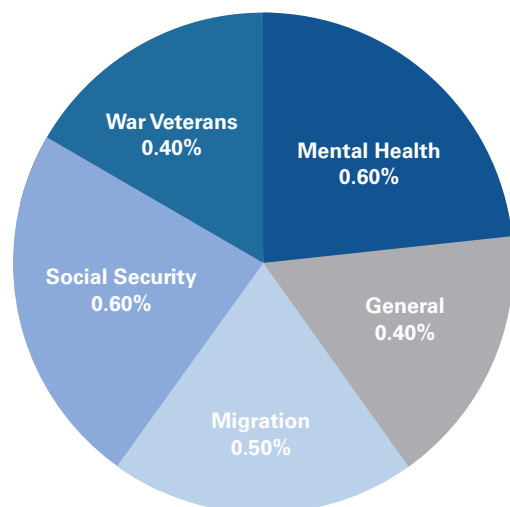
Criminal Law sub-program expenditure as a % of total criminal law expenditure



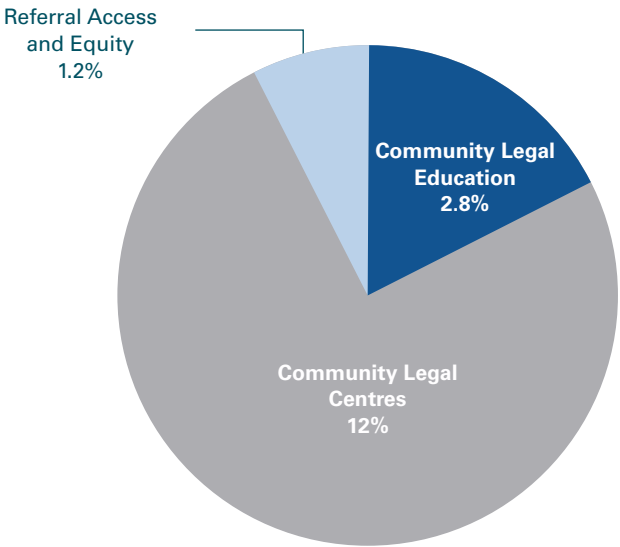
Criminal Law sub-program expenditure as a % of total expenditure



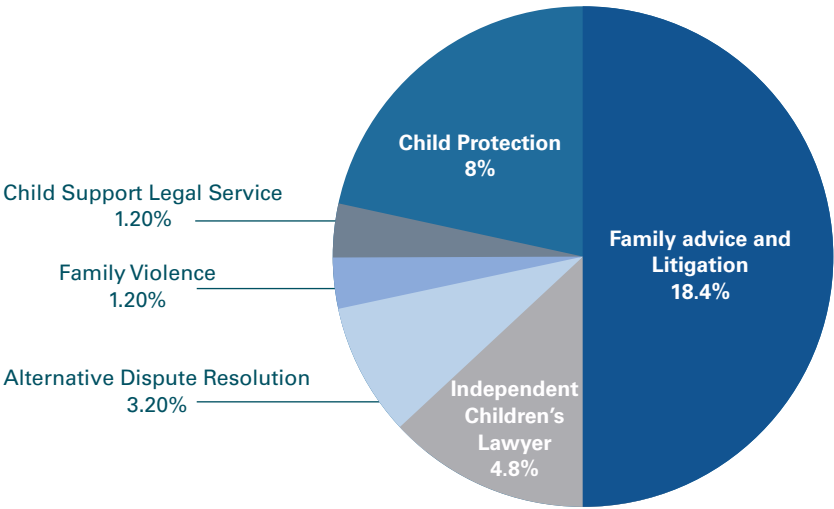
Civil Law sub-program expenditure as a % of total expenditure



Access and Equity sub-program
expenditure as a % of total expenditure



Family Law sub-program
expenditure as a % of total expenditure



The FFR identified that funding for legal aid services had not kept pace with demand brought about by:

- a) increases in police and child protection workers, as well as other policies that increase justice system throughput by modernising legislation and court procedures; and
- b) socio-economic factors, including increased incidences of mental health problems and substance abuse presenting amongst VLA clientele.

The extent of underfunding was calculated at over \$12.1 million. In response, the State Government allocated one-off funding of \$24.7 million in 2009/10. This comprised \$10.5 million to meet the existing unfunded demand, \$8.5 million to meet demand projected in the FFR; and \$5.5 million to underwrite expected shortfalls in PPF. A similar amount has been approved by the State government for the next two years, which includes funding to meet previous growth forecasts of demand and increased complexity.

In the period since the FFR, demand has exceeded forecast, with a combined 10% increase in case and duty lawyer services and a 6% increase in costs.

Under the terms of the relevant government agreement, Commonwealth monies may not be used to fund State crime. This will not change in the proposed new National Partnership Agreement.

The *Swifter Justice and Keeping Communities Safe* initiatives announced in this year's State budget will add to demand. For instance, the FFR estimated that an additional police officer would lead to 3.5 additional criminal cases and 12 additional duty lawyer services per year. The proposals to increase fees contained in this report will add to the costs of providing services. A structural deficit will re-emerge over time as the full impact of the *Swifter Justice and Keeping Communities Safe* initiatives blend with rising input costs of meeting this heightened level of demand.

2.3 Criminal Law Program and Expenditure

VLA's criminal law program is one of four programs and it is made up of four sub-programs: indictable crime, summary crime, appellate crime and youth crime.

The goals of VLA's criminal law program are:

- a) to provide access to quality advice and representation for people charged with offences who cannot otherwise afford it, with a focus on those who are disadvantaged or at risk of social exclusion;
- b) to influence the criminal justice system to provide timely justice, the fair hearing of charges and appropriate outcomes;
- c) to ensure that people charged with offences are treated with dignity, well informed and guided appropriately through the criminal justice system;
- d) to improve community understanding of criminal justice and behavioural issues.

The criminal law program provides services to the community in the following ways:

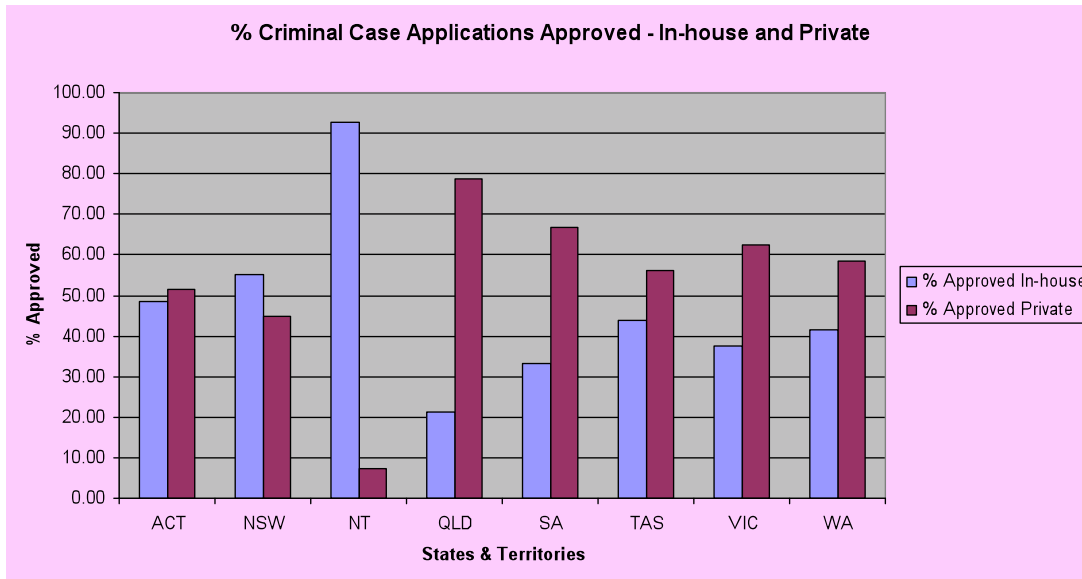
- a) legal representation funded through grants of legal aid;
- b) duty lawyer services;
- c) minor case work;
- d) legal advice including prison advice;
- e) legal information services.

Expenditure on the criminal law program approximates \$56 million per annum. Total external expenditure associated with grants of legal aid approximates \$33.8 million per annum. VLA receives funding from three main sources:

- a) State and Commonwealth governments;
- b) the Public Purpose Fund;
- c) contributions received from people who have received grants of legal aid.

VLA receives an indexation on base funding each year in order to meet some of the rising costs of doing business. This rate does not equate to the consumer price index ("CPI") or the real increasing costs of service delivery. Last year this rate averaged 2% and was applied internally to meet increasing demand for services.

The criminal law program provides services to the community both in-house and through private practitioners. In 2008/2009, the criminal law program provided 53,100 duty lawyer services and 26,018 minor casework and advice services. In that same period 26,847 grants of legal aid were made in criminal cases. Of those, 37% were assigned to in-house practitioners and 63% to private practitioners. The allocation of work in other jurisdictions is included in the following table.³

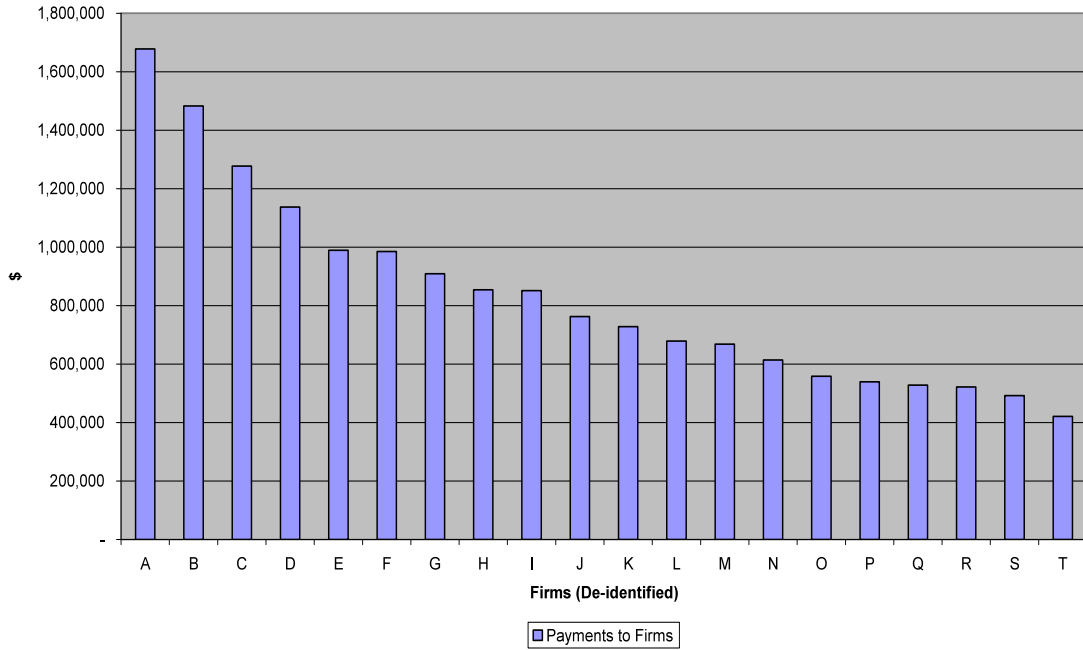


Although many practitioners make themselves available for legal aid work, the work that is undertaken is concentrated in a relatively small number of firms.

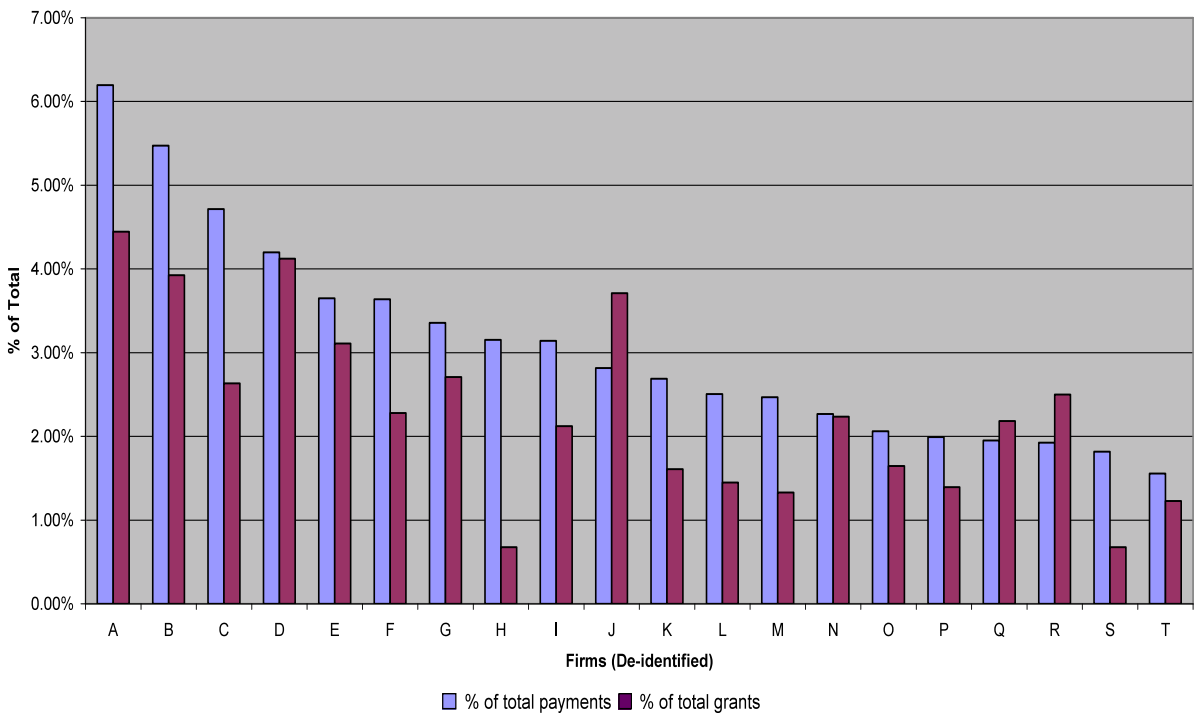
In the past 12 months 7% or 20 firms undertook 49% of the privately assigned grants of aid for summary crime. During that same period, 22% or 20 firms undertook 63% of the privately assigned grants of legal aid for indictable crime. There are 13 firms included in both the 7% of firms who received 49% of summary crime grants and 22% of firms who received 63% of indictable crime grants. A total of 27 firms received 69% of all payments made to private practitioners for criminal law matters during that period. This expenditure includes third party disbursements.

³ Figures are for the 2008 – 2009 financial year. Figures obtained from National Legal Aid website (<http://www.nla.aust.net.au/>)

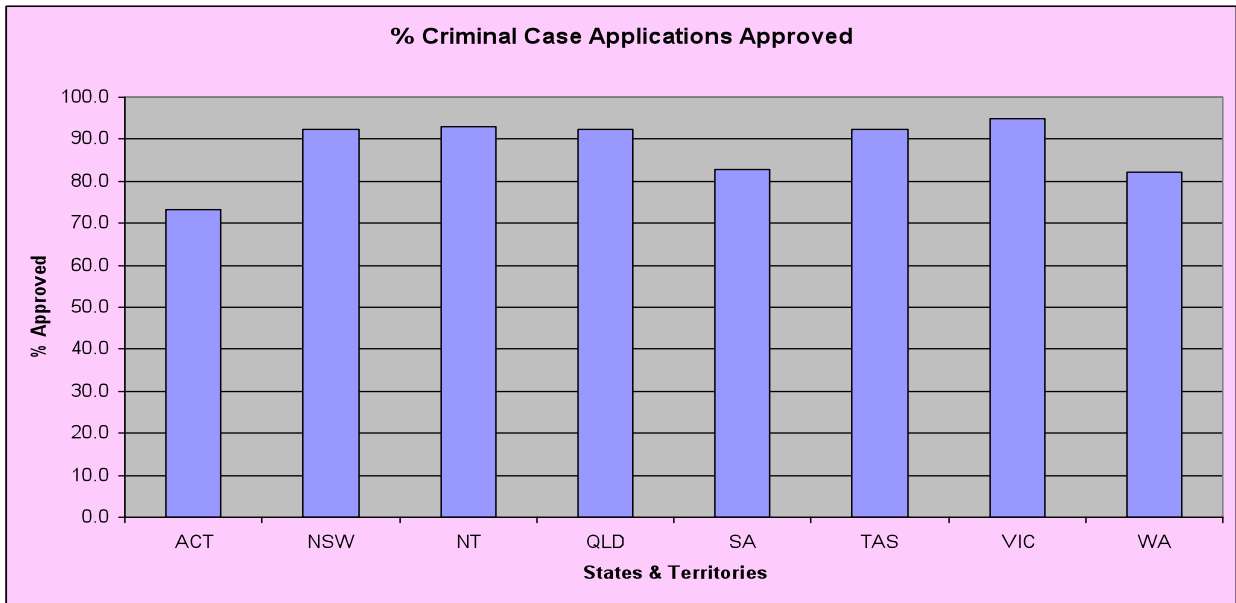
**Victoria Legal Aid
Payments to Top 20 Firms**



**Victoria Legal Aid
Payments and Grants as a % of Total**



VLA has the highest approval rates for criminal law applications for legal aid. In 2008 to 2009, 95% of all criminal law applications for legal aid that were submitted were approved ⁴. The approval rates for criminal law applications in other jurisdictions is included in the following table ⁵.



⁴ Figures obtained from National Legal Aid website (<http://www.nla.aust.net.au/>)

⁵ Figures are for the 2008 – 2009 financial year. Figures obtained from National Legal Aid website (<http://www.nla.aust.net.au/>).

2.4 Criminal Law Fee Structure Review

In late 2008 the private profession began to lobby for an increase in legal aid fees paid to criminal practitioners for criminal law services. The profession argued that the fees paid by VLA were no longer acceptable and posed a threat both to the financial viability of the profession and therefore to the profession's participation in the legal aid scheme. Research has shown that low remuneration is overwhelmingly the most common reason for private practitioners ceasing to take on legal aid work ⁶.

There has not been a complete review of the fee structure since 1996/1997. Over the years, while some fees have increased, the current fee structure, when analysed, does not reflect current criminal procedure, is not aligned with good practice principles, and is not regularly indexed.

Accordingly, a review of the criminal law fee structure was initiated.

2.4.1 Stakeholder Engagement

A Steering Committee was established that included representatives from various agencies, including the DoJ, the LIV, the Bar, the OPP and VLA's in-house criminal law practice.

2.4.2 Objectives

The review proceeded on the basis that opportunities could be found to align the fee structure with good practice and to realise efficiencies in the criminal justice system.

The Steering Committee agreed on the importance of quality client management and the following related objectives:

- a) timely disposition of cases;
- b) early preparation of cases;
- c) early briefing of counsel where appropriate;
- d) continuity of counsel;
- e) promote efficiency within the criminal justice system;
- f) maintaining involvement of the private profession in the delivery of legal aid services.

⁶TNS Social Research Consultants, Study of the Participation of Private Legal Practitioners in the Provision of Legal Aid Services in Australia, December 2006 at page 61

3. Project Logic

The review was designed to be transparent and evidence based.

3.1 Analytical Tools

The review commenced with the development of a “problem model” to depict the causal links between VLAs current criminal law fee structure and various issues or criticisms of the way the criminal justice system was functioning. The end points of the problem model reflect the ultimate effects within the criminal justice system stemming from the fee structure at its base. The diagram is set out in Appendix 1 and formed the basis for much of the remaining work on the review, including the recommendations that are contained in this report.

3.2 Surveys

Having established the problem model, evidence and input was gathered through qualitative surveys of practitioners.

Two surveys were designed, one for barristers and one for solicitors. The samples of practitioners were large enough to draw analytical inferences which could be validated through workshops and discussions with staff practitioners. Although the sample size is not statistically representative, it does meaningfully represent the population of all practitioners who undertake legally assisted criminal law cases.

3.3 Workshops

Three workshops were held with the profession focussing on the two main areas of criminal practice - summary and indictable. Two workshops were held in Melbourne, one for summary crime and one for indictable crime, and one workshop was held in regional Victoria. The purpose of the workshops was to obtain:

- a) further data to provide evidence of the causal links identified in the problem model; and
- b) ideas and suggestions for changes to the current criminal law fee structure.

3.4 Stakeholder feedback

Throughout the review, the VLA project team regularly engaged with a range of stakeholders. For the profession it was important to ensure that regular updates were provided about the review and that the profession had the opportunity to engage in the process and make recommendations. The profession strongly engaged with the process and all of the proposals that are supported in this paper had their genesis in suggestions through this process.

It was also necessary to ensure that other stakeholders, such as prosecution agencies and the courts, were engaged in order to promote cross-agency collaboration and co-operation. In the absence of such co-operation and collaboration, any review of fees is unlikely to result in any wider systemic benefits and reform to the criminal justice system. That is because defence effort in obtaining efficiencies must be aligned with prosecution and court efforts in order to achieve meaningful systemic results.

3.5 Other research

The project team also analysed existing research and academic discussion of criminal justice system reform and legal aid fee structure design, as well as Victorian and interstate data relevant to the project.

