# Criminal Trial Preferred Barrister List frequently asked questions

This document will be amended from time to time. Practitioners should refer to the online document for the most up to date content.

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## Glossary of terms

‘Grants and Quality Assurance’ refers to the Grants and Quality Assurance Unit within Victoria Legal Aid.

‘a Major Criminal Trial’ is a criminal trial that is likely to last more than 15 days.

‘a Standard Criminal Trial’ is a criminal trial that is likely to last 15 days or less.

‘Preferred Barrister’ means a barrister who is on the Criminal Trial Preferred Barrister List.

‘Non-Preferred Barrister’ means a barrister who is not on the Criminal Trial Preferred Barrister List.

## Standard Criminal Trial

### When do I assess whether a