3.6 Actuarial analysis

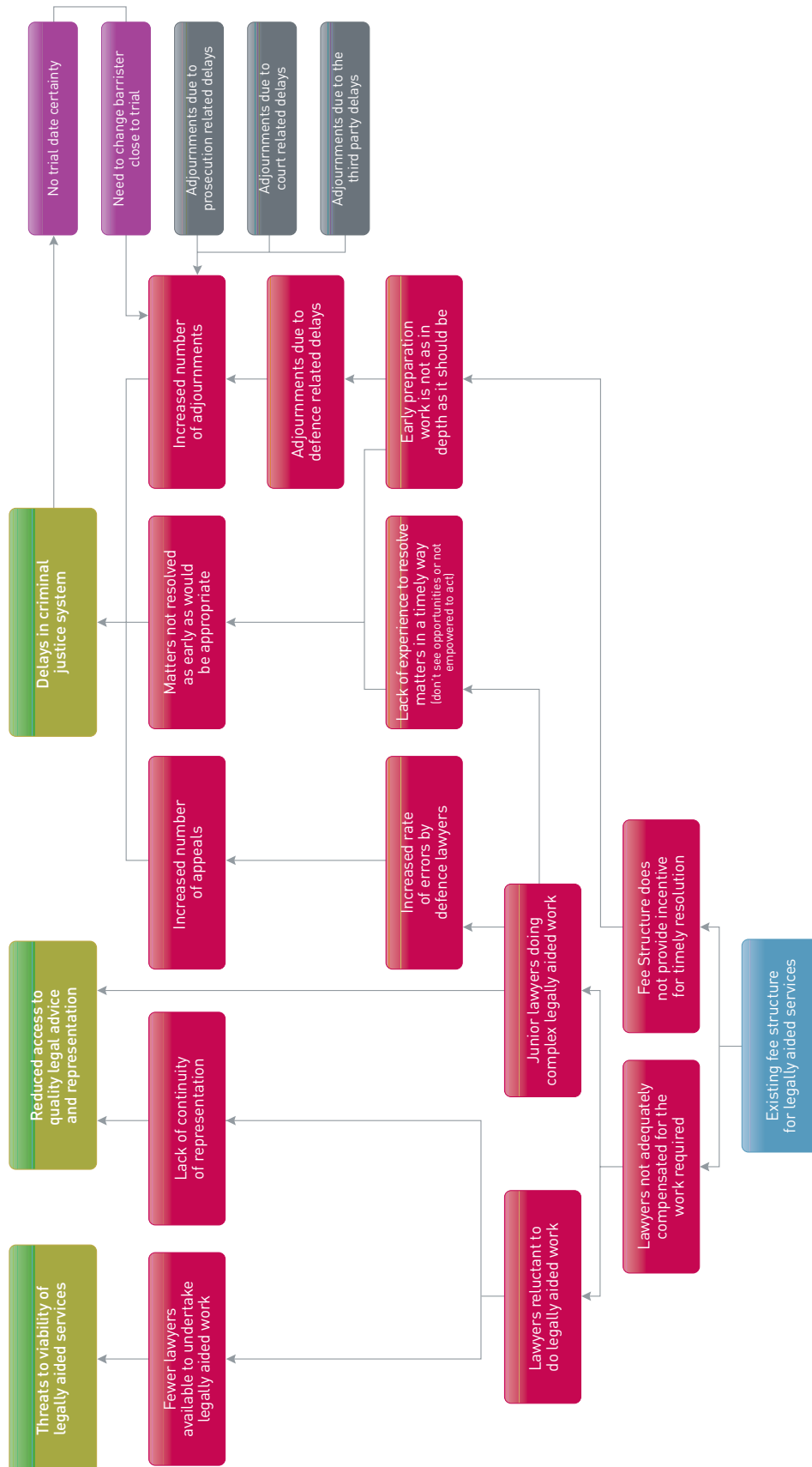
Following the consultation process a set of proposals were formulated by the review. VLA briefed external actuaries to cost the proposals. The actuaries were asked to consider the following when costing the proposals:

- a) the desire to formulate a fee structure which is fair and reasonable to practitioners who undertake legal aid work;
- b) the desire to promote efficiency within the criminal justice system.

The actuarial costing analysis has been conducted on the assumption that the hourly rate for summary criminal cases will be \$125 (GST inc) per hour, which is 80% of the current Magistrates’ Court civil scale (solicitor rate).

4. Discussion

Problem model



4.1 Summary Crime - Magistrates' Court and Children's Court

4.1.1 Current eligibility guidelines and fee structure

With the exception of New South Wales ("NSW"), eligibility for legal aid for summary cases is more freely available in Victoria than in other State or Territory, with other States and Territories generally limiting legal aid to persons with special circumstances or who face a real prospect of imprisonment, if found guilty. In NSW, although the threshold appears to be lower than any other State or Territory, guilty pleas are generally dealt with by duty lawyers (see comparison table below and also Appendix 5). This is a positive feature of the scheme of legal assistance in Victoria which should be preserved to the maximum extent possible.

In most States and Territories the penalty threshold for eligibility for legal aid for both guilty and not guilty pleas is imprisonment. VLA's guidelines are more inclusive because they allow legal aid to be granted where the likely penalty is a CBO (guilty pleas) or a fine in excess of 7.5 penalty unity (\$876.15) (not guilty pleas).

	Summary Crime Penalty Threshold (Guilty)	Summary Crime Penalty Threshold (Not Guilty)
Queensland	High risk of lengthy term of imprisonment	Likelihood of Imprisonment
NSW	Offence carries term of imprisonment.	Offence carries term of imprisonment.
TAS	Likelihood of lengthy term of imprisonment	Likelihood of imprisonment/suspended sentence.
WA	Likelihood of immediate imprisonment (and applicant is on an ICO or suspended sentence currently)	Likelihood of immediate imprisonment (and applicant is on an ICO or suspended sentence currently).
SA	Likelihood of imprisonment	Likelihood of imprisonment
ACT	Likelihood of lengthy term of imprisonment	Likelihood of imprisonment/suspended sentence
NT	Likelihood of imprisonment	Likelihood of imprisonment/suspended sentence.
VIC	Likely penalty imprisonment, ICO, suspended term of imprisonment or CBO requiring more than 200 hours of unpaid community work.	Likely penalty upon conviction is a fine in excess of 7.5 penalty units.

Where legal aid is granted in summary cases there is a set lump sum fee for solicitor's preparation, and separate fees for certain hearings such as contest mentions, plea hearings and contested hearings. VLA does not normally pay a fee for mention hearings and adjournments.

The decision not to fund mention hearings/adjournments is based on a desire not to reward adjournments. However, as is always a risk with lump sum fee structures, they result in unintended consequences.

Often the response to not funding mentions is that accused people appear unrepresented at those hearings, a practice that inevitably delays the resolution of cases. Valuing (through allocation of a fee) contest mention hearings over other hearings may provide an incentive to use the contest mention process as the primary vehicle for case resolution.

The current fee structure does not make any allowance for complex cases. This results in practitioners working on complex cases for an inadequate fee. This has traditionally been justified on the basis that a lump sum fee structure, such as the current one, includes 'swings and roundabouts'.

What this means in theory is that for the set of complex cases that a practitioner conducts, there will be a set of simpler cases where the lump sum fee will compensate the practitioner because the hours worked will represent less than the value of the fee. This justification is unsustainable in light of the diminishing real value of the lump sum fee, and the fact that many of the 'simple cases' are currently subject to a lower fee because they qualify as an 'urgent grant'. An 'urgent grant' applies to cases where the application for legal aid is lodged no earlier than the day before the substantive hearing or within fourteen days following the substantive hearing. The fee in those cases is substantially lower than the standard fee for non-urgent grants of legal aid.

As well as skewing the 'swings and roundabouts' theory to lump sum fees, the urgent grant fee arguably adds financial disincentives to early resolution of cases. Turning an 'urgent grant' into a normal grant can be achieved by adjourning the case and therefore delaying the substantive hearing of the case. This is not noted to suggest improper conduct on the part of practitioners, but to highlight the importance of ensuring that the fee structure is designed to reward rather than disincentivise good practice and early appropriate resolution.

The current fee structure has two additional features in its design worthy of note:

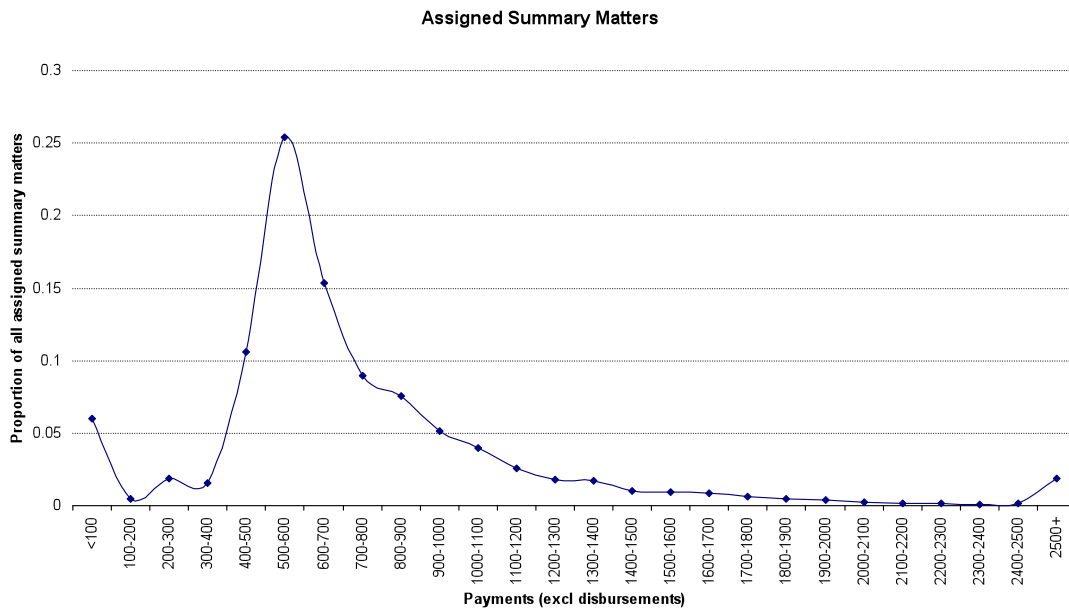
- if a practitioner acts for more than one accused, there is a diminishing fee as the number of clients increases. This is based on the (almost certainly correct) assumption that the work to prepare the case for each subsequent client is less because the case will be based on substantially the same material. However, this is a further example of where the current fee structure provides 'swings' but not 'roundabouts', in that while practitioners take the risk on extra time needed in preparing such cases for a lower additional fee, the reduced return for each subsequent co-accused does not provide a counterbalance;
- there is an additional fee paid for a consolidated plea (where two or more cases for one client are heard together). VLA considers that the system should encourage consolidation of cases as they are both efficient and tend to benefit accused people.

The relevant comparative summary crime GST exclusive fees in other jurisdictions are included in the table below and also at Appendix 6.

	QLD	NSW	TAS	WA	SA	ACT	NT	VIC
Magistrates' Court Guilty Plea (minimum fee)	\$591	\$225	\$375	\$550	\$470	\$350	\$700	\$547
Magistrates' Court Not Guilty Plea (minimum fee)	\$1,723	\$1,730	\$1,844	\$1,700	\$2,375	\$1,380	\$1,600	\$1,038

All fees are GST Exclusive

The mean or average case cost for summary crime cases is \$802. The median or midpoint case cost is \$645. 70% of cases finalised in the last 12 months (to 30 April 2010) incurred costs of \$800 or below. The chart below depicts the current spread of costs associated with summary crime grants of legal aid.



4.1.2 Considered Proposal

Whole of Job Fee – Introduction

The most significant proposal for changing the summary crime fees structure that came out of the review is a ‘whole of job’ fee. This proposal was raised during the consultation process and is the review’s preferred approach to the summary crime fee structure.

A whole of job fee would represent a shift away from lump sum fees for different parts of the summary criminal process, which can lead to unintended systems consequences by preferencing certain parts of the system (e.g. a contest mention) over another part (e.g. a summary case conference). Instead, a whole of job fee is a single fee for a whole summary crime case regardless of when and how it resolves.

Rationale for a whole of job fee structure:

- the feedback during workshops was that practitioners are keen to have a simple fee structure;
- a whole of job fee structure will remove any suggestion of incentives for defence practitioners to delay proceedings. Under a whole of job fee it will be more cost effective for practitioners to resolve cases early rather than adjourn cases unnecessarily. This will in turn improve efficiencies in the criminal justice system and reduce court delays in cases finalising;
- the whole of job fee structure will complement the recent changes to summary criminal procedure by removing incentives to resolve cases at contest mention and increase incentives to use early resolution processes through preliminary briefs and summary case conferencing;
- earlier appropriate resolution benefits accused people by limiting the time in which they are in contact with the criminal justice system;
- a whole of job fee provides opportunities for practitioners to benefit from the ‘swings and roundabouts’ rationale for the proposal (refer to Appendix 11). This will encourage flexible and innovative legal practice models, rather than models driven by decisions as to which hearing types to preference;
- remodelling the fee structure to a whole of job fee structure, even on a cost-neutral basis, will not worsen the remuneration position for practitioners – the same money is simply being split between cases in a different way. The overall average spend per case could not reduce unless funds were withdrawn from the system, which is not intended.

Potential risks of a whole of job fee:

- there is a risk of a perception that some practitioners may place their own financial interests above the best interest of their clients in resolving cases prematurely and in a manner that is inconsistent with their client’s best interests.
- the predicted efficiencies gained in the criminal justice system through delay reduction will inevitably result in more cases proceeding through the courts in any given year. This in turn will have a financial impact on VLA given that its financial liability will accrue earlier than is currently the case.

Discussion

A Whole of Job Fee – What it Would Look Like?

The key features of the proposal are:

- a) a whole of job fee for non-complex and complex summary cases. Other than the hearings discussed below, this fee covers the entire conduct of the summary case;
- b) no lower fee for urgent grants, i.e. regardless of timing, the fee will be determined by whether the case is categorised as complex or non-complex;
- c) no reduction in fee for acting for co-accused i.e. if a practitioner acts for three co-accused in a non-complex case, the fee will be three times the non-complex fee;
- d) an additional fee will remain payable for consolidated pleas;
- e) a separate fee for contested hearings;
- f) a separate whole of job fee for bail applications.

Complex versus Non-Complex

There were very strong views expressed on complex cases during consultation. Having no distinction between complex and non-complex cases risks discouraging practitioners from taking on complex cases, a result that would be contrary to the goals of the legal aid scheme. For those reasons, it is proposed to have one whole of job fee for non-complex summary crime cases and another whole of job fee for complex summary crime cases.

A significant problem distinguishing complex and non-complex cases is how best to formulate the criteria for distinction to avoid administrative costs in the assessment of complexity. The proposed criteria are expected to recognise 25% of summary cases as complex with any variation from this forecast adding to the total cost burden:

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

If a case does not fall within any of the above criteria, it would be classified as a non-complex case.

Calculating the Value of the Whole of Job Fee

At this stage, the review considers that the assessments made by practitioners in surveys and validated in workshops of the average hours spent on types of cases should form the basis of the whole of job fee. In summary, those assessments were that:

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

No Urgent Grant Fee

The lower urgent grant fee currently paid may act as a disincentive to early resolution. It also removes one of the upsides of what claims to be a 'swings and roundabouts' model.

The whole of job fee would not have an urgent grant fee. This would mean that all previous cases which qualified as an urgent grant would instead attract either a complex or non-complex whole of job fee. This cohort of cases therefore provides opportunities for practitioners to legitimately realise financial benefits, while behaving in a way that enhances the early resolution of cases.

In the 2008 - 2009 financial year, there were 2,168 urgent grants out of a total of 23,172 summary crime grants. Therefore, urgent grants made up 9.36% of the total summary crime grants.

Acting for Co-accused

The current fee structure means that if a practitioner acts for more than one accused, there is a diminishing fee as the number of clients increases. This is based on the (almost certainly correct) assumption that the work to prepare the cases for each subsequent client is less because the cases will be based on substantially the same material. However, this is a further example of where the current structure provides 'swings' but not 'roundabouts'.

In the whole of job fee structure, practitioners would receive the full complex or non-complex fee for each subsequent co-accused without diminishing returns. This would also remove any perceived incentives for distributing co-accused between different practitioners (other than in conflict situations), a practice that almost certainly adds delay to cases resolving.

Consolidated Pleas

A consolidated plea is where an accused is sentenced on more than one unrelated charge or sets of charges in the same hearing. It is a practice to be encouraged as it saves time from a systemic perspective and reduces an accused person's contact with the justice system. It also allows a Magistrate to sentence the accused with a complete picture of the offending behaviour.

Currently, consolidated pleas are valued by paying a higher fee. It is proposed to maintain an additional payment for consolidated pleas regardless of the fact that it does not fit with a pure whole of job fee approach.

Contested Hearings

Contested hearings are not included in the whole of job fee. The rationale for that approach is that contested hearings are comparatively unusual and require identifiable additional work. As a result, a separate fee is proposed.

Bail Applications

It is proposed that there is a separate whole of job fee for bail applications in the Magistrates and County Courts. This is discussed further below.

The Format

The proposed whole of job fee structure is contained in Appendix 8.

The Respective Roles of Barristers and Solicitors

The whole of job fee does not prevent barristers from being briefed in summary cases. The involvement of expert advocates in summary crime, particularly in complex cases, should be encouraged. Summary crime is also an important skills development area for members of the junior bar, who will later graduate to indictable crime.

The structure and culture of the legal profession means that barristers are almost always briefed by solicitors. That inevitably leads to debate about what, if any, controls on brief fees should be put in place, given that a barrister's brief fee is to be paid out of the whole of job fee.

The review recommends setting a minimum brief fee or fees that must be paid to a barrister briefed in a summary case. The following should influence the design of this fee:

- continuity of representation (whether by barrister or solicitor) should be encouraged as accused people benefit from having a practitioner involved in their case for longer than a single court appearance;
- if a case is to be briefed to a barrister, then that should happen as early as is reasonably possible;
- fee arrangements should reward and therefore encourage good preparation and client contact by both solicitors and barristers.

A number of comparable jurisdictions do not have a culture of briefing in summary crime cases. Instead, they work on the assumption that one practitioner will have carriage of a case from start to finish. Involvement by barristers in such arrangements is facilitated by a relaxation of ethical rules to allow direct briefing. By combination of section 3.2.3(1) of the Legal Profession Act 2004 and Rules 165, 169 and 170 of the Victorian Bar Practice Rules that position already appears to exist in Victoria, at least for VLA cases.

Feedback during the review indicates a level of disagreement between the arms of the profession about how and when to weight the contributions played by solicitors and barristers in summary crime cases. Given that this question turns on the professional relationship between barristers and solicitors, the review proposes to make it a specific focus of further joint consultation.

4.1.3 Cost analysis of proposal

Independent actuaries were engaged to cost the proposals put forward in the review. The actuaries were provided with the data gathered during the review and VLA data for previous years.

The actuarial analysis for the proposal for a whole of job fee was based on the assessments of reasonable average hours identified by practitioners in the survey phase:

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

The objective criteria for assessing whether a case is complex or non-complex (discussed above) are designed to ensure that no more than 25% of summary cases are categorised as complex and the cost analysis has proceeded on that assumption.

Based on the higher average hours identified by practitioners in the survey phase (6.5 hours non-complex and 13 hours complex), the whole of job fee proposal will result in a \$2.7 million increase in criminal law expenditure or 22% if calculated against expenditure solely for summary crime cases. This proposal has the largest financial impact of any of the proposals.

4.1.4 Potential savings

During the review, practitioners and other stakeholders were asked to identify where savings might be made through redesign of the fees structure to offset the costs of any new spending. Unsurprisingly, given the decrease in the real value of fees over time, very few savings were proposed. However, in summary crime, the following savings were identified.

a) Standardising the eligibility threshold for summary crime cases to the current threshold for guilty pleas (excluding traffic/driving cases)

Under current guidelines, there is a distinction between the eligibility criteria for pleas of guilty and pleas of not guilty. Legal aid is available for pleas of guilty, where the likely penalty is imprisonment, a suspended sentence or a CBO requiring more than 200 hours of community work. Legal aid is available for pleas of not guilty where the accused person has reasonable prospects of acquittal and where the likely penalty is a fine in excess of 7.5 penalty units (\$876.15).

This review has concluded that there is no reasonable basis for this distinction and recommends standardising the eligibility threshold to the current threshold for pleas of guilty. This excludes traffic/driving cases, where the eligibility threshold will remain at imprisonment or a suspended term of imprisonment.

It is important to identify the potential consequences to accused people and the wider criminal justice system of standardising the eligibility threshold for summary crime cases as described above. The actuarial assessment shows that 4% of people will no longer be eligible for legal aid for pleas of not guilty. This means that these accused people will either be unrepresented, need to rely on the duty lawyer or to find funds to pay a private practitioner.

Furthermore, lack of legal representation at contested hearings is generally considered to reduce the efficiency of the criminal justice process. It should also be noted that the duty lawyer service does not represent accused people in contested summary hearings.

The risk to an accused person appearing unrepresented at a contested hearing due to the standardisation of eligibility was not considered to be significant, as these people are facing a sentence outcome of a fine or lower. This review regarded this consequence as acceptable when balanced against the other areas of need identified in this review.

The review further concluded that these consequences to the criminal justice system do not outweigh the benefits of standardising the eligibility threshold, particularly given the low number of contested hearings when compared to the number of guilty plea hearings.

It should be noted that this proposal will not have any impact on accused people qualifying for legal aid due to special circumstances such as an intellectual or psychiatric disability.

The standardisation of the eligibility guideline will continue to mean that more people in Victoria will have access to legal aid services than any other State or Territory, with the exception of NSW (refer to Appendix 5).

The standardisation of the eligibility guideline for summary crime cases is likely to generate some savings. This potential area of saving was referred to the actuaries for a financial analysis. The actuaries advised that this proposal would realise a saving of approximately 1.4% of total criminal law expenditure. If we use VLA's current total criminal law expenditure, this equates to a cost saving of approximately \$475,000.

b) Standardising the eligibility threshold for summary crime cases to a likelihood of immediate imprisonment, intensive correction order or suspended sentence

As stated above, under the current eligibility guidelines, there is a distinction between the eligibility criteria for pleas of guilty and pleas of not guilty. Legal aid is available for pleas of guilty, where the likely penalty is imprisonment, a suspended sentence or a CBO requiring more than 200 hours of community work. Legal aid is available for pleas of not guilty where the accused person has reasonable prospects of acquittal and where the likely penalty is a fine in excess of 7.5 penalty units (\$876.15).

Standardising the eligibility criteria to a likelihood of immediate imprisonment, intensive correction order or suspended sentence would lead to various consequences to accused people and the wider criminal justice system which must be considered. It is estimated that between 15% – 30% of cases would no longer be eligible for legal aid.

However, this approach would generate considerable savings. This potential area of saving was referred to the actuaries for a financial analysis. The actuaries advised that this proposal would realise a saving of between 8.8% - 14.4% of total criminal law expenditure. This equates to a saving of between \$2.97 - \$4.87 million.

c) Not providing legal aid for traffic/driving offences

Under the current guidelines for traffic/driving offences, VLA will only provide assistance where a conviction is likely to result in imprisonment or a suspended sentence.

It is important to identify the potential consequences to accused people and the wider criminal justice system of removing legal aid funding for all traffic/driving offences. It is estimated that approximately 15% of cases would no longer be eligible for legal aid. This means that these accused people would be unrepresented, need to rely on the duty lawyer or to find funds to pay a private practitioner.

Removing legal aid funding for all traffic/driving offences is likely to generate considerable savings. This potential area of saving was referred to the actuaries for a financial analysis. The actuaries advised that this proposal would realise a saving of approximately 4.7% of total criminal law expenditure. This equates to a saving of approximately \$1.5 - \$1.7 million.

d) Amending the eligibility guideline relating to psychiatric/psychological/ neuropsychological assessments and reports for summary cases, by not providing assistance for such reports unless the accused person has a treating practitioner or where the accused may have the defence of mental impairment or where fitness to plead needs to be determined

This potential area of saving was referred to the actuaries for a financial analysis. They advised that it would result in a total cost saving of approximately 1.1% of total criminal law expenditure. This would amount to a saving of \$370,000.

As well as the savings, it is important to identify the potential consequences for the wider criminal justice system. This limited eligibility criteria would mean that a significantly smaller proportion of accused people would be eligible for funding for expert assessment and report. This in turn may result in some cost shifting to the State's Forensicare agency, as courts may refer more cases for assessment by Forensicare before making a sentencing decision.

This restriction on eligibility for expert reports may also make it more difficult for courts to choose therapeutic outcomes or less severe sentences (under cases such as R v Verdins).

Finally, VLA's own experience with its in-house client base is that many clients have undiagnosed mental health issues, particularly in relation to mild to moderate intellectual disability. The criminal justice system can provide one of the few opportunities for diagnosis and a restriction on reports as discussed above may limit the effectiveness of such opportunities.

By contrast, feedback from judicial officers received during the review indicated that at times expert reports were obtained as a matter of course without any real likelihood of a meaningful difference on sentencing. Frustration was expressed that in such cases, the time to obtain the report added significant delays to the process.

4.1.5 Options

To summarise the above:

- a) this review favours a whole of job fee structure modified and qualified in the ways discussed;
- b) on an assessment of reasonable hours on an underlying hourly rate of \$125 (GST inc), that model would add approximately \$2.7 million to the summary crime program;
- c) standardising the summary crime eligibility guidelines to the current threshold for guilty pleas would save approximately \$475,000;
- d) standardising the eligibility threshold for summary crime cases to likelihood of immediate imprisonment, intensive correction order or suspended sentence would save between \$2.97 - \$4.87 million;
- e) not providing legal aid for traffic/driving offences would save between \$1.5 - \$1.7 million;
- f) restricting the eligibility guideline for psychiatric, psychological and neuropsychological reports would save \$370,000 and carries with it access to justice implications;
- g) no other areas of saving were identified in the review.

The review considered whether to:

- a) **Make no change to the current fee structure**

If this option is adopted, it is likely that the problems identified with the current fee structure at 4.1.1 above and in the problem model at Appendix 1, will remain. Adopting this option will also mean that the anticipated efficiencies to the whole criminal justice system in the whole of job proposal, identified at 4.1.2 will not be realised.

- b) **Adopt the whole of job proposal with no additional investment**

The whole of job fee structure would be based on a calculation of the reasonable average hours for summary crime cases as stated by practitioners during the survey phase, see discussion at 4.1.2. The underlying hourly rate would be notionally adjusted to \$107 (GST inc) per hour to make this option cost-neutral.

This option would realise some of the benefits of the whole of job fee, particularly in providing incentives for early resolution. It would also provide practitioners with opportunities to take legitimate advantage of the increased flexibility in the system to re-organise their practice mix and processes.

However, this option would not address practitioner dissatisfaction and may lead to inadequate supervision of junior lawyers. This would create problems and lead to the inefficiencies in the criminal justice system identified at Appendix 2.

- c) **Adopt the whole of job proposal based on a calculation of reasonable and appropriate time allowances for practitioners**

The whole of job fee structure will be based on a calculation of the reasonable average hours for summary crime cases as stated by practitioners during the survey phase, see discussion at 4.1.2. The underlying hourly rate would be adjusted to \$125 (GST inc) per hour which is 80% of the current Magistrates' Court civil scale.

d) Adopt the whole of job proposal now by phasing in the increase in fees, as follows:

- Year 1** Adopt an hourly rate of \$116 per hour, while moving to a whole of job model based on average reasonable hours of 6.5 hours for non-complex cases and 13 hours for complex cases. This model would increase expenditure by 4.4% or \$1.5 million
- Year 2** The underlying hourly rate be increased from \$116 to \$121 (GST inc). This would increase expenditure by 6.2% or \$2.1 million.
- Year 3** The underlying hourly rate be increased from \$121 to \$125 (GST inc). This model would increase expenditure by 8% or \$2.7 million in the third year.
- Year 4** and into the forward estimates, index the hourly rate.

The table below demonstrates how this might work:

	Year 1		Year 2		Year 3		Year 4	
	Non Complex	Complex	Non Complex	Complex	Non Complex	Complex	Non Complex	Complex
Hours (including prison time)	6.5	13	6.5	13	6.5	13	Indexation of fees @ 2%	
Total \$ (GST inclusive)	\$754	\$1,508	\$786.50	\$1,573	\$812.50	\$1,625		
Hourly Rate (GST inclusive)	\$116		\$121		\$125			
% Increase in summary crime (without savings)	12%		17%		22%			
% Increase in summary crime (with savings)	8%		13%		18%			
Cost (GST exclusive)	\$1.5 million		\$2.1 million		\$2.7 million		\$750,000	

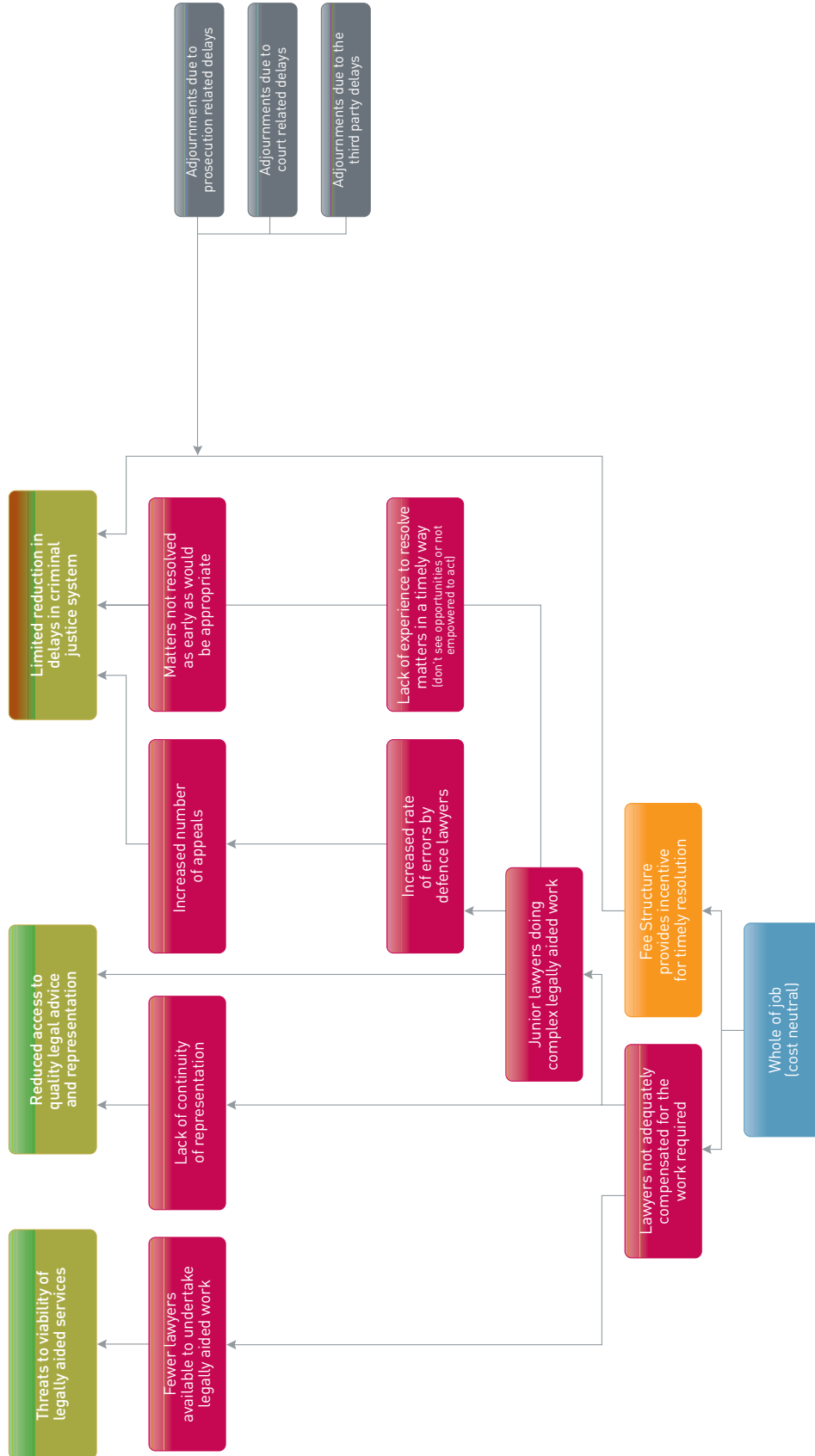
4.1.6 Preferred Option

This review recommends that a whole of job fee structure be introduced as outlined. This would be partially funded by savings by standardising eligibility criteria for legal aid in not guilty pleas to the current level for guilty pleas (4.1.4(a)).

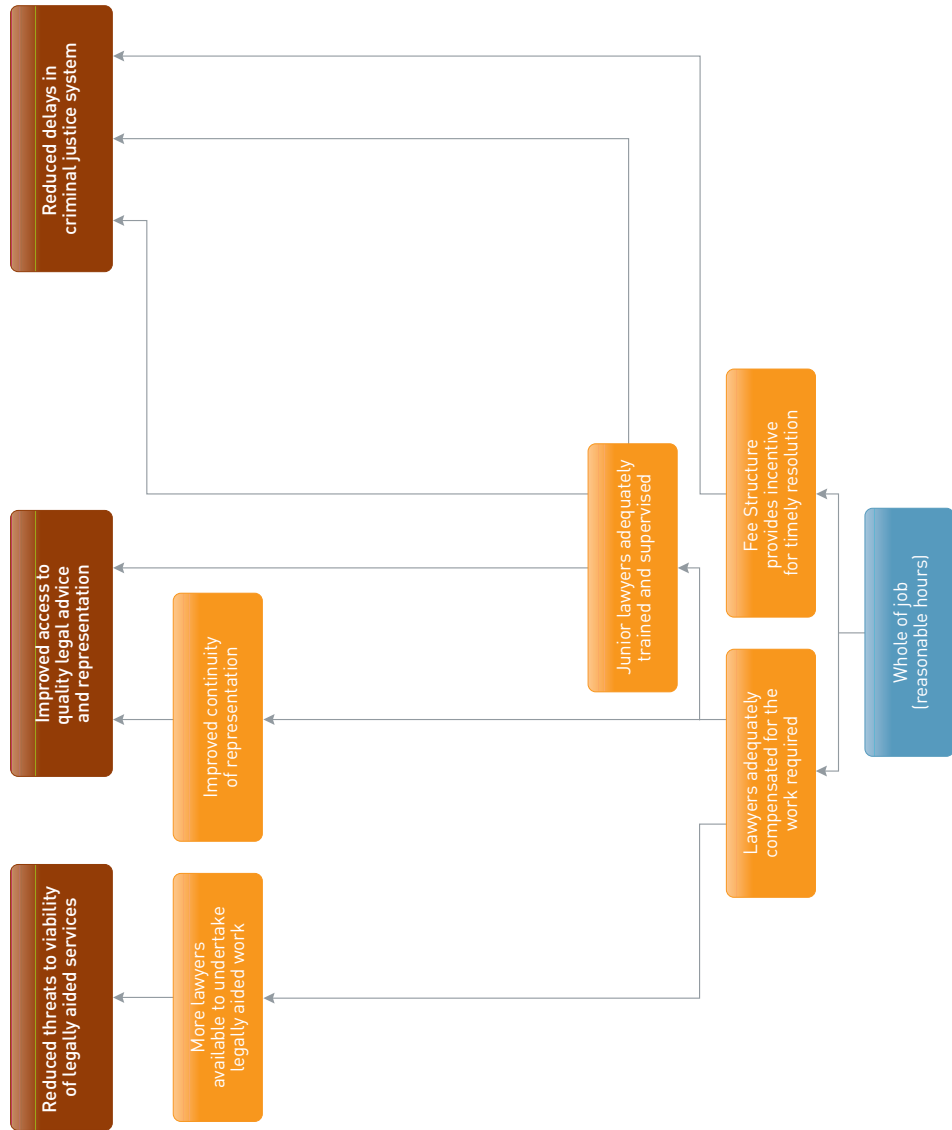
The review does not recommend any further restriction on the eligibility criteria for summary crime cases as discussed in 4.1.4 b), c) and d). Significantly reducing the eligibility criteria for summary crime cases would have significant consequences to accused people, the criminal justice system and to the duty lawyer service.

Implementation of a whole of job fee structure based on reasonable time allowances will promote efficiency and need not compromise 'professionalism' on the quality of representation provided. It should benefit clients by reducing the time they are in contact with the criminal justice system, as identified in the solution model at Appendix 3.

Solution model - Whole of job (no additional investments)



Solution model - Whole of job (reasonable hours)



4.2 Indictable Crime

VLA's indictable crime program funds cases in four courts:

- a) committal proceedings in the Magistrate's Court;
- b) pre-trial and trial proceedings in the County Court;
- c) pre-trial and trial proceedings in the Supreme Court;
- d) serious crime cases in the Children's Court.

Unlike any other area of the criminal law program, VLA can be ordered to fund indictable cases under section 143 of the Confiscation Act 1997 or under section 197 of the Criminal Procedure Act 2009 (formerly section 360A of the Crimes Act 1958). Those orders can be made even if an accused person does not qualify for legal aid under VLA's guidelines, including the means test. The practical effect is that VLA's ability to control funding for indictable crime cases is extremely limited.

Indictable crime is where the stakes are highest for the system, the community and the accused. As most indictable crime cases are, if contested, heard before a jury, they are very resource intensive for all parts of the system. There are currently, as in many other states, significant pressures on the indictable crime system manifesting in significant delays and the average duration or court time of indictable cases appears to be increasing. The Commonwealth and a number of other jurisdictions maintain arrangements to supplement Legal Aid Commissions (LACs) budgets for criminal cases deemed 'expensive.' The threshold for 'expensive case' supplementation is provided to ensure long, complex and therefore 'expensive criminal cases' do not interfere with LACs ability to fund other Commonwealth cases and services.

This review was conducted on the basis that any changes to the indictable crime fee structure should incentivise good practice and early resolution where appropriate by 'front ending' fees from the trial stage.

By comparison with other States and Territories, the minimum GST exclusive fee currently payable in an indictable cases in Victoria compares favourably as is demonstrated in the below table and also at Appendix 7.

	QLD	NSW	TAS	WA	SA	ACT	NT	VIC (current fee structure)
County Court Plea (minimum fee)	\$1,834	\$1,050	\$613	\$900	\$834	\$1,900	\$1,000	\$2,247
County Court Trial one day (minimum fee)	\$3,442	\$2,490	\$1,390	\$2,520	\$2,626	\$3,380	\$2,000	\$4,865

All fees are GST Exclusive

An important feature of indictable crime practice is that it operates firmly in accordance with the traditional split between solicitors and barristers. Generally speaking, solicitors do the preparatory work, and barristers appear as advocates. This differs from summary crime where much (but by no means all) advocacy is done by solicitors.

As a result, a major issue in the design of the indictable crime fee structure is how and when to weight the contributions played by solicitors and barristers respectively. During consultation, there was an unsurprising lack of consensus between the arms of the profession on this issue.

4.2.1 Current fee structure and its problems

Magistrates Court Stage

Most indictable cases start in the Magistrates Court where they go through a committal process to determine if there is sufficient evidence for an accused person to stand trial for the offences they have been charged with. If there is enough evidence, the person is committed to the County or Supreme Court for trial. Often, the accused will foreshadow a guilty plea and be committed to the County or Supreme Court to be sentenced. The committal process has a number of distinct hearings within it and culminates in either a 'hand-up' committal (where no evidence is heard) or a contested committal (where witnesses are cross-examined in the Magistrates' Court).

Responding to this court process, the current fee structure provides:

- a) a fee for general solicitor's preparation;
- b) a fee for committal mention and negotiations. This fee includes preparation of the Form 32 (a case management document completed jointly by the prosecution and defence); and plea negotiations. This fee is intended to encourage plea negotiations at an early stage and early resolution in appropriate cases;
- c) a fee for each substantive hearing such as committal mention and contested committal. This fee is usually paid to counsel briefed to appear at the hearing.

The current fee structure does not make any allowances for attendance at a filing hearing which is the first hearing in a committal proceeding. The current fee structure also does not allow for additional solicitor preparation for complex or voluminous cases. However additional 'reading fees' for counsel may be approved for voluminous cases.

Data from the OPP and the County Court indicates that a high proportion of guilty pleas are first indicated before an accused person is committed for trial. The OPP data indicates that, in the first quarter of the 2009 - 2010 financial year, 65.2% of cases resolved prior to the contested committal⁸. This tends to indicate that VLA's current fees are not acting as a disincentive to resolution at this stage.

County and Supreme Court Stage

In both of these courts there are three distinct stages; pre-trial, trial and plea. At the pre-trial stage there will ordinarily be a number of hearings (mentions, directions hearings and case conferences). The trial will take place as a discrete event over a number of days or weeks and the sentencing stage usually involves a plea on one day with sentence formally being passed on a later date.

The current fee structure provides for:

- a) a general fee for solicitor's preparation;
- b) a separate fee for preparation of necessary responses (part of the pre-trial process where the defence is required to indicate how it responds to aspects of the prosecution case);
- c) a fee for all discrete hearings, including mentions, directions hearings, case conferences, trial days, plea and sentence. This fee includes a preparation and appearance component and the whole fee is usually passed to the barrister briefed for the appearance;
- d) an instructing fee for solicitors which allows the solicitor to attend the trial and instruct the barrister;
- e) for circuit court cases, there are extra 'circuit fees' for barristers and 'out of office' fees for solicitors, including an overnight fee.

The above fee structure is designed around court events and, as a result, arguably does not value or encourage out of court pre-trial resolution of cases. This observation is important because one of the factors most often identified as contributing to trial delays are cases resolving at or very shortly before trial. This results in courts intentionally over-listing trials and the lack of certainty of trial dates makes it hard to maintain continuity of representation.

Data from the County Court and the OPP shows that a number of cases listed for trial resolve as a guilty plea on the first day of trial. County Court statistics show that, from July 2008 - July 2009, between 10% to 24% of cases each month resolved as a plea of guilty on the first day of trial⁹. A further 1% to 3% of cases each month resolved during the trial¹⁰.

⁸ Office of Public Prosecutions, OPP Guilty Plea Resolution Data (including matters resolved summarily)

⁹ County Court of Victoria Criminal Jurisdiction, Crime & Plea Monthly Report July 2009

¹⁰ Ibid

If the fee structure can be used to create incentives for early appropriate resolution of cases, then it should be structured with that goal in mind. However, as the above discussion demonstrates, the problems with delays in indictable trials are multi-factorial and cross-agency. It follows that the solutions must be collaborative and aligned between courts and other agencies to identify an agreed point or points in the system, where resources can be directed to attempt to promote early resolution of cases where appropriate.

Children's Court Cases

Where children are granted legal aid for indictable charges proceeding through the Children's Court (charges where if the accused was an adult the case would be heard in the County or Supreme court), the current fee structure provides:

- a) a general fee for solicitor's preparation;
- b) a fee for each substantive hearing such as contest mentions and the final contested hearing. This fee includes a preparation and appearance component and the whole fee is passed to the barrister briefed for the appearance.

The current fee structure does not make any allowance for complexity, volume of material, or seriousness of the charges the child is facing.

A strong and consistent message throughout the consultation process was that fees for Children's Court indictable crime contested hearings, do not adequately compensate practitioners for the time required in the conduct of these serious indictable cases. There is a strong case for these concerns given that fees for a serious charge in the County Court are substantially higher than for the same charge in the Children's Court.

The consequences of this are identified as being a comparative juniorisation of the cohort of barristers available for such cases which in turn leads to systemic problems as identified in the problem model at Appendix 1.

4.2.2 Considered Proposals

A number of proposals for redesign of the fee structure in indictable crime were raised in consultation and each has been considered and costed in this review. As with proposals for the summary crime fee structure, almost all of the proposals for an indictable crime fee structure would add cost and very few potential savings were identified.

The benefits of these proposals for the criminal justice system is difficult to predict, as they are highly dependant upon behavioural changes of the various players in the system, including practitioners, prosecuting agencies, the courts and accused people.

As stated above, this review was conducted on the basis that any changes to the indictable crime fee structure should incentivise good practice and early resolution where appropriate by front ending fees from the trial stage.. Although front ending of fees may promote efficiencies it is likely that any reduction in preparation and appearance fees at the trial stage will lead to a reduction in the quality of representation for trials.

The proposals considered throughout this review are as follows:

- a) *Change the brief fee calculation for committals to provide for:*
 - additional time allowances for preparation and appearance at committal;
 - a fee for post committal negotiations;
 - attendance at the first case conference in the County Court / first directions hearing in the Supreme Court.

Rationale:

- this proposal is based on support for the idea of ‘front-ending’ fees to promote early preparation and early resolution of cases;
- implicit in the proposal is the idea that fees will be moved from the ‘back end’ (i.e. trial) to the ‘front end’ (i.e. committal or pre-trial). By doing so, it is suggested that there will be incentives for early preparation and hence timely resolution of cases. Methods of ‘front- ending’ such as this, encourage timely resolution by encouraging the prosecution and defence to communicate earlier in the process. It is important to note that this review recognises that reducing trial fees will create additional undesirable consequences;
- the most common reason that criminal trials do not proceed on the listed date is late guilty pleas ¹². At times this has been attributed to legal aid fee structures on the basis that fees encourage legal representatives to take a case to trial, rather than seek earlier resolution ¹³. By providing a fee structure which explicitly incentivises early preparation and negotiations between the parties, there should be a reduced number of late guilty pleas and earlier resolution of cases;
- this proposal identifies the period shortly before, during and after committal for trial, as the best point in the process to target early resolution. At this stage in a case, both parties should have representatives who are familiar with the evidence and are therefore able to engage in meaningful negotiations. This point has been identified in consultation with the County Court, the Magistrates’ Court and the Director of Public Prosecutions (“DPP”) and practitioners;
- an increase in the brief fee for a contested committal is designed to encourage more senior barristers to accept such briefs. This should improve prospects of resolution, and improve the chances of the same barrister conducting both the contested committal and the trial;
- the fee for post committal negotiations is designed to encourage out of court negotiations continuing post-committal so that case knowledge is not lost;
- the brief fee for a contested committal also includes the first hearing in the trial court following the contested committal, as part of the package of fees for the committal. This would help to ensure that the same barrister appears on that occasion and the prospects of resolution would therefore be increased ¹⁴.

Cost analysis of proposal:

The actuarial analysis for this proposal was based on the following criteria and assumptions:

- a) an increase in the committal brief fee by one third;
- b) post committal negotiation and case conference fee to be equivalent to double the current fees (County Court \$354 Supreme Court \$502) to be reallocated from the trial stage;
- c) 75% of trials will incur a post committal negotiation and case conference fee;
- d) 50% of cases where funding is provided for post committal negotiations and case conference will resolve to a plea of guilty.

The actuarial analysis shows that the cost of increasing the committal brief fee will result in an increase in total criminal law expenditure of approximately 0.8%. This equates to a cost increase of \$270,000. The actuarial analysis shows that the cost of introducing a post committal negotiation and case conference fee will result in a further 0.7% increase in expenditure which equates to a cost increase of \$237,000.

¹¹ Boston Consulting Group, Criminal Justice System Procedures Review Report, August 2006

¹² Payne, J, Criminal Trial Delays in Australia: Trial Listing Outcomes, 2007 at page 24

¹³ Ibid at page 26

¹⁴ This could only work if the court was prepared to list such hearings at times that made it practically possible for barristers to appear, e.g. 14 days following committal at 9.30am

Potential risks:

- the behavioural changes are difficult to predict. There is a risk that the hypotheses outlined above may not prove to be true;
- where a case is reallocated due to a schedule conflict, additional preparation fees must be paid. Late changes in representation increase criminal justice system costs and may add to the duration of trials. The provision of trial date certainty, if achievable, would mitigate this risk;
- increasing fees at the committal stage will mean that the average case cost for those cases that proceed to a plea of guilty in the County or Supreme Court without a contested committal, will increase.

Discussion

This set of proposals provides a significant opportunity to make systemic changes that could have a meaningful impact on a number of key issues. This could only be achieved in collaboration with the courts and the OPP. These systemic changes are identified in the solution model at Appendix 4.

b) Introduce a fee for sentence indication hearings

Rationale:

- sentence indications were introduced in July 2008. The Sentencing Advisory Council's 2010 report titled "Sentence Indication – A Report on the Pilot Scheme" on the use of sentence indication hearings during the pilot, shows that sentence indication hearings were rarely utilised during the pilot¹⁵. The report also shows that 85.2% of cases which proceed to a sentence indication hearing resolve into pleas of guilty;¹⁶
- it is expected that introducing a fee for sentence indication hearings will provide an incentive for practitioners to attempt to resolve cases prior to the trial date. This in turn aims to improve inefficiencies in the criminal justice system particularly through delay reduction.

Cost analysis of proposal:

The actuarial analysis for this proposal was based on the following criteria and assumptions:

- a) 10% of cases listed for trial will proceed to a sentence indication hearing;
- b) the sentence indication fees for each court will be equivalent to the current trial sentence fees for the County Court and Supreme Court i.e. County Court \$248 Supreme Court \$338.

The actuarial analysis shows that the cost of funding sentence indication hearings will result in an increase in total criminal law expenditure of approximately 0.1% or \$34,000.

Potential risks:

- if the proportion of cases proceeding to sentence indication hearing do not resolve as expected (i.e. 85.2% from the Sentencing Advisory Council's report), a fee for this hearing is simply an additional cost to VLA with no benefit gained by either the accused person, VLA, or the criminal justice system.

¹⁵ Sentencing Advisory Council, 2010 "Sentence Indication – A Report on the Pilot Scheme" at p15

¹⁶ Ibid at p 23

Discussion

The success of sentence indication hearings is demonstrated by the Sentencing Advisory Council's report. Given that a significant percentage of cases in the County Court result in a sentence other than immediate imprisonment, it seems inarguable that sentencing indications are underused.

c) Provide a fee for attendance at filing hearing

Rationale:

- this proposal has been included as it was an issue that was frequently raised by practitioners throughout the review;
- practitioners currently appear at filing hearings without payment and it has been suggested that this is a source of unfairness;
- however, there is a current incentive for private practitioners to attend filing hearings, as doing so will mean that they are most likely to be allocated the case by VLA. It is essentially a way of generating a client base;
- the only substantive issue that usually arises at a filing hearing is a bail application. Bail applications are separately funded. This ameliorates some of the concerns related to unfairness;
- VLAs duty lawyer service currently provides assistance to persons attending court for a filing hearing. It is therefore not the case that people attending at filing hearings would otherwise be required to represent themselves.

Cost analysis of proposal:

The actuarial analysis shows that the cost of funding filing hearings at the current mention fee rate will result in an increase in total criminal law expenditure of approximately 0.7% or \$237,000.

Discussion

With limited resources there is a need to focus this review on initiatives that offer major systemic benefits. This proposal is not supported on that basis.

d) Provide a reading fee for solicitors for voluminous cases

Rationale:

- this was an issue that was raised throughout the review;
- in order for solicitors to adequately advise their clients and resolve cases in a timely manner, they must read the entire prosecution brief;
- knowledge of the detail of a brief will improve the prospects of solicitor led resolution at an early stage in the proceedings, carrying systemic benefits.

Cost analysis of proposal:

The actuarial analysis for this proposal was based on the assumption that between 10-40% of indictable cases will reach the volume threshold.

The actuarial analysis shows possible changes in total criminal law expenditure by VLA ranging from an increase in total criminal law expenditure of 0.1% per annum (10% of cases- additional 2 hours) to an increase of 2.5% per annum (40% of cases- additional 10 hours).

Discussion

The cost of providing additional reading fees varies greatly according to the assumptions of frequency and the caps that might be imposed. For example, an additional two hours for 10% of cases would cost \$34,000, whereas an additional 10 hours on 40% of cases would cost \$845,000. The review recommends a total additional investment of \$335,000 for reading fees for solicitors, and that any new arrangements contain a maximum additional reading fee in order to control costs.

There is no doubt that improvements in technology have resulted in briefs of evidence becoming more complex and voluminous. The review recognises that this trend is likely to continue, and this in turn will add to the cost of providing legal aid for such cases. For this reason, the review recommends a formula be developed for additional reading fees for both barristers and solicitors, in order to control costs whilst ensuring that accused people are not disadvantaged.

e) Introduce a fee for instructing at plea hearings in the County and Supreme Courts

Rationale:

- this was an issue that was raised throughout the review;
- barristers briefed for plea hearings often have not had a great deal of contact with the client. Solicitors often attend plea hearings without payment in order to support the client and their family and to provide barristers with assistance during the course of the plea, including organising witnesses.

Cost analysis of proposal:

The actuarial analysis for this proposal was based on the assumption that an instructing fee will be equivalent to the current half-day instructing fee for trials.

The actuarial analysis shows that the cost of funding a half-day instructing fee for plea hearings will result in an increase in total criminal law expenditure of approximately 0.7%. This equates to a cost increase of \$237,000.

Discussion

With limited resources, there is a need to focus this review on initiatives with major systemic benefits. This proposal does not demonstrate sufficient systemic benefits and is not supported on that basis.

f) Change the fee calculation for Children's Court indictable cases to reflect adequate time allowances for preparation and appearances for these cases

Rationale:

- the current fees do not provide incentives for experienced practitioners to represent children facing serious charges such as rape, in the Children's Court. It is therefore argued that this creates inefficiencies in the criminal justice system such as those outlined in the problem model at Appendix 1;
- it is argued that children facing serious charges are receiving reduced access to quality legal advice and representation when compared to adults facing the same charges, due to less experienced barristers prepared to undertake briefs in these cases.

Cost analysis of proposal:

The actuarial analysis for this proposal was based on the following criteria and assumptions:

- a) VLA funds approximately 50 Children's Court indictable cases each year;
- b) the current daily fee of \$420 would be doubled to \$840;

The actuarial analysis shows that the cost of this proposal is negligible i.e. less than 0.1% of total criminal law expenditure.

Potential risks:

- VLA currently funds so few Children's Court indictable cases each year, that the potential risks are minimal and do not weigh against the benefits to be gained.

Discussion

Although this proposal is not likely to lead to downstream savings, it is arguably necessary to remedy an inequity between adult and child criminal cases. That inequity results in less experienced practitioners taking on serious cases in the Children's Court. Given the low cost of the proposal, it is supported by the review on that basis.

4.2.3 Potential savings

During the course of the review, consideration was given to potential areas of saving which could be allocated to proposals that require extra resources to be effective. As discussed earlier, VLA's ability to create savings in indictable crime is limited because it can be (and often is) ordered to fund criminal proceedings pursuant to section 143 of the Confiscation Act 1997 and section 197 of the Criminal Procedure Act 2009, irrespective of an accused person's eligibility under VLA's guidelines (including the means test).

The only area of potential saving identified in the review is to limit instructing in trials. The proposal is to allow one full day instructing and limit instructing for any subsequent day of trial to half a day. The instructing can be used in any way during the course of the trial e.g. for a five day trial, the maximum instructing that could be claimed is 3 days (1 day + 4 x ½ days).

This potential area of saving was referred to the actuaries for a cost analysis. Based on the assumption that of the total number of trial days, solicitors currently instruct for two thirds of those days, this initiative would equate to a total cost saving of approximately 1.8% of total criminal law expenditure. This equates to a saving of \$608,000.

Discussion

Feedback on this proposal revealed that instructing in trials is often delegated to junior solicitors and the role of the instructor is often primarily for the taking of notes. Given that a trial transcript is provided daily, this role is difficult to justify on that basis, and the proposal to realise savings in this area without removing instructing completely, has merit.

4.2.4 Options

There are two options identified in the review which result from the proposals in indictable crime discussed above.

a) Adopt all the proposals

The actuarial analysis shows that the cost of adopting this option without adopting the option relating to savings from instructing in trials would result in an increase in total criminal law expenditure of between 3.1% and 5.5%. This equates to an increase in criminal law expenditure between \$1.04 - \$1.86 million.

Adopting this option as well as adopting the option relating to savings from instructing in trials would result in an increase in total criminal law expenditure of between 1.3% and 3.7%. This equates to an increase in criminal law expenditure between \$439,000 - \$1.25 million.

b) Adopt those proposals that offer the greatest benefits

A number of proposals have such clear merit that they should be introduced:

- a) change the fee structure for committals to provide for:
 - i. additional time allowances for preparation and appearance at committal;
 - ii. a fee for post committal negotiations;
 - iii. the contested committal brief to include appearance at the first hearing of the case in the County or Supreme Court.

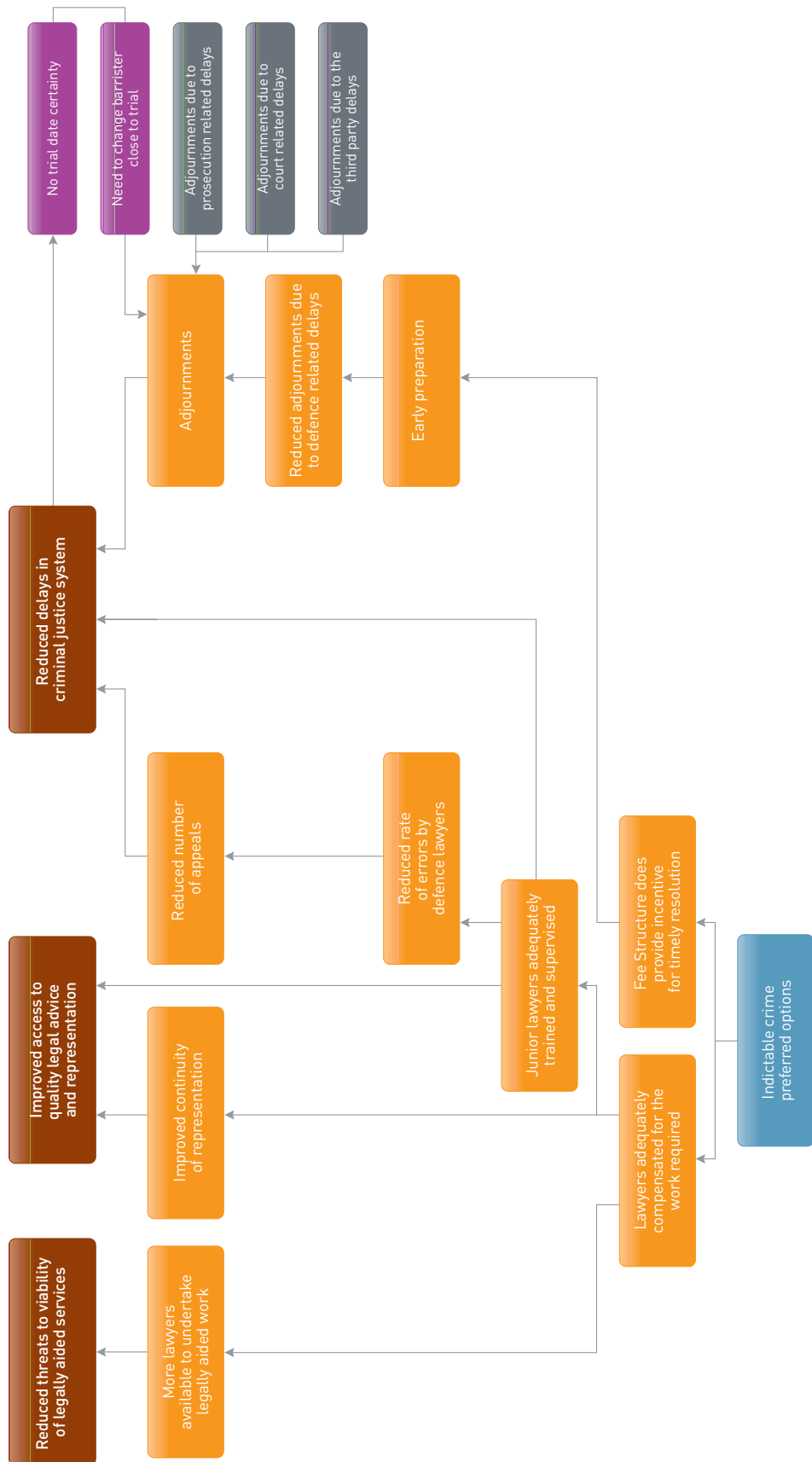
N.B. This suite of proposals can only be implemented following negotiation and agreement with the OPP and the County and Supreme Courts to ensure that processes are aligned.

- b) introduce a specific fee for sentence indication hearings;
- c) increase the fee for preparation and appearance for indictable cases in the Children's Court;
- d) introduce a 'reading fee' for solicitors for voluminous cases equivalent to \$335,000.
- e) limit instructing for trials by allowing one full day instructing and limit instructing for any subsequent day of trial to half a day.

Based on the actuarial analysis above, savings from the proposed change to instructing fees of \$608,000 is not sufficient to meet the cost of this option which is estimated at \$876,000. Although the concept of front-ending of fees from the trial stage as discussed above would allow this option to be implemented on a cost-neutral basis, this review cannot support the reduction of fees at the trial stage to fund additional fees earlier in the process. On balance, the consequences which are likely to follow such a move, would create undesirable consequences for accused people and the criminal justice system.

The benefits to the system of implementing this option is outlined in the solution model at Appendix 4. A draft of the indictable crime fee structure as proposed above is at Appendix 9.

Solution model - Indictable crime options (preferred options)



4.3 Bail

4.3.1 Current fee structure

Where a grant of legal aid is provided for a bail application in the Magistrates' Court, Children's Court, County Court or Supreme Court, the current fee structure provides a fee for solicitor's preparation, and an appearance fee. The current fee structure does not make any allowances for counsel to have a conference with the client.

Although different fees apply in different courts, no allowance is made in the fee structure for seriousness or complexity of the bail application. Most bail applications relating to both summary offences and indictable offences are heard in the Magistrates' Court. What this means in practical effect, is that a practitioner representing an accused person facing serious charges such as major fraud, is entitled to the same fee as a practitioner representing an accused person facing less serious charges such as drug possession.

It is argued that the current fee structure does not adequately reflect reasonable and appropriate time allowances for practitioners representing accused people for bail applications, particularly in the Magistrates' Court. This is the main concern with the fee structure for bail applications that was identified during the course of this review.

4.3.2 Considered Proposal

In considering the objectives of this review together with the data obtained throughout the review, it was considered that the proposal in relation to bail should predominantly focus on Magistrates' Court bail. There is no proposal to change the fee structure in relation to Supreme Court bail.

The proposal is to create a whole of job fee structure, similar to that recommended in 4.1.2 for summary crime cases. The proposal is that there is a whole of job fee for non-complex and complex bail applications in the Magistrates' Court and one whole of job fee for bail applications in the County Court.

It is proposed that the definition of what constitutes a complex case is clear enough to remove any ambiguity in order to prevent potentially inefficient administrative costs for solicitors and VLA. It is proposed that the definition of what constitutes a complex case be purely objective. This approach will result in genuinely complex cases at times being categorised as non-complex and vice versa. However, on balance, the negatives of having a subjective assessment outweigh the negatives of a purely objective set of criteria.

The proposed criteria are designed to capture approximately 10% of bail applications as complex. It is proposed that cases will be classified as complex where:

- a) the accused person is on remand for an indictable offence proceeding through the committal stream;
- b) the threshold for bail is that the accused must demonstrate "exceptional circumstances".

The whole of job fee will be calculated according to the average hours of necessary work involved in bail applications. Practitioners have stated that on average a bail application requires between 4-6 hours of work including preparation and appearance. This review has not obtained any data in relation to the distinction between the reasonable average hours for complex bail applications and non-complex bail applications. This review has proceeded on the assumption that the reasonable average hours for a non-complex bail application is 4 hours, and the reasonable average hours for a complex bail application is 6 hours.

Rationale for a whole of job fee:

- practitioners are keen to retain a simple fee structure model with adequate provision for complex cases;
- this proposal was raised during the consultation process and was received with optimism;
- should result in more experienced practitioners appearing at bail hearings, in turn improving the prospects of bail being granted in appropriate cases. If these consequences prove to be true, this will have cross-agency benefits flowing through to correctional services.

Cost analysis of proposal:

The cost analysis for this proposal was based on the following criteria and assumptions:

- a) on average, the reasonable hours for a non-complex bail application is 4 hours, and for a complex bail application is 6 hours;
- b) hourly rates based on 80% of the Magistrates Court Civil Scale (\$125 (GST inc) per hour).

Adopting this proposal will result in an increase in total criminal law expenditure of approximately 0.6%. If we use VLA's current total criminal law expenditure, this equates to a cost increase of \$203,000.

Potential risks:

There are no identifiable risks associated with this proposal.

4.3.3 Options

This review has identified two possible options in relation to the bail fee structure.

- a) Create a new fee structure based on the whole of job proposal which is cost-neutral*

This option may result in less experienced practitioners undertaking complex bail applications. This option may therefore result in more accused people being held on remand due to reduced access to quality legal representation and in turn will add costs to correctional services.

- b) Adopt the whole of job proposal for complex and non-complex bail applications in the Magistrates' Court and one whole of job fee in the County Court which is based on a calculation of reasonable and appropriate time allowances for practitioners*

This is the recommended option. Upon consideration of the importance associated with protecting the liberty of accused people held on remand, the review recommends that VLA fund this option in the absence of any identifiable savings. Adopting this option will ensure that more accused people held on remand will have more experienced practitioners appear on their behalf at a bail application. Improvement in the quality of representation for bail applications, in turn, is likely to result in more accused people being granted bail. If these consequences prove to be true, this will have cross-agency benefits flowing through to correctional services.

4.4 Appeals

4.4.1 Current fee structure

Eligibility for legal aid for appeals is primarily based on applying a merit test.

During consultation, no stakeholders identified VLA's appeals fee structure as contributing to delays or failing to incentivise good practice. Only two proposals for change were identified, which are discussed below. A wholesale review of the approach to appeals funding was not warranted on the evidence available.

Appeals to the County Court

When summary cases are heard in the Magistrate's Court and the Children's Court, the right of appeal (other than on pure questions of law) is to the County Court. Unlike other appeals, these hearings are heard *de novo*, which means that the plea or verdict in the Magistrates' Court and the Children's Court is set aside and (at least in theory) the evidence is reheard. However, in practice, appeals against sentence usually proceed on an agreed summary of facts, and it is only appeals against conviction that require a full rehearing of the evidence.

The current fee structure provides a fee for solicitor's preparation, and an appearance fee. It does not distinguish between appeals against sentence and appeals against conviction. The fee structure also does not make explicit allowance for the barrister to have a conference with the client.

Appeals to the Court of Appeal

The right of appeal from the County Court or Supreme Court is to the Court of Appeal. There are four main categories of these appeals:

- a) appeals against sentence by a convicted person;
- b) appeals against sentence by the DPP;
- c) appeals against conviction by a convicted person ;
- d) interlocutory appeals by either an accused person or the DPP.

The current fee structure provides a different fee for each of these appeal types which includes a fee for solicitor's preparation, a fee for the preparing grounds of appeal and outline of submissions, as well as an appearance fee for the appeal and judgment. The fee structure does not make an explicit allowance for the barrister to have a conference with the client.

The current structure does not provide a fee for applications for leave to appeal against sentence. These are short hearings before a single judge and are held for most appeals against sentence. VLA uses leave to appeal as a proxy for a merits assessment, in that legal aid is only granted once leave to appeal is granted by the Court.

Although they are not funded, leave to appeal hearings are an important part in the appeal process and therefore in access to justice for convicted people. Accordingly, VLA provides the services of a specialist senior public defender to appear in leave applications without fee. If leave is granted then the grant of legal aid for the appeal hearing is allocated to the practitioner who originally acted for the person in the County or Supreme Court. Some practitioners also appear in these cases on a pro bono basis. It is therefore not the case that people who wish to appeal against their sentence are required to appear unrepresented at a leave to appeal hearing.

4.4.2 Considered Proposals

Two proposals for a fee structure for appeals were considered by the review.

Appeals to the County Court

Create a whole of job fee for appeals against sentence in the County Court

The proposal is to have one whole of job fee for all appeals against sentence in the County Court. It is not proposed to have a whole of job fee for appeals against conviction as it is recognised that appeals against conviction are generally more complex than appeals against sentence.

The whole of job fee will be calculated according to the average hours of necessary work involved in summary crime cases. This calculation will be derived from the data obtained from practitioners during the course of the review.

Rationale for a whole of job fee:

- practitioners favour a simple fee structure model with adequate provision for complex cases;
- an appeal against sentence is a hearing de novo, and is not dissimilar to a plea hearing in the Magistrates' Court albeit in a superior court;
- the low number of sentence appeals makes drawing a distinction between complex and non-complex cases for fee purposes unworkable in terms of administrative costs.

Cost analysis of proposal:

The actuarial analysis for this proposal was based on the following criteria and assumptions:

- a) the level of work for a complex appeal and a non-complex appeal is similar to the level of work for complex and non-complex summary cases in the Magistrates' Court;
- b) accordingly, a single whole of job fee is appropriate balancing practitioners' assessments of hours required for complex and non-complex summary cases.

The cost of introducing a whole of job fee for appeals against sentence based on 9 hours of work would be minimal at \$76,000.

Potential risks:

There are no identifiable risks associated with this proposal.

Option:

This review recommends adopting the proposal outlined in a above. There is no identifiable unfairness or major financial risk to VLA in adopting this proposal.

Appeals to the Court of Appeal

Introduce a limited guideline and associated fee for leave to appeal hearings in the Court of Appeal

Rationale:

- the only rationale for providing funding for applications for leave to appeal is to pay practitioners for a court attendance which some currently do on a pro bono basis.

Cost analysis of proposal:

The actuarial analysis for this proposal was based on the following criteria and assumptions:

- a) between 5-20% of cases would be eligible for legal aid under the limited guideline;
- b) the applicable fee would be similar to the current fee for an appearance for sentence in the Supreme Court.

The actuarial analysis shows that the cost of introducing a limited guideline and associated fee for applications for leave to appeal will result in a minimal increase in total criminal law expenditure.

Potential Risks:

- the behavioural change of this proposal is difficult to predict. The limited guideline may result in more appeals against sentence being filed with the Court of Appeal as there is no risk to a convicted person to proceed to a leave to appeal hearing. Therefore there is a risk that the assumption that between 5-20% of cases would qualify for legal aid is an underestimate. If this is so, this could potentially result in an unexpected additional cost to VLA's total criminal law expenditure, with little benefit gained to the applicant/convicted person;
- if more appeals against sentence are filed with the Court of Appeal, this proposal may lead to increased delays in appeals being heard in the court.

Discussion and Options

a) Adopt a limited eligibility guideline for applications for leave to appeal against sentence

This option would add some costs to VLA's total expenditure, albeit a minimal cost, without any apparent savings. There is also no identifiable systemic benefit flowing from this proposal which would justify attempting to identify additional savings to fund it.

b) Retain the current fee structure without introducing a limited guideline for leave to appeal hearings

The majority of leave to appeal hearings are currently undertaken by a specialist public defender. Some practitioners also appear in these cases on a pro bono basis. If leave to appeal is granted, the practitioner who represented the applicant/convicted person for the substantive hearing in the County or Supreme Court will in most cases receive the grant of legal aid for the appeal hearing. It is therefore not the case that people who wish to appeal against their sentence are required to appear unrepresented at a leave to appeal hearing. It is also not the case that this option results in practitioners losing work to VLA's in-house practice.

On balance, the review considers that the current arrangements for applications for leave to appeal against sentence are effective and the case for change is not made out.

5. Recommendations

This review considered a number of proposals in relation to a new criminal law fee structure and recommends the following options:

5.1 Summary crime fee structure

1. Introduce a whole of job fee structure for summary crime cases in the Magistrates' Court and the Children's Court for complex and non-complex cases.
2. Standardise the eligibility criteria for summary crime cases, excluding traffic/driving cases to the current level for pleas of guilty.
3. Further consultation occur with the two arms of the profession on the design and level of a minimum brief fee for complex and non-complex cases.

5.2 Indictable crime fee structure

1. Change the fee structure for committals to provide for:
 - i. additional time allowances for preparation and appearance at committal;
 - ii. a fee for post committal negotiations;
 - iii. the contested committals brief fee to include an appearance fee for the first hearing of the case in the County or Supreme Court.

N.B. This set of proposals can only be implemented following negotiation and agreement with the OPP and the County and Supreme Courts to ensure that processes are aligned.

2. Introduce a specific fee for sentence indication hearings.
3. Create a new reading fee for solicitors in voluminous cases.
4. Increase the fee for preparation and appearance for indictable cases in the Children's Court.
5. Limit instructing for trials by allowing one full day instructing and limit instructing for any subsequent day of trial to half a day.

5.3 Bail fee structure

1. Introduce a whole of job fee structure for all bail applications heard in the Magistrates' Court, Children's Court, and County Court.

5.4 Appeals fee structure

1. Introduce a whole of job fee structure for all appeals against sentence in the County Court.

5.5 Underlying Hourly Rate

The review recommends that the fees contained in the new criminal law fee structure be calculated on 80% of the hourly rates contained in the current Civil Law Scales for Magistrates' Court (solicitor rate), County Court "B," and Supreme Court. It is noted that there is no Criminal Law Scale in any court. The rationale for the calculation of the fees at 80% of the Scale originates from section 32 of the original *Legal Aid Act 1978* which contained the following provision:

*"Subject to sub-section (3) the fee to be paid to a private practitioner for the performance of services on behalf of assisted persons shall be such amount as is equal to eighty per centum of the fees ordinarily payable in respect of similar services provided to a person who is not an assisted person, and the fees offered to private practitioners for the performance of such services shall, so far as practicable, consist of amounts fixed by the Commission in respect of the performance of particular services."*¹⁷

The rationale behind this section of the Act was that both the State and the profession should make a contribution to the legal aid scheme in Victoria, and that a 20% reduction in fees was the contribution by the profession towards the legal aid scheme.

Section 32 of the Act was subsequently amended and the reference to 80% of the Scale was removed. VLA has however continued to apply this rationale when considering any changes to its fees.

The current hourly rate (solicitor rate) underlying the lump sum fee scale in the Magistrates' Court is \$111 (GST inc). It is recommended that the Magistrates' Court hourly rate be increased to \$125 (GST inc) which equates to 80% of the current Civil Law Scale.

Both State and Commonwealth governments provide VLA with an indexation on base funding in order to meet some of the rising costs of doing business. Last year this rate averaged 2% and was used to meet the increasing demand for services. This review recommends that:

1. fees be indexed into the future;
2. there be a review of the allowance for hours and the underlying hourly rate with the profession at least once every five years.

¹⁷ *Legal Aid Act 1978*

6. Cost

6.1 Financial Impacts

The recommended proposals are valued at \$4.6 million and would cost \$3.5 million to fully implement. This equates to a 13.6% increase on aggregate payments to the private profession for criminal law cases.

The difference in the cost of financing the increase and the 'value to the profession' lies in costs avoided for work foregone (e.g. reduction in days of instructing at trial) and a proposed standardisation or upward shift in eligibility to restrict aid in less serious matters, that would also produce savings.

The summary crime suite is the significant portion of the total package valued at \$2.7 million, equating to an increase of 22% on the current investment in summary crime. The indictable crime proposals are valued at \$876,000. The bail proposal is costed at \$203,000 and the appeal proposal is costed at \$76,000. In total, the overall package of changes increases VLA's criminal law expenditure by 10.4% or \$3.5 million.

6.2 Evaluation and Risks

The recommendations in this review are based on a number of assumptions and expected behavioural changes. These include the willingness of prosecutorial agencies to actively support early disclosure and sensible negotiation, away from court, and the willingness of Courts to consider listing initiatives that are supportive of the objectives of this review.

A significant risk with these proposals is that the mix between summary crime complex and non-complex cases is exceeded. It is currently predicted that 25% of summary cases will be complex, however if 40% of cases receive a complex grant of legal aid, then it would add a further \$4 million to the cost of providing assistance. A monthly review will be undertaken to monitor the number of cases certified by practitioners as complex with tightening of eligibility to occur if they are likely to exceed the target number of 4,500 per year.

Another significant risk is that resources do not become available to respond to unfunded demand associated with the *Swifter Justice and Keeping Communities Safe* initiatives, leading to restrictions in eligibility for summary matters and added pressures on the duty lawyer scheme.

An evaluation and test plan will need to be prepared to monitor the impact of all of these changes and contingencies.

7. Attestation by Finity Consulting

Finity Consulting have reviewed this report and attest that the references to the cost analysis conducted by Finity Consulting are used in the correct context and are accurately reported.

Signed:

Name:

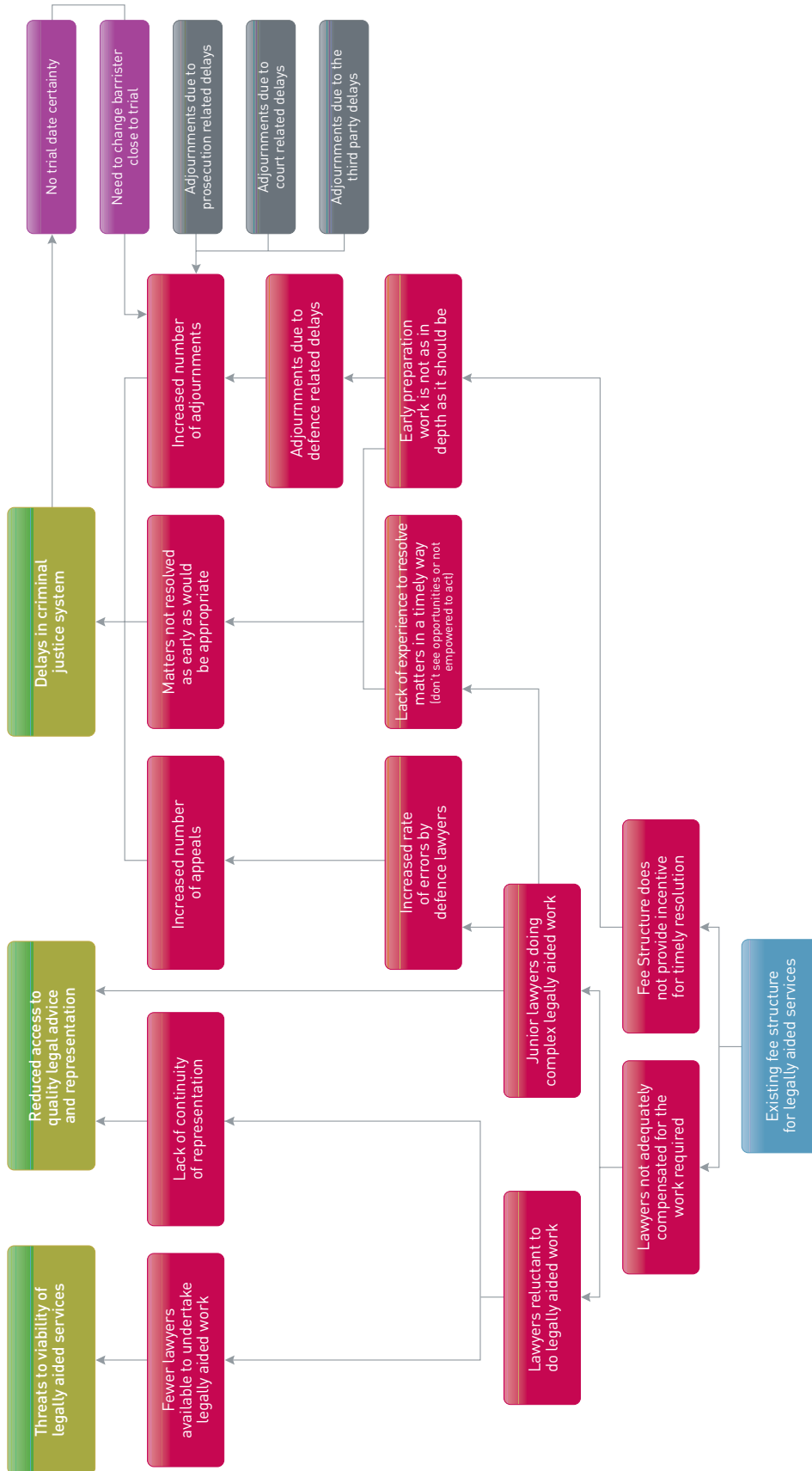
On behalf of Finity Consulting

8. Appendices

Appendix 1	Problem model.....	55
Appendix 2	Solution model, whole of job (no additional investment)	56
Appendix 3	Solution model, whole of job (reasonable hours)	57
Appendix 4	Solution model, indictable crime preferred options	58
Appendix 5	Summary crime eligibility guideline comparisons	59
Appendix 6	Summary crime fee comparisons	60
Appendix 7	Indictable crime fee comparisons	61
Appendix 8	Proposed fee structure – Summary crime and Bail	62
Appendix 9	Proposed fee structure – Indictable crime and Appeals	66
Appendix 10	Current criminal law fee structure	80
Appendix 11	Whole of job “swings and roundabouts” examples	101
Appendix 12	Hourly rates	103
Appendix 13	Summary of costs	104
Appendix 14	Feedback Received in Response to the Recommendations of the Review	105

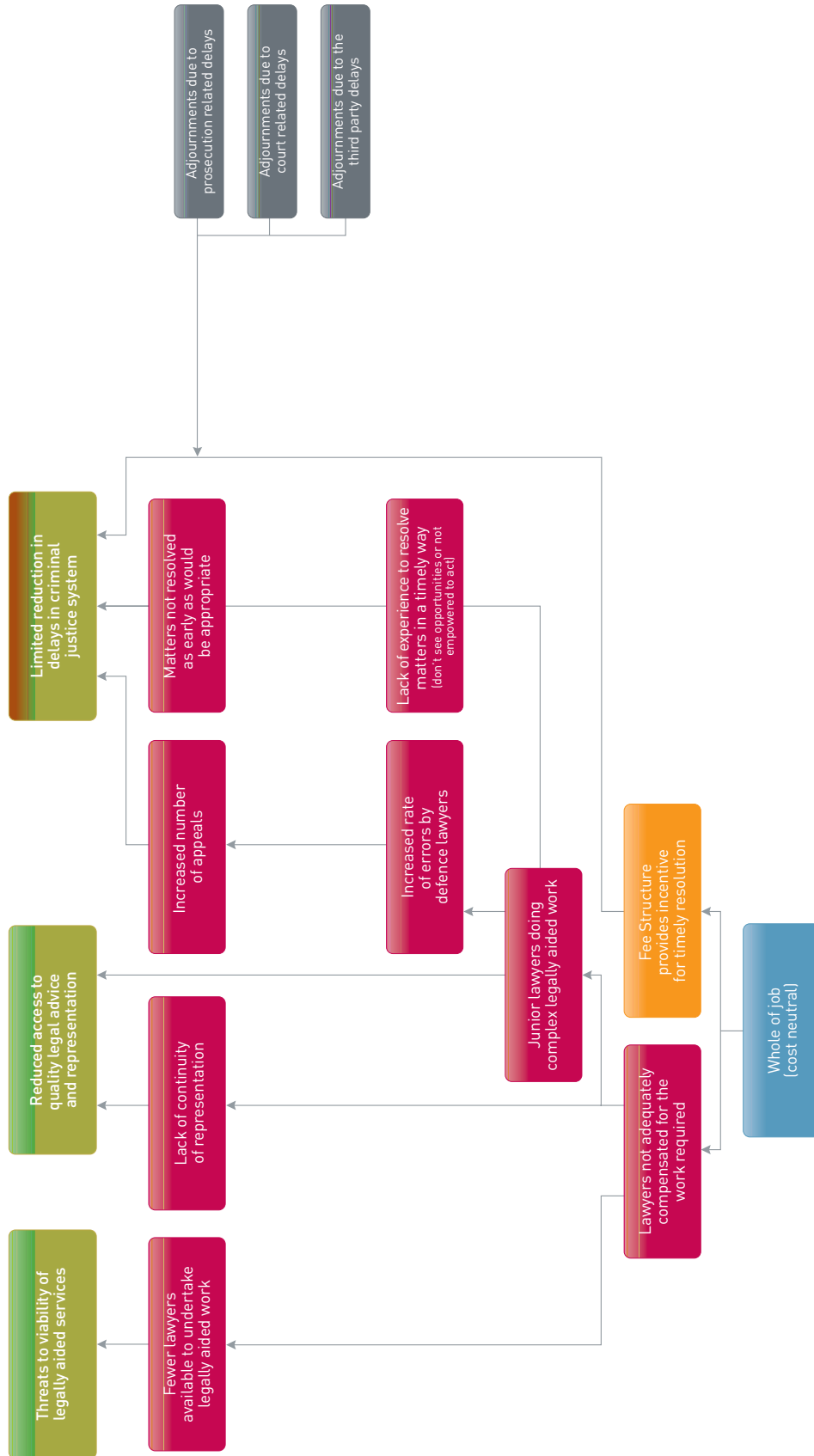
Appendix 1

Problem Model



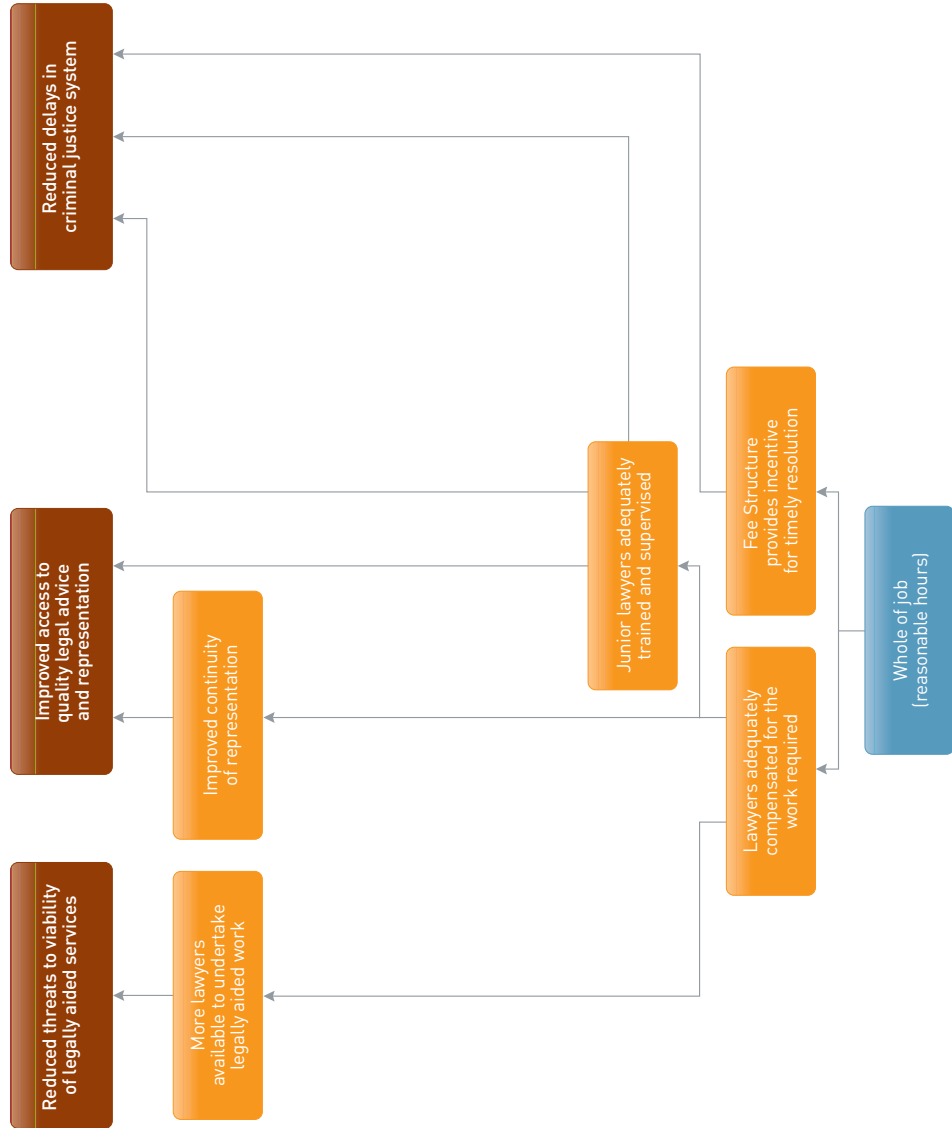
Appendix 2

Solution model - Whole of job (no additional investment)



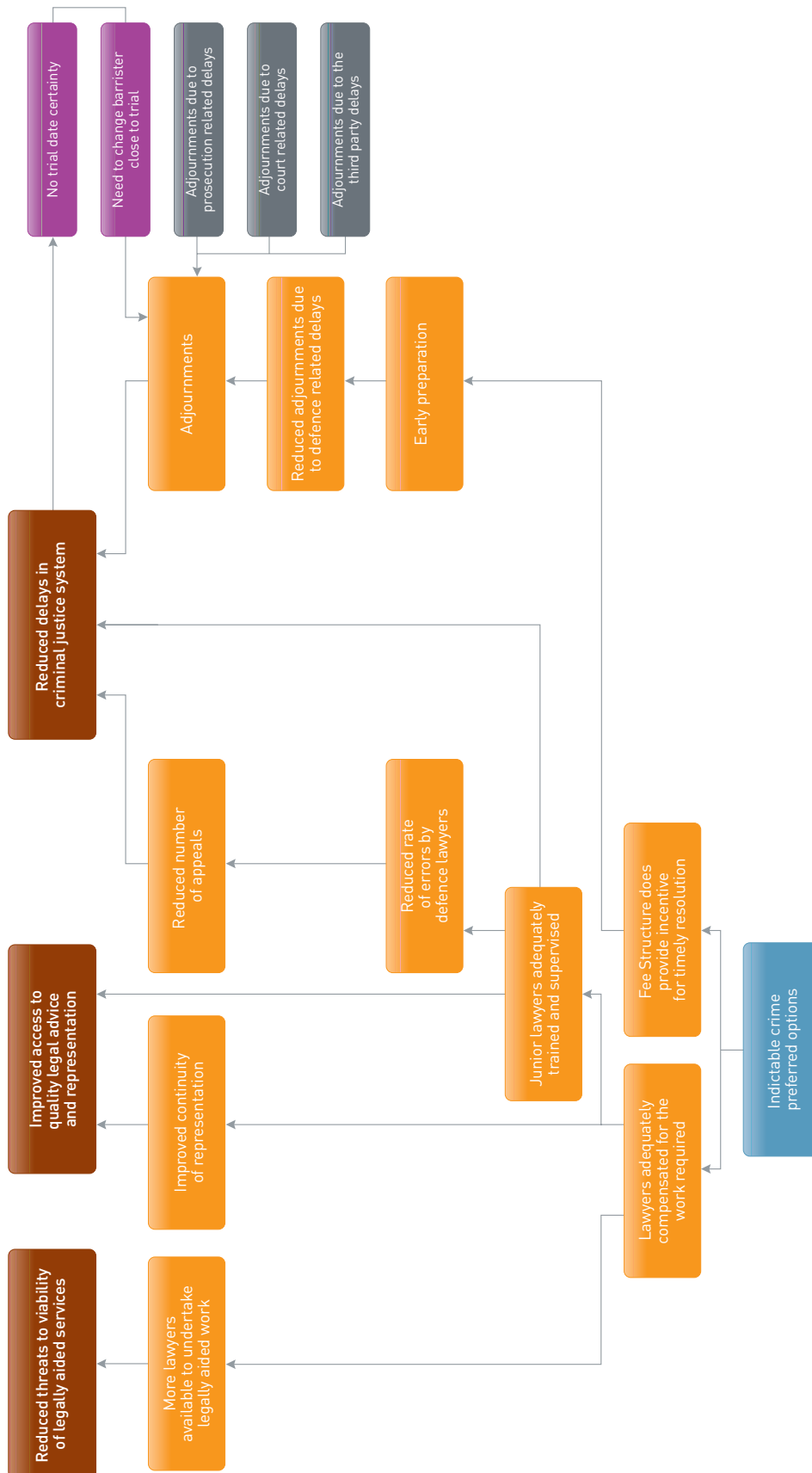
Appendix 3

Solution model - Whole of job (reasonable hours)



Appendix 4

Solution model - Indictable crime options (preferred options)



Appendix 5

Comparison Between States – Eligibility Guidelines for Summary Crime Cases

	Summary Crime Penalty Threshold (Guilty) ¹	Summary Crime Penalty Threshold (Not Guilty) ²
Queensland	High risk of lengthy term of imprisonment	Likelihood of Imprisonment
NSW	Offence carries term of imprisonment. ³	Offence carries term of imprisonment.
TAS	Likelihood of lengthy term of imprisonment	Likelihood of imprisonment/suspended sentence.
WA	Likelihood of immediate imprisonment (and applicant is on an ICO or suspended sentence currently)	Likelihood of immediate imprisonment (and applicant is on an ICO or suspended sentence currently).
SA	Likelihood of imprisonment	Likelihood of imprisonment
ACT	Likelihood of lengthy term of imprisonment	Likelihood of imprisonment/suspended sentence
NT	Likelihood of imprisonment	Likelihood of imprisonment/suspended sentence.
VIC	Likely penalty imprisonment, ICO, suspended term of imprisonment or CBO requiring more than 200 hours of unpaid community work.	Likely penalty is a fine of at least \$750.

Note: Data was obtained from the websites of each legal aid commission.

¹ Most Legal Aid Commissions also have criteria other than likely penalty to assess eligibility for aid. E.g. some Commissions require complexity in addition to the likely penalty thresholds. Other Commissions allow for aid to be provided regardless of penalty where other circumstance exist (e.g. need to gather expert evidence/exceptional circumstances).

² All Commissions require reasonable prospects of acquittal in addition to the factors listed in the table. Most Commissions also have alternative criteria for assessing eligibility (e.g. aid can be provided regardless of likely penalty where conviction will result in detrimental impact to the applicants employment/livelihood, or where the applicant has special circumstances)

³ Although the threshold appears to be lower than any other State, in NSW guilty pleas are generally dealt with by duty lawyers.

Appendix 6

Comparison between States – Current Minimum Fees for Summary Crime Cases

All fees are GST Exclusive

	QLD	NSW	TAS	WA	SA	ACT	NT	VIC ¹
Magistrates' Court Guilty Plea (minimum fee) ²	\$591	\$225	\$375	\$550	\$470	\$350	\$700	\$547
Magistrates' Court Not Guilty Plea (minimum fee) ³	\$1,723	\$1,730	\$1,844	\$1,700	\$2,375	\$1,380	\$1,600	\$1,038

Data was obtained from the websites of each legal aid commission.

¹ Based on current fee structure

² Fees are minimum fees based on guilty plea with sentence on same day

³ Fees are minimum fees based on a two day contested hearing

Appendix 7

Comparison Between States – Current Minimum Fees for Indictable Crime Cases

All fees are GST Exclusive

	QLD	NSW	TAS	WA	SA	ACT	NT	VIC
County Court Plea (minimum fee)	\$1,834	\$1,050	\$613	\$900	\$834	\$1,900	\$1,000	\$2,247
County Court Trial one day (minimum fee)	\$3,442	\$2,490	\$1,390	\$2,520	\$2,626	\$3,380	\$2,000	\$4,865

Data was obtained from the websites of each legal aid commission.

Appendix 8 – Proposed fee structure

1. Summary Crime

Table A applies to Criminal Division Children’s Court and Criminal matters in the Magistrates’ Court.

The fees set out in this table cover all necessary work and VLA will not allow additional claims save as hereunder provided.

1.1 Whole of Job Fee

Where a whole of job fee is provided for in this table it covers all preparation negotiations, adjournments, contest mentions, case conference, substantiative hearing and sentence.

1.2 Complex Matter

Where:

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

A specific grant for complex is not required.

Any matter not satisfying the criteria for complex will be aided as a non-complex matter.

1.3 Consolidation of Charges

Where a solicitor is in receipt of a non complex grant and there are two or more sets of charges that fall within the guidelines for assistance, the additional fee for consolidation shall apply.

Where a solicitor is in receipt of a complex grant and there are two or more sets of charges that fall within the guidelines for assistance, the additional fee for consolidation shall apply.

The additional fee for consolidation for a complex grant does not apply where the case is aided as a complex matter due to the consolidation criteria of four or more briefs.

A specific grant of aid for consolidation is not required.

1.4 Urgent Grant

VLA will pay the non-complex whole of job fee as set out in the table in any matter where the request for aid is made no earlier than the day immediately preceding the substantive hearing or where the solicitor is otherwise in receipt of an urgent grant.

1.5 Contested Hearing

Where a matter is listed as a contest the additional fees in the table will be payable.

1.6 Travel Fees

Where a solicitor practices more than 50 km from the court a fee equivalent to 1 hour will be paid which fee will cover either travel to Court or briefing an agent. This fee is payable once only in a matter. Where a matter is booked in for a contest VLA will pay \$121 for any necessary overnight stay in the circuit town.

1.7 Group Conference

VLA will pay for the attendance of a practitioner at a Children’s Court Group Conference in accordance with the fees set out in the table below.

1.8 Grants on a “disbursement only” Basis

Where a grant is made on a disbursement only basis the fees payable to a barrister or agent shall not exceed the fees in Table A(i).

Table A (Year 1)

	Non Complex hours	\$	Complex hours	\$
Whole of job fee	6.5	754	13	1508
Consolidation of charges (additional)	1	116	1	116
Contest appearance fee (additional fee where matter resolves into plea)	0.5	58	0.5	58
Contest appearance fee (additional fee where matter proceeds to contest)	1	116	1	116
Contest appearance second and subsequent day (per day)	4	464	4	464
Out of office fee – travel	1	116	1	116
Overnight fee	NA	121	NA	121
Held outside work hours	3.5	406	3.5	406

Counsel's Fees in Summary Crime

Where counsel is briefed for a summary crime matter, the fees in Table A(i) are the brief fees to be paid from the whole of job fee.

Table A(i)

	Complex	Non Complex
Appearance (plea)		
Consolidated appearance		
Contest mention		
Special mention		
Sentence		
Sentence (Consolidated)		
Contest mention and plea		
Contest mention and plea (consolidated)		
Contest (resolving into a plea)		
Contest (daily fee)		
Jail Conference		

Bail Applications

2. Bail Applications

2.1 Magistrates' Court and Children's Court

Table B applies to bail applications in the Children's Court and Magistrates' Court.

The fees set out in this table cover all necessary work and VLA will not allow additional claims save as hereunder provided.

2.1.1 Whole of Job Fee

The whole of job fee in this table it covers all preparation and appearances.

2.1.2 Complex matter

Where

- a) the accused person is on remand for an indictable offence proceeding through the committal stream;
 - b) the threshold for bail is that the accused must demonstrate “exceptional circumstances”
- the complex fee is payable.

Any matter not satisfying the criteria for complex will be aided as a non-complex matter.

Table B- Magistrates’ Court and Children’s Court Bail

	Non Complex hours	\$	Complex hours	\$
	4	500	6	750

2.2 County Court Bail

This tables applies to bail applications in the County Court.

The fees set out in this table cover all necessary work and VLA will not allow additional claims save as hereunder provided.

2.2.1 Whole of Job Fee

The whole of job fee covers all preparation and appearances.

2.2.2 Hourly Rate

The hourly rate is based on \$149 per hour which is the median solicitor and counsel 80% of the Civil Scale rate. This represents an allowance of 50% for preparation and 50% appearance.

Table C- County Court Bail

	Non Complex hours	\$
	6.5	1266

2.3 Supreme Court Bail

Table D applies to bail applications in the Supreme Court.

The fees set out in this table cover all necessary work and VLA will not allow additional claims save as hereunder provided.

Table D- Supreme Court Bail

	Non Complex hours	\$
Solicitor Preparation	3.5	728
Appearance fee	NA	720

Appendix 9 – Proposed fee structure

INDICTABLE CRIME

1. MAGISTRATES' COURT STAGE- Table E

1.1 General Preparation

This fee is payable in all indictable matters. General preparation includes taking instructions, reading hand up brief, advising client and entering into negotiations with the prosecution.

1.2 Committal Mention/Case Conference

VLA will pay the fee in the table for each necessary attendance at committal mention or case conference.

1.3 Special mention

VLA will pay the fee in the table for each necessary attendance at a special mention.

1.4 Travel fees

Where a solicitor practices more than 50km from the court, an additional fee equivalent to 1 hour will be payable to cover either travel to court or briefing an agent. This fee is payable only once in a matter.

1.5 Contested Committal - Additional Preparation

Where aid is granted for a contested committal, the additional preparation fees in the table shall apply. The additional preparation includes taking further instructions, further negotiations with the prosecution, preparing and filing the Form 10A and any necessary jail conference.

Note. A separate grant of aid for contested committal must be sought.

1.6 Contested Committal – Brief

The first day brief fee includes preparation, conferences and appearance on the first day of the committal. Counsel briefed for the contested committal must also be briefed to appear at the County Court case conference or Supreme Court first directions hearing at the fees in Table F, including appearance and preparation of necessary responses.

1.7 Circuit Fees

Where Counsel is briefed for a contested committal, circuit and overnight fees in accordance with those payable in Table D shall be payable.

1.8 Summary Plea

Where a summary plea is negotiated and heard, the fee in the table shall be paid save and except where the plea is heard on the same day as the contested committal in which case no additional fee is payable.

TABLE E- Magistrates’ Court Stage

Magistrates’ Court Stage	Hours	\$
General preparation		
Additional Preparation (committal aided)		
Committal mention/case conference		
Special mention		
Brief fee- contested committal		
Subsequent day- contested committal		
Summary plea		

2. COUNTY & SUPREME COURT STAGE

2.1 General

Where aid is granted for a County Court or Supreme Court plea or a trial, the “general fees” in Table F are payable as applicable.

2.2 Plea

Where aid is granted for a County Court or Supreme Court plea, the “plea fees” in Table F are payable as applicable.

The preparation fee includes perusal of the brief, taking instructions, jail conferences, briefing counsel, organising witnesses and preparing plea material.

No allowance is made in the table for instructing in a plea.

2.2.1 Brief fees

The first day brief fee in Table F includes preparation, conferences and appearance on the first day of the hearing.

2.2.2 Circuit fee

Except where counsel or solicitor advocate practices in the circuit town, additional fees in accordance with Tables N are payable.

2.3 Trial and Special Hearing

Where aid is granted for a County Court or Supreme Court trial, the “trial fees” in Table F are payable as applicable.

Where aid is granted for a County Court special hearing, the “special hearing fees” in Table F are payable as applicable.

The preparation fee includes perusal of the brief, taking instructions, jail conferences, briefing counsel, organising witnesses and preparing plea material.

2.3.1 Post committal negotiation fee

Where a matter has not resolved into a plea at the contested committal, counsel briefed for the contested committal must also be briefed to undertake post-committal negotiations and to appear at the County Court Case Conference or Supreme Court first directions hearing at the fees in Table F, including appearance and preparation of necessary responses.

2.3.2 Brief fee

The first day brief fee in Table F includes preparation, conferences and appearance on the first day of the hearing.

2.3.3 Instructing

VLA will pay instructing calculated as follows:

One full day instructing plus ½ day instructing for subsequent days of trial.

Solicitors may instruct in any manner they so choose but the total claim shall not exceed fees in accordance with the above e.g. for a 5 day trial, the maximum instructing that could be claimed is 3 days (1 day + 4 x ½ days)

Except where the instructing solicitor practices in the circuit town, where a solicitor instructs in a circuit trial, VLA will allow an additional ½ day instructing over and above the entitlement above for each 5 days of trial. This also applies where an instructing solicitor who practices in a circuit town has a trial listed in Melbourne.

2.3.4 Solicitors “out of office” fees.

Except where the instructing solicitor practices in the circuit town, VLA will pay an additional sum in accordance with the first day circuit fee pursuant to the fees in Table N together with an overnight fee of \$121 for each necessary overnight stay in the circuit town. These fees also apply where an instructing solicitor who practices in a circuit town has a matter in Melbourne.

2.3.5 Circuit fees

Except where counsel or solicitor advocate practices in the circuit town, additional fees in accordance with Tables O are payable.

TABLE F - County & Supreme Court Stage

	County Court hours	\$	Supreme Court hours	\$
General				
Counsel- post committal negotiations				
Case conference				
First directions hearing				
Directions hearing/mention/ call over				
Defence Response- case conference/first directions hearing				
Plea				
Preparation				
Brief fee- 1st day				
Subsequent day				
Sentence				
Special Hearing				
Preparation				
Brief fee				
Subsequent day				
Instructing – 1 full day of trial				
Instructing – ½ subsequent day				
Sentence Indication				
Brief fee				
Trial				
Preparation				
Defence Response- final directions hearing				
Brief fee- 1st day				
Subsequent day				
Instructing – 1 full day of trial				
Instructing – ½ subsequent day				
Application for discontinuance of proceedings				
Plea hearing				
Sentence				
Except where the instructing solicitor practices in the circuit town, VLA				

3. Children's Court Serious Crime

3.1

Where children are granted legal aid for indictable charges proceeding through the Children's Court (charges where if the accused was an adult, the case would be heard in the County or Supreme court), the fees in Table F(i) are payable.

Table F(i)

Children's Court	Hours	\$
Solicitors preparation		
Contest mention		
Daily fee		
Sentence		

4. County Court Appeals

4.1 Sentence Appeals

Table G applies to all appeals against sentence in the County Court.

This table applies to appeals by the convicted person and the Director of Public Prosecutions.

The fees set out in this table cover all necessary work and VLA will not allow additional claims save as hereunder provided.

4.1.1 Whole of Job Fee

Where a whole of job fee is provided for in this table it covers all preparation and appearances.

Table G- Sentence Appeals

	Hours	\$
Whole of job fee		

4.2 Appeals Against Conviction and Sentence

This table applies to appeals against conviction and /or conviction and sentence in the County Court.

The fees set out in this table cover all necessary work and VLA will not allow additional claims save as hereunder provided.

Table H- Appeals Against Conviction and Sentence

	Hours	\$
Solicitor Preparation		
Mention		
Daily Appearance		
Sentence		

5. County Court Breaches

Table J applies to breach proceedings in the County Court.

The fees set out in this table cover all necessary work and VLA will not allow additional claims save as hereunder provided.

Table J is not payable where the breach proceedings are heard at the same time as a plea in the County Court. In that case the applicable fees are the plea fees in Table F.

Table J- County Court Breaches

	Hours	\$
Solicitor Preparation		
Mention		
Daily Appearance		
Sentence		

6. Appeals to the Court of Appeal

6.1 Sentence Appeals by Convicted Person

Table K applies to appeals against sentence in the Court of Appeal.

The fees set out in this table cover all necessary work and VLA will not allow additional claims save as hereunder provided.

6.2 Appeals Against Conviction and Sentence by Convicted Person

Table K applies to appeals against conviction and /or conviction and sentence by a convicted person in the Court of Appeal.

The fees set out in this table cover all necessary work and VLA will not allow additional claims save as hereunder provided.

Table K- Appeals to the Court of Appeal

	Appeal Against Sentence		Appeal Against Conviction	
	Hours	\$	Hours	\$
Solicitor Preparation				
Brief Fee				
Subsequent days				
Judgment				
Preparation of grounds and outline of submissions				

6.3 Appeals by the Director of Public Prosecutions

Table K(i) applies to appeals to the Court of Appeal by the Director of Public Prosecutions.

The fees set out in this table cover all necessary work and VLA will not allow additional claims save as hereunder provided.

Table K(i) Appeals by the Director of Public Prosecutions

	Hours	\$
Solicitor Preparation		
Senior Counsel Brief Fee		
Subsequent days		
Outline of submissions		
Junior Counsel Brief Fee		
Subsequent days		
Outline of submissions		
Judgment		

6.4 Interlocutory Appeals

Table K(ii) applies to interlocutory appeals to the Court of Appeal.

6.4.1 Preparation

The fees set out in this table cover all necessary work.

Where a trial is adjourned for a brief period pending the hearing of an interlocutory appeal, VLA will pay up to 3 non-hearing trial days ("lay days") at the subsequent day fee in Table F. When lay days are approved by VLA, VLA expects counsel to prepare the interlocutory appeal on those lay days, and will not pay for counsel's preparation including submissions pursuant to Table K(ii).

6.4.2 Appeals Costs Fund Certificate

Counsel appearing for the accused in an interlocutory appeal relating to a State prosecution must make application to the Court of Appeal pursuant to the Appeal Costs Act 1998 if any of the following circumstances apply:

- a) where an interlocutory appeal by the accused is successful;
- b) where the accused is a respondent to an interlocutory appeal by the prosecution;
- c) where the court reserves a question of law for determination by the Court of Appeal pursuant to s305 of the Act.

Table K(ii)

	Hours	\$
Solicitor Preparation		
Counsel's preparation including submissions		
Application for leave to appeal		
Interlocutory appeal		
Subsequent days		

7. High Court Criminal Appeals

Table L applies to appeals to the High Court

The fees set out in this table cover all necessary work.

Table L - High Court

	Application for Special Leave		Appeal	
	Hours	\$	Hours	\$
Solicitor Preparation				
Brief Fee				
Subsequent days				
Judgment				
Preparation of grounds and outline of submissions				

8. Senior Counsel and Two Counsel

8.1 Terms

Senior Counsel: refers to Senior Counsel and Queen's Counsel

Senior Junior Counsel: refers to counsel who leads junior counsel.

8.2 Senior Counsel Policy

8.2.1

VLA may grant assistance for the briefing of Senior Counsel in complex criminal trials. Where the briefing of Senior Counsel is approved, the fees are not to exceed the fees in Table M.

8.2.2

In order to promote mentoring / training opportunities for junior barristers by Senior Counsel, where assistance is not approved for the briefing of Senior Counsel for a criminal trial, VLA may approve the briefing of Senior Counsel if:

- a) Senior Counsel agrees to accept the fees for Senior Junior Counsel in Table M; and
- b) Junior Counsel is briefed and accepts the fee for Junior Counsel in Table M.

8.3.1

VLA will grant assistance for only one counsel unless there are exceptional circumstances.

In determining 'exceptional circumstances' in a particular case, VLA will have regard to the following:

- 1 the volume of material required to be dealt with in preparation for or during the trial;
- 2 the time available for preparation;
- 3 the anticipated length of the trial;
- 4 the multiplicity and complexity of issues;
- 5 the willingness of counsel to accept a capped fee for their services in that particular case;
- 6 the opinion of the solicitor acting for the defendant as to the need for two counsel;
- 7 the number of accused, and the number of lawyers acting for each accused, and the extent to which defence work can be shared between each accused.
- 8 the number of counsel engaged by the prosecution.

It should be noted that none of the above issues alone meets the exceptional circumstances threshold. For example:

- while in some cases there may be a large volume of material, much of that material could be repetitive (such as transcripts of earlier trials);
- while some issues may be complex, that complexity will only be relevant if the accused is challenging that evidence;

If VLA grants assistance for two counsel, VLA will make the final decision with respect to the selection of counsel (including counsel employed by VLA) to be briefed.

8.3.2

In order to promote mentoring / training opportunities for junior barristers by Senior Counsel, where assistance is not approved for the briefing of two counsel for a criminal trial, VLA may approve the briefing of Senior Counsel and Junior Counsel if:

- a) Senior Counsel agrees to accept the fees for Senior Junior Counsel in Table M; and
- b) Junior Counsel is briefed and accepts the fee for Junior Counsel in Table M.

8.3.3

Where assistance is granted for two counsel, VLA will only pay for Junior Counsel to attend at sentence.

TABLE M- Fees where Senior Counsel or Two Counsel Approved

Counsel	County Court Hours	\$	Supreme Court Hours	\$
Senior Counsel				
General				
Post committal negotiations				
Case Conference			NA	
First Directions Hearing	NA			
Directions hearing/Mention Call over				
Defence Response- case conference/first directions hearing				
Plea				
Brief fee- 1st day				
Subsequent day				
Sentence				
Special Hearing				
Brief fee				
Subsequent day				
Sentence Indication				
Brief fee				
Trial				
Defence Response- final directions hearing				
Brief fee- 1st day				
Subsequent day				
Application for discontinuance of proceedings				
Plea hearing				
Sentence				

Counsel	County Court Hours	\$	Supreme Court Hours	\$
Senior Junior Counsel				
General				
Post committal negotiations				
Case Conference			NA	
First Directions Hearing	NA			
Directions hearing/Mention Call over				
Defence Response- case conference/first directions hearing				
Plea				
Brief fee- 1st day				
Subsequent day				
Sentence				
Special Hearing				
Brief fee				
Subsequent day				
Sentence Indication				
Brief fee				
Trial				
Defence Response- final directions hearing				
Brief fee- 1st day				
Subsequent day				
Application for discontinuance of proceedings				
Plea hearing				
Sentence				
Junior Counsel				
General				
Post committal negotiations				
Case Conference			NA	
First Directions Hearing	NA			
Directions hearing/Mention Call over				
Defence Response- case conference/first directions hearing				
Plea				
Brief fee- 1st day				
Subsequent day				

Counsel	County Court Hours	\$	Supreme Court Hours	\$
Sentence				
Special Hearing				
Brief fee				
Subsequent day				
Sentence Indication				
Brief fee				
Trial				
Defence Response- final directions hearing				
Brief fee- 1st day				
Subsequent day				
Application for discontinuance of proceedings				
Plea hearing				
Sentence				

9. Circuit fees for Committals and Pleas & Solicitor Out of Office Fees for Trials

9.1 Circuit fees

Except where the solicitor advocate practices in the circuit town, the circuit fees in Table N are payable for counsel/solicitor advocate in relation to appearances for contested committals in the Magistrates' Court and plea hearings in the County or Supreme Court.

9.2 Out of Office fees

Except where the instructing solicitor practices in the circuit town, VLA will pay an additional sum in accordance with the first day circuit fee in Table N for each visit to the circuit town.

These fees also apply where an instructing solicitor who practices in a circuit town has a matter in Melbourne.

9.3 Overnight fee

An overnight fee of \$121 for accommodation meals and sundry expenses is payable for each necessary overnight stay in the circuit town.

TABLE N- Circuit fees for Committals and Pleas & Solicitor Out of Office Fees for Trials

Circuit Town	1st day	2nd & subsequent days
Ararat		
Bairnsdale		
Ballarat		
Bendigo		
Colac		
Geelong		
Hamilton		
Horsham		
Kerang		
Korumburra		
Mildura*		
Morwell		
Sale		
Shepparton		
Wangarratta		
Warragul		
Warrnambool		
Wodonga		

10. Circuit Fees for Trials

Except where the solicitor advocate practices in the circuit town, the circuit fees in Table O are payable for appearances in the Supreme Court or County Court of the circuit town.

These fees are payable for each five days of the trial or part thereof. If counsel/solicitor advocate appears in a number of cases during any five day period, only one circuit fee is payable to be shared equally between each of the cases.

Where a trial is interrupted by a weekend or some other cause, the circuit fee will only be payable for each five sitting days. In the event the trial proceeds beyond five sitting days an additional circuit fee will be payable.

An overnight fee of \$121 for accommodation meals and sundry expenses is payable for each necessary overnight stay in the circuit town.

TABLE O- Circuit Fees for Trials

Circuit Town	Fee per 5 days of trial
Ararat	
Bairnsdale	
Ballarat	
Bendigo	
Colac	
Geelong	
Hamilton	
Horsham	
Kerang	
Korumburra	
Mildura*	
Morwell	
Sale	
Shepparton	
Wangarratta	
Warragul	
Warrnambool	
Wodonga	

Appendix 10

Current Fee Structure

Summary Criminal Proceedings

This Table applies to Criminal Division Children's Court and Criminal matters in the Magistrates' Court.

The fees set out in this Table cover all necessary work and VLA will not allow claims for additional work apart from:

- (i) **Fees for a second or subsequent day of hearing.** Where a hearing continues beyond one full day VLA will pay an additional fee for every day or part of a day beyond the first day of substantive hearing in accord with the fees set out in the table below.
- (ii) **Fees for transcribing a taped record of interview.** Where it is necessary to transcribe a taped record of interview the person transcribing the tape shall be entitled to an additional sum of \$67 per tape.
- (iii) **Contest mentions** VLA will pay the sum of \$208 for each necessary appearance at contest mention if the assisted person had a reasonable prospect of acquittal on all or some of the charges on the available evidence, and those charges would have qualified for assistance having regard to the likely penalty.
- (iv) **Group conference** VLA will pay for the attendance of a practitioner at a Children's Court Group Conference in accord with the fees set out in the table below.
- (v) **Gaol conference** VLA will pay \$116 for one necessary gaol conference with the accused subject to the following:
 - (a) the fee is only payable if the practitioner who undertakes the conference also does the appearance
 - (b) the fee is not payable where the attendance on the accused is in the court/police cells on the day(s) of the hearing
- (vi) **CREDIT Program** VLA will pay \$116 for one necessary appearance under the CREDIT Program other than on final plea/sentence subject to the following:

The above fee will only be paid where there is a prior indication that the client is not complying and the court will be moved to take him/her off the program.

VLA will pay \$116 for any 'mention' before a Magistrate where the matter is transferred to the Drug Court.
- (vii) **Urgent Grants in Tables A1, A1(i), A4 and A5** VLA will pay preparation fee as set out in the table in any matter where the request for aid is made no earlier than the day immediately preceding the substantive hearing or where the solicitor is otherwise in receipt of an urgent grant.
- (viii) **Contest hearing fee**

Summary Crime

In the event that a matter fails to resolve at contest mention and continues to meet the summary crime "not guilty plea" guideline the contest appearance fee is payable.

In the event that a matter is booked in for a contest an appearance fee of \$368 will be payable.

OR

In the event that the matter is booked in for a contest and proceeds as a contest an appearance fee of \$420 will be payable for each day of the contested hearing.

Table A1

Payments to private practitioners

Preparation fee	\$301
Daily appearance fee	\$301
Urgent grant preparation	\$174
Contest mention fee	\$208*
Gaol conference	\$116
CREDIT Program/Drug Court mention	\$116
Contest appearance fee (matter does not proceed as contest)	\$368
Contest appearance fee (matter proceeds as contest)	\$420
Appearance on sentence or adjournment	\$200
Group conference	
held during work hours	\$289
held outside work hours	\$370
Plea heard at contest mention	
Contest mention fee	\$208
Appearance fee on plea	\$200

Consolidation of Charges

Where: There are two or more sets of charges that fall within the guidelines of assistance

OR

A grant of aid is current pursuant to Table A1 and the client receives a further charge or charges that fall within the guidelines for assistance the fees set out in Table A1(i) shall apply.

A specific grant of aid is required to claim fees pursuant to Table A1(i).

Table A1(i)

Preparation	\$361
Urgent grant preparation	\$219
Daily appearance fee	\$360
Contest mention fee	\$208*
Gaol conference	\$116
Appearance fee for 2nd day and subsequent days of hearing	\$360
Appearance fee for sentence or adjournment	\$228
Plea heard at contest mention	
Contest mention fee	\$208*
Appearance fee on plea	\$228

* Where a solicitor appears in more than one contest mention for the same client on the same day VLA will pay only one contest mention fee.

Multiple Defendants

A fee equivalent to one and a half times the table fees are payable where two legally aided defendants are represented by the same practitioner. Where three or more legally aided defendants are represented by the same practitioner, a fee equivalent to two times the fees are payable.

Children's Court - Serious Indictable Criminal Cases

This table covers all indictable criminal cases in the Children's Court where should the charges have been brought against an adult the Magistrates Court would not have jurisdiction to hear the matter (eg rape). The lump sum fee covers all necessary work. VLA will not allow claims for additional work except as follows:

- (i) **Fees for second or subsequent day of hearing** Where a hearing continues beyond one full day VLA will pay an additional fee for every day or part of a day beyond the first day of substantive hearing in accord with the fees set out in the table below.
- (ii) **Contest mentions** VLA may pay, the sum of \$208 for only one contest mention:
 - (a) if the assisted person had a reasonable prospect of acquittal on all or some of the charges on the available evidence, and that charge or those charges would have qualified for assistance having regard to the likely penalty, and
 - (b) the legal practitioner has undertaken negotiation with the prosecution prior to the contest mention date in order to examine the possibility of a negotiated plea, and
 - (c) after failing to resolve the matter after such negotiation, the legal practitioner attended on the contest mention date before a magistrate as required for the purpose of:
 - endeavouring to narrow the issues between the parties to areas of genuine dispute;
 - identifying those witnesses necessary for the hearing of the matter;
 - identifying those matters which may be admitted between the parties; and
 - re-examining the possibility of a negotiated plea.

Note: a practitioner need not seek prior approval for the contest mention fee. The fee is payable at the point of certification if the requirements have been met.

- (iii) **Fees for transcribing a taped record of interview** Where it is necessary to transcribe a taped record of interview the person transcribing the tape shall be entitled to an additional \$67 per tape.

Table A3

Preparation	\$475
Contest mention fee	\$208
Daily appearance fee	\$420
Sentence	\$239
Plea heard at contest mention	
Preparation component	\$475
Contest mention fee	\$208
Appearance at plea	\$275
TOTAL	\$958

Committals and Inquests with the Character of Committals

1. Lump Sum Fee

VLA has fixed a lump sum fee for committal proceedings. The lump sum fee covers all necessary work involved in obtaining instructions, negotiating with prosecution, perusal of hand-up brief and appearing at the first committal mention.

The lump sum fee allows no claims for additional work other than set out in this Table. If counsel is briefed his/her fees are to be paid from the lump sum fee.

2. Committal Mentions

VLA will pay, in addition to the lump sum fee, the sum of \$286 for every necessary attendance at a committal mention after the first, provided that:

- (i) where the matter is adjourned for another committal mention, application must be made, where appropriate, for a certificate under the Appeal Costs Act. Where this certificate is not applied for, no fee will be payable for that committal mention;
- (ii) before VLA will approve assistance for a second or subsequent committal mention fee, the assigned solicitor must satisfy VLA that substantial negotiation took place, or that an Appeal Costs certificate was requested.

In the event that the committal mention is transferred by the prosecution or the court from the appropriate local venue to another court, VLA will pay for the assigned solicitor's travel at the rate of 58.3 cents per kilometre for each kilometre of the return trip in excess of 80 kilometres.

3. Contested Committals

In the event that the committal does not resolve into a plea at a committal mention assistance may be granted for a contested committal hearing of up to two days only.

Where the Managing Director or Divisional Manager, F.A.B. is satisfied that a hearing of more than two days is necessary, the fee payable is at the absolute discretion of the Managing Director or Divisional Manager, F.A.B. but cannot exceed the second day rate for any further days for which assistance is provided.

4. Committals that proceed as a plea in the Magistrates' Court

VLA recognises that many committals are negotiated into a plea in the Magistrates' Court. These negotiations often take place at a committal mention hearing.

The matter is then:

- (i) adjourned to a later date for a plea; or
- (ii) heard as a plea on that day.

Where a matter is negotiated into a summary plea at a committal mention additional fees are payable as set out in the table below.

5. Travelling and Accommodation

Travelling and accommodation fees are payable in contested committals.

6. Special Mention; Special Mention Case Conference Hearing

VLA will pay, in addition to the lump sum fee, the sum of \$116 for any necessary attendance at a special mention or special mention case conference hearing.

7. Leave to Cross-examine Witnesses

Where it is not practicable to apply for leave to cross-examine witnesses at the first committal mention date, VLA will pay \$286 for any necessary leave to cross-examine appearance.

Leave to cross-examine should only be sought in matters where a grant for a contested committal has been made.

VLA will pay \$132 for preparation of Notice of Defendant in Response to Hand-up brief (Form 8A) where such document has been filed and served.

8. Gaol Conference Fee

VLA will pay \$116 for one necessary gaol conference with the accused.

Table B

Including instructions, advice on defence, perusal of depositions	\$512
Special mention	\$116
Gaol conference	\$116
Appearance at committal mention	\$286
Preparation of Form 8A Notice of Defendant in Response to hand-up brief	\$132
Appearance at contested committal 1st day	\$665
Appearance at contested committal 2nd day	\$600
If matter resolves into plea at summary level and is disposed of on same day as the committal mention an additional	\$200
OR	
If plea heard on day other than committal mention	\$334

Committals and Inquests with the Character of Committals

(Where filing hearing is held on or after 1 July 2007)

1. Committal Preparation (General)

A lump sum fee is payable for committal preparation and includes taking instructions, advice on defence and perusal of depositions.

2. Preparation for Committal mention / Case conference

A lump sum fee is payable for preparation for committal mention including further consideration of hand-up brief, consultation and negotiation with prosecution and preparation of Form 10A (Case Direction Notice)

Where preparation fees pursuant to Fee Schedule 4 are sought and allowed the lump sum fee pursuant to this paragraph shall not, be offset against any additional allowance for preparation. Practitioners should note the uplift provisions in Paragraph 9(b) of Fee Schedule 4.

3. Committal Mention

VLA will pay the sum of \$286 for every necessary attendance at a committal mention

4. Case Conference

VLA will pay the sum of \$402 for every necessary attendance at a case conference

5. Contested Committals

In the event that the committal does not resolve into a plea at a committal mention assistance may be granted for a contested committal hearing of up to two days.

Where VLA is satisfied that a hearing of more than two days is necessary further days of hearing may be approved.

6. Committals that proceed as a plea in the Magistrates' Court (Summary fee)

VLA recognises that many committals are negotiated into a plea in the Magistrates' Court. These negotiations often take place at a committal mention or case conference.

The matter is then:

- (i) adjourned to a later date for a plea; or
- (ii) heard as a plea on that day.

Where a matter is negotiated into a summary plea at a committal mention/case conference additional fees are payable as set out in the table below.

7. Travelling and accommodation

Travelling and accommodation fees are payable in contested committals

8. Special mention

VLA will pay the sum of \$116 for any necessary attendance at a special mention.

9. Gaol conference fee

VLA will pay \$116 for one necessary gaol conference with the accused.

Table B1

Including instructions, advice on defence, perusal of depositions	\$512
Special mention	\$116
Gaol conference	\$116
Appearance at committal mention	\$286
Preparation for committal mention/case conference	\$444
Case conference	\$402
Appearance at contested committal 1st day	\$665
Appearance at contested committal 2nd day	\$600
If matter resolves into plea at summary level and is disposed of on same day as the committal mention an additional	\$200
OR	
If plea heard on day other than committal mention	\$334

Bail Applications (Magistrates' and Children's Courts)

Table C

Preparation	\$143
Appearance fee	\$301
Negotiated fee – including appearance	\$192

County Court Bail, Appeals and Proceedings for Breach of Order for Suspended Sentence, Community Based Order, Probation, Intensive Correction Order

A lump sum fee is payable for all County Court appeals and breach proceedings. This fee covers all necessary work involved in obtaining instructions, preparation, proofing of witnesses. Appearance fees are set out in the table.

VLA will not allow claims for additional work apart from fees for subsequent days of hearing where a hearing continues beyond one full day. VLA may place a limit on the number of days in a grant.

Table D1

Preparation	\$653
Daily fee	\$615
Sentence	\$248

Supreme Court Bail

A lump sum fee is payable for all Supreme Court bail applications. The fee covers all necessary work involved in obtaining instructions and preparation of any necessary documentation. Appearance fee appears separately in the table.

Table F

Preparation	\$828
Brief	\$620

County Court Preparation

A lump sum fee is payable for preparation for plea or trial. The fee covers taking instructions, perusing material and advising client.

Preparation of necessary responses

The preparation of necessary responses fee is payable once only in a matter.

Committal mention fee where committal is not aided

VLA will pay the sum of \$116 for one necessary attendance at a committal mention.

Printing from disk

VLA will pay for the printing of depositions from disk in excess of 2000 pages where such printing is necessary. The cost of printing will be at commercial rates. Prior approval is necessary.

Table D2

Preparation for proceedings (committal not aided)	\$1068
Preparation for proceedings (committal aided)	\$579
Case conference	\$354
Mention, call-over, directions hearing	\$203
Preparation for necessary responses	\$354
Committal mention fee	\$116
Nolle prosequi	\$431

County Court Pleas

A lump sum fee is payable for preparation and conferences. The appearances to make the plea appear separately in the table.

A grant for County Court plea is made on the basis that a grant pursuant to Table D2 has been previously made.

No allowance has been made in the fee for solicitor to instruct.

Except where the solicitor advocate practices in the circuit town, additional fees in accordance with those annexed to Tables D1 and D3 are paid.

Table D3

Preparation	\$296
Hourly conference rate to maximum of \$432	(\$144)
Brief fee	\$676
Second day fee	\$396
Fee on sentence	\$248

Circuit fees for Tables D1 and D3

Except where the solicitor advocate practices in the circuit town the following additional fees are paid:

Court	1st day	2nd & subsequent days
ARARAT	184	122
BAIRNSDALE	201	134
BALLARAT	131	89
BENDIGO	153	102
COLAC	155	102
GEELONG	111	74
HAMILTON	210	140
HORSHAM	210	140
KERANG	210	140
KORUMBURRA	131	89
MILDURA*	255	172
MORWELL	155	102
SALE	184	120
SHEPPARTON	174	118
WANGARRATTA	192	130
WARRAGUL	140	95
WARRNAMBOOL	201	134
WODONGA	210	140

County Court Criminal Trials

A lump sum fee is payable for all County Court Criminal Trials. The fee covers all necessary work involved in the obtaining instructions, preparation of any documentation, correspondence, perusals, proofing of witnesses, conferences with advocate. Separate fees for conferences, appearance and instructing appear in the table.

A grant for County Court Trial is made on the basis that a grant pursuant to Table D2 has been previously made.

VLA will not allow claims for additional work apart from:

(i) fees for second or subsequent day of hearing

Subject to any limit VLA may place on the grant and the fee ceiling, where a hearing continues beyond one full day VLA will pay an additional fee for every day or part of a day beyond the first day of substantive hearing in accord with the fees set out in the table below.

(ii) preparation fees

Subject to the fee ceiling and with prior approval, additional fees for preparation may be claimed in accordance with Fee Schedule 4.

(iii) instructing fees

Where the assigned practitioner or any other member of his/her firm appears no claim can be made for a second solicitor to instruct. Only a clerk's fee may be claimed.

(iv) circuit fees

Except where the solicitor advocate practices in the circuit town, additional fees in accordance with Table R Fee Schedule 4 are paid.

(v) solicitor's "out of office" fees

Except where instructing solicitor practices in circuit town VLA will pay an additional sum in accordance with the first day circuit fee pursuant to the fees in Tables D1 and D3 together with an overnight fee of \$121 for each necessary overnight stay in the circuit town. Where trial is interrupted by a weekend a further fee pursuant to Tables D1 and D3 shall become payable. These fees also apply where an instructing solicitor who practises in a circuit town has a matter in Melbourne.

Table G

Preparation	\$1311
Brief fee	\$1240
Hourly conference fee to a maximum of \$720	(\$144)
Second and subsequent daily rate	\$845
Instructing fee ½ day rate	
Solicitor	\$263
Clerk	\$197
Plea	\$676
Appearance on sentence	\$248

Circuit Fees

The following circuit fees are payable in relation to appearances in the Supreme Court or County Court of the gazetted circuit towns.

Table R

Ararat	\$519
Bairnsdale	\$778
Ballarat	\$260
Bendigo	\$390
Colac	\$390
Geelong	\$131
Hamilton	\$778
Horsham	\$843
Kerang	\$778
Korumburra	\$260
Mildura	\$1002
Morwell	\$390
Sale	\$584
Shepparton	\$455
Wangaratta	\$649
Warragul	\$260
Warrnambool	\$714

These fees are payable for each five days of the trial or part thereof. If counsel or solicitor advocate appears in a number of matters during any five day period only one circuit fee is payable to be shared equally between each of the matters.

Where a trial is interrupted by a weekend or some other cause the circuit fee will only be payable for each five sitting days. In the event the trial proceeds beyond five sitting days an additional circuit fee will be payable.

An overnight fee of \$121 for accommodation meals and sundry expenses is payable for each necessary overnight stay in the circuit town.

Note: These fees only apply to trials. The circuit fees applicable to pleas are as annexed to Tables D1 and D3.

Supreme Court Preparation

A lump sum fee is payable for preparation for plea or trial. The fee covers taking instructions, perusing material and advising client.

Preparation of necessary responses

The preparation of necessary responses fee is payable once only in a matter.

Committal mention fee where committal is not aided

VLA will pay the sum of \$116 for one necessary attendance at a committal mention.

Printing from disk

VLA will pay for the printing of depositions from disk in excess of 2000 pages where such printing is necessary. The cost of printing will be at commercial rates. Prior approval is necessary.

Table H

Preparation for proceedings (committal not aided)	\$1709
Preparation for proceedings (committal aided)	\$1333
Pegasus II conference/final directions/Section 5H	\$502
Mention, call-over, directions hearing	\$271
Preparation of necessary responses	\$525
Committal mention fee	\$116
Nolle prosequi	\$615

Supreme Court Plea

A lump sum fee is payable for all Supreme Court pleas. The fee covers all necessary work involved in obtaining instructions, preparation of any documentation, correspondence and perusals. Separate fees for conferences and appearance are provided.

A grant for a Supreme Court plea is made on the basis that a grant pursuant to Table H has been previously made.

No allowance has been made in the fee for solicitor to instruct.

Table J: Supreme Court Pleas

Preparation fee	\$1012
Hourly conference fee to a maximum of \$615	(\$205)
Brief fee	\$958
Second & subsequent day rate	\$620
Appearance on sentence	\$338

Except where the solicitor advocate practices in the circuit town, additional fees in accordance with those annexed to Tables D1 and D3 are paid.

Circuit fees for Tables D1 and D3

Except where the solicitor advocate practices in the circuit town the following additional fees are paid:

Court	1st day	2nd & subsequent days
ARARAT	184	122
BAIRNSDALE	201	134
BALLARAT	131	89
BENDIGO	153	102
COLAC	155	102
GEELONG	111	74
HAMILTON	210	140
HORSHAM	210	140
KERANG	210	140
KORUMBURRA	131	89
MILDURA*	255	172
MORWELL	155	102
SALE	184	120
SHEPPARTON	174	118
WANGARRATTA	192	130
WARRAGUL	140	95
WARRNAMBOOL	201	134
WODONGA	210	140

Supreme Court Criminal Trials

A lump sum fee is payable for all Supreme Court Criminal Trials. The fee covers all necessary work involved in the obtaining instructions, preparation of any documentation, correspondence, perusals, proofing of witnesses conferences with advocate. Separate fees for conferences, appearances and instructing appear in the table.

A grant for a Supreme Court trial is made on the basis that a grant pursuant to Table H has been previously made.

VLA will not allow claims for additional work apart from:

- (i) **fees for second or subsequent day of hearing** Subject to any limit VLA may place on the grant and the fee ceiling, where a hearing continues beyond one full day VLA will pay an additional fee for every day or part of a day beyond the first day of substantive hearing in accord with the fees set out in the table below.
- (ii) **preparation fees** Subject to the fee ceiling and with prior approval, additional fees for preparation may be claimed in accordance with Fee Schedule 4.
- (iii) **instructing fees**

Where the assigned practitioner or any other member of his/her firm appears no claim can be made for a second solicitor to instruct. Only a clerk's fee may be claimed.

- (iv) circuit fees

Except where the solicitor advocate practices in the circuit town, additional fees in accordance with Table R Fee Schedule 4 are paid.

- (v) solicitor's "out of office" fees

Except where instructing solicitor practises in circuit town VLA will pay an additional sum in accordance with the first day circuit fee pursuant to the fees in Tables D1 and D3 together with an overnight fee of \$121 for each necessary overnight stay in the circuit town. Where the trial is interrupted by a weekend a further fee pursuant to Tables D1 and D3 shall become payable. These fees also apply where an instructing solicitor who practises in a circuit town has a matter in Melbourne.

Table K: Supreme Court Trials

Preparation fee	\$2387
Brief fee	\$1690
Hourly conference fee to a maximum of \$1435	(\$205)
Second & subsequent day rate	\$1352
Instructing fee – ½ day rate	
Solicitor	\$461
Clerk	\$231
Plea	\$958
Appearance on sentence	\$338

Circuit Fees

The following circuit fees are payable in relation to appearances in the Supreme Court or County Court of the gazetted circuit towns.

Table R

Ararat	\$519
Bairnsdale	\$778
Ballarat	\$260
Bendigo	\$390
Colac	\$390
Geelong	\$131
Hamilton	\$778
Horsham	\$843
Kerang	\$778
Korumburra	\$260
Mildura	\$1002
Morwell	\$390
Sale	\$584
Shepparton	\$455
Wangaratta	\$649
Warragul	\$260
Warmambool	\$714

These fees are payable for each five days of the trial or part thereof. If counsel or solicitor advocate appears in a number of matters during any five day period only one circuit fee is payable to be shared equally between each of the matters.

Where a trial is interrupted by a weekend or some other cause the circuit fee will only be payable for each five sitting days. In the event the trial proceeds beyond five sitting days an additional circuit fee will be payable.

An overnight fee of \$121 for accommodation meals and sundry expenses is payable for each necessary overnight stay in the circuit town.

Note: These fees only apply to trials. The circuit fees applicable to pleas are as annexed to Tables D1 and D3.

Fee Schedule 4 - Fees in Criminal Trials

Preparation Fees for Counsel

VLA has adopted the following guidelines for payment of fees for preparation (including inspection of exhibits, listening to tape recordings, reading and consultations).

1. Additional fees for preparation for committals, committal/inquests, coronial inquests and trials will only be allowed where the preparation is necessary and exceeds eight hours.
2. The daily fee includes remuneration for time that is ordinarily necessary for counsel to spend before and after court each day reading the transcript, preparing arguments and submissions, and conferring with the instructing solicitor and the client, plus remuneration for time spent in court.
3. Before payment of a fee for preparation will be considered, VLA will require:
 - (i) an estimate by the instructing solicitor of the amount of time it will take counsel to read and prepare the case-this should occur after the assigned solicitor has consulted with counsel;
 - (ii) details of the nature and extent of the preparation, including the number of pages and the nature of documents to be perused by counsel; and
 - (iii) details about which part of the preparation will be undertaken by the instructing solicitor.
4. VLA must satisfy itself that the preparation is essential. If necessary, VLA will independently examine the documentation and require confirmation from counsel by means of further and better particulars about the amount of preparation necessary.
5. Time for reading and scanning of documentary material will be calculated at the rate of 90 pages per hour to peruse and 180 pages per hour to scan.

Documents to be perused are:

- Witness statements
- Transcripts of committal proceedings
- Transcript of record of interview

Documents to be scanned are:

- Financial statements
- Photographs
- Other exhibits
- Transcripts of listening devices, SMS messages and other recording devices
- Other documents

6. When the number of pages of material to read or scan exceeds 8 hours using the rates in paragraph 5, counsel is entitled to seek additional preparation. The rate of additional preparation for additional preparation will be calculated as follows.

[perusing plus scanning] less 8 hours

rounded to nearest whole number × appropriate hourly rate

where perusing = total pages to be perused ÷ 90

and scanning = total pages to be scanned ÷ 180

7. A preparation fee will be calculated on the basis of hours spent on preparation up to the maximum fee approved. This fee paid will not exceed the amount calculated in accordance with the formula in paragraph 6. Counsel must keep a record of time spent on preparation and submit it when a fee is claimed.
8. Where a hearing does not proceed and is either adjourned or a rehearing occurs, a further preparation fee will not usually be paid for the adjourned hearing or re-hearing. Where a period of time passes so that it would be unreasonable to expect counsel to have a detailed recollection of the circumstances of the case, then the further preparation fee will be paid. This will be a proportion of the original fee.
- 9(a) A preparation fee will usually be paid only once for the same case, on the basis that the same counsel should appear at all stages of the case. A further fee for preparation will only be paid in the circumstances described in paragraph 8 above, or where the counsel previously engaged cannot appear at a subsequent hearing, or where there is some other good reason for briefing different counsel.
- 9(b) Where a preparation fee has been allowed at the committal stage and the matter proceeds in the County or Supreme Courts additional reading fees in respect to the same material may be allowed at the hourly rate in the higher court less the amount allowed at committal.
10. If the hearing of a matter is delayed or adjourned, and counsel is unable to appear at the later hearing, then counsel will not usually be entitled to a preparation fee unless the preparation undertaken has significantly reduced the amount of preparation which new counsel would need to do.
11. Counsel is presumed to know the law. A fee will not ordinarily be paid for researching the law.
12. A preparation fee must be agreed on either before, or immediately after delivering the brief to counsel who has assessed the amount of work involved. This must occur before formal acceptance of the brief.
13. Solicitor as Counsel Where solicitor appears as counsel he/she may claim preparation fees on the same basis as if he/she was counsel.

Applicable Hourly Rates in the Criminal Jurisdiction for Calculation of Preparation Fees, Conferences and Views

	Counsel	Solicitor
Supreme Court	\$208	\$187
County Court	\$144	\$118
Committals	\$111	\$111

Two Counsel Policy

VLA will grant assistance for only one counsel unless there are exceptional circumstances.

The Managing Director and Divisional Manager of Finance Assignments & Business (“FAB”) have the discretion to make grants of assistance for two counsel in criminal trials in exceptional circumstances.

In determining ‘exceptional circumstances’ in a particular case, the Managing Director or the Divisional Manager, FAB shall have regard to:

- 1 The volume of material required to be dealt with in preparation for or during the trial.
- 2 The time allowed or available for preparation.
- 3 The anticipated length of the trial.
- 4 The multiplicity and complexity of issues to be confronted by the defence.
- 5 The willingness of counsel to accept a capped fee for their services in that particular case
- 6 The opinion of the lawyer or lawyers acting for the defendant as to the need for two counsel.
- 7 The number of defendants and the number of lawyers acting for them and the extent to which they can share the defence work among themselves.
- 8 The number of counsel engaged by the prosecution.

It is recognised that none of these issues alone indicates the need for the appointment of two counsel. For example:

- While in some cases there may be a large volume of material, much of that material could be repetitive (such as transcripts of earlier trials).
- While some issues may be complex, that complexity will only be relevant if the defence is challenging that evidence.
- The Director of Public Prosecutions has to prove all elements of the case against the defendant and accordingly may need two counsel to do so while the defence, if it is not intending to oppose much of that evidence, may not have such a difficult task.

If those exceptional circumstances exist and the Managing Director or the Divisional Manager FAB decides to make a grant for two counsel, the Managing Director or Divisional Manager FAB shall select such counsel (including counsel employed by Victoria Legal Aid) as the Managing Director or Divisional Manager FAB sees fit on such terms and conditions as he or she sees fit.

The fees are set out in Table S.

9. The Managing Director (or, in the Managing Director’s absence, the Divisional Manager FAB) has the authority to approve the briefing of Queen’s Counsel alone in complex criminal trials. Where Queen’s Counsel is so briefed, the fees are to be negotiated on a case by case basis but are not to exceed the fees prescribed for Queen’s Counsel in Table S.
10. VLA may approve the briefing of Senior Counsel/Queens Counsel in criminal trials where the briefing of Senior Counsel/Queens Counsel or the briefing of two counsel has otherwise not been approved subject to:
 - (a) Senior Counsel/Queens Counsel agreeing to accept the fees for Senior Junior in Table S; and
 - (b) A Junior Counsel being briefed and agreeing to accept the fee for Junior in Table S.

Fees where two Counsel Briefed

The following table is published as a guide. The Managing Director and Divisional Manager, Grants have the discretion to vary these fees in appropriate circumstances.

TABLE S

COUNSEL	SERVICE	AMOUNT
Queens Counsel	Brief	2507
	Second and subsequent day rate	2084
	Hourly rate (conference/preparation)	275

COUNSEL	SUPREME COURT	AMOUNT
Senior Junior	Brief	1690
	Subsequent day rate	1352
	Hourly rate (conference/preparation)	205
Junior	Brief	823
	Second and subsequent day rate	688
	Hourly rate (conference/preparation)	106
	Sentence	338

COUNSEL	COUNTY COURT	AMOUNT
Senior Junior	Brief	1240
	Subsequent day rate	845
	Hourly rate (conference/preparation)	144
Junior	Brief	564
	Second and subsequent day rate	451
	Hourly rate (conference/preparation)	91
	Sentence	248

Notes:

- The term Senior Junior applies to counsel who lead Junior Counsel.
- The fee for plea is two thirds of brief fee.
- VLA will only pay for one counsel to attend at sentence. The fee assumes that Junior Counsel will attend.

Court of Appeal – Criminal Appeals

Appeals by convicted person

A lump sum fee is payable for convicted person appeals to the Court of Appeal. The fee covers all necessary work involved in obtaining instructions, preparation of any documentation, correspondence and perusals. Separate appearance fees are set out in the table.

No allowance has been made in the fee for solicitor to instruct.

No allowance has been made in the fee for conferences with counsel. VLA considers such fees not reasonable.

Additional fees for preparation may be claimed in accordance with Fee Schedule 4.

Table L: Appeals by convicted person

	Appeal against sentence	Appeal against conviction
Preparation	\$1295	\$1626
Brief fee	\$1408	\$1408
Second & subsequent day	\$940	\$940
Judgment	\$338	\$338
Preparation of grounds and outline of submissions	\$410	\$1024

Appeals by Crown

A lump sum fee is payable for crown appeals to the Court of Appeal. The fee covers all necessary work involved in obtaining instructions, preparation of any documentation, correspondence and perusals.

No allowance has been made in the fee for solicitor to instruct. No allowance has been made in the fee for conference with counsel. VLA considers such fees not reasonable.

Additional fees for preparation may be claimed in accordance with Fee Schedule 4.

Table L(i) is calculated on the understanding that senior and junior counsel will be retained. VLA may, on the recommendation of the solicitor or otherwise, make a grant for senior counsel only.

VLA will only pay for one counsel to attend at judgement. The fee assumes that Junior Counsel will attend.

Table L(i): Appeals by Crown

Fees Payable	Appeal
Preparation	\$1295
Senior counsel – brief fee	\$3584
Outline of submissions	\$1663
Second and subsequent day	\$2970
Junior counsel – brief fee	\$1536
Outline of submissions	\$1229
Second and subsequent day	\$1280
Judgment	\$338

High Court Criminal Appeals

A lump sum fee is payable for all High Court criminal appeals. The fee covers all necessary work involved in obtaining instructions, preparation of any documentation and perusals. Separate appearance fees are set out in the table.

No allowance has been made in the fee for solicitor to instruct. No allowance has been made in the fee for conferences with counsel, VLA considers such fees not reasonable.

Additional fees for preparation up to a maximum of \$2255 may be claimed in accordance with Fee Schedule 4. Additional fees for drawing submissions may be claimed. Approval will only be granted if the submissions are extraordinarily lengthy or complex. An allowance will be made on an hourly basis at the rate of \$205 per hour.

Where aid has been granted for an Application for Special Leave specific approval must be sought for assistance to appeal to the High Court.

Table M: High Court Appeal

Fees Payable	Special leave	Appeal
Preparation	\$2121	\$2618
Brief fee	\$1408	\$1408
Second & subsequent day rate	\$940	\$940
Judgment	\$338	\$338

Appendix 11

Swings and Roundabouts

The following are some examples of the “swings and roundabouts” referred to in the whole of job proposal at 4.1.2.

1. Urgent Grants

Under the current fee structure, the solicitor would be entitled to claim a total of \$475 for a standard urgent grant.

Under the proposed whole of job fee structure, the solicitor 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.

2. Standard plea

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

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

3. Matter proceeds to a contest of one day

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

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

4. Consolidated Matter – 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 solicitor would be entitled to claim a total of \$721 under a consolidated grant of aid.

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

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

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

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

6. Solicitor acts for two co-accused in a complex matter

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

Under the proposed fee structure, the solicitor would be entitled to claim the complex whole of job fee of \$1,508 (in year 1 of the proposal) for each accused, equal to \$3,016.

7. Solicitor acts for 3 co-accused in a non-complex matter

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

Under the proposed fee structure, the solicitor 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 \$2,262.

8. Solicitor acts for four co-accused in a non-complex matter.

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

Under the proposed fee structure, the solicitor 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.

9. Summary hearing where client initially in custody then bailed and placed on the CISP program, matter 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 solicitor 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 solicitor would be entitled to claim a total fee of \$444 for the bail application.

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

Under the proposed fee structure, the solicitor 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.

Appendix 12

Proposed Hourly Rates

MAGISTRATES' COURT

Type	Current Fee	Proposed Fee	Proposed Fee Calculation
Solicitor	111	125	80% of Civil Scale
Counsel	111	125	80% of Civil Scale

* Note: The Scale has a range of rates for counsel.

COUNTY COURT

Type	Current Fee	Proposed Fee	Proposed Fee Calculation
Solicitor	118	131	80% of Civil Scale B
Counsel	144	167	80% of Civil Scale B

SUPREME COURT

Type	Current Fee	Proposed Fee	Proposed Fee Calculation
Solicitor	187	208	80% of Supreme Court Civil Scale
Counsel	205	228	228**

** There is no fee for counsel in the Supreme Court Civil Scale. This fee is calculated as follows: \$205 (current hourly rate) x 208 (proposed solicitor rate) / \$187 (current solicitor rate).

Appendix 13

Summary of all Costings

Finity Scenario Index Number	Description	Reference	% Change in Cost	\$ '000	Supported / Not Supported	2010/11 \$'000	2011/12 \$'000	2012/13 \$'000	2013/14 \$'000
Summary									
3	"Whole of job" fee for summary matters in the Magistrates Court (complex & non-complex)	4.1.2	8.0%	2,700	Yes	1,500	2,200	2,700	2,700
1	Standardising eligibility threshold for summary crime matters to current threshold for pleas of guilty	4.1.4(a)	(1.4%)	(475)	Yes	(475)	(475)	(475)	(475)
2	Amend the guideline relating to assistance for expert reports	4.1.4(d)	(1.1%)	(370)	No				
4	Remove funding for driving offences	4.1.4(c)	(4.4% to 5%)	(1500-1700)	No				
5	Changing eligibility criteria to imprisonment	4.1.4(b)	(8.8% to 14.4%)	(2970 - 4870)	No				
Indictable									
11	Increase in the brief fee for contested committals	4.2.2(a)	0.8%	270	Yes	270	270	270	270
13	Introduction of post committal negotiation fee	4.2.2(a)	0.7%	237	Yes	237	237	237	237
17	Introduction of fee for sentence indication in County and Supreme Courts	4.2.2(b)	0.1%	34	Yes	34	34	34	34
12	Fee for attendance at filing hearing	4.2.2(c)	0.7%	237	No				
14	Introduction of "reading fee" for solicitors for voluminous indictable criminal matters	4.2.2(d)	0.1% to 2.5%	34 - 845	Yes	335	335	335	335
10	Introduction of fee for instructing at plea hearings in County and Supreme Court	4.2.2(e)	0.7%	237	No				
16	Increase brief fees for Children's Court (Indictable Crime) contested hearings	4.2.2(f)	0.0%	-	Yes	0	0	0	0
8	Limit instructing for any subsequent day of trial to half day	4.2.3	(1.8%)	(608)	Yes	(608)	(608)	(608)	(608)
Bail									
6	"Whole of job" fee for bail applications- complex & non-complex	4.3.3(b)	0.6%	203	Yes	203	203	203	203
Appeals									
7	"Whole of job" fee for County Court appeals against sentence	4.4.2	0.2%	76	Yes	76	76	76	76
15	Introduction of fee for "leave to appeal against sentence" in limited circumstances	4.2.2	0.0%	0	No	0	0	0	0
Indexation Factor									
Annual						1,572	2,272	2,772	3,522

Appendix 14

Agency	Agency Response
Chief Judge County Court	<p>“The County Court supports recommendation 5.2 in relation to the Indictable Crime Fee Structure. The Court supports the provision of a fee structure which explicitly incentivises early preparation and negotiations between the parties to achieve a reduced number of late guilty pleas and earlier resolution of cases.”</p>
Chief Magistrate	<p>“The Court is required to take a neutral position in relation to the development of, consultation over, and ultimate implementation of any fee structure applying to the legal profession...”</p> <p>“I support the attempt made by VLA to create incentives that maximize earlier rather than later resolution of cases in the summary stream. In particular I support the implementation of a fee structure (whatever the money amounts may be) which will maximize the potential benefits of the summary case conference system.”</p> <p>“I support a fee structure that will create incentive to reduce cost and delay in the criminal justice system by ensuring that there is a focus on reducing the number of court attendances and promoting the resolution of cases earlier rather than later- other than in the context of deferrals, bail reviews and the application of therapeutic jurisprudence principles.”</p>
Director Legal Services, Victoria Police	<p>“Victoria Police fully supports the introduction of a whole of job fee for representation in a summary crime matter. The removal of the focus on court events under the existing structure should assist in reducing court delays and supports the summary case conferencing system.”</p>
President, Law Institute of Victoria	<p>“We will not accept the whole of job fee in its current proposed form or with the current proposed quantum.”</p>
General Manager, The Victorian Bar	<p>The Bar is willing to consider whether the whole of job fee proposal is the best approach to funding criminal cases... but will require a deeper understanding.”</p>

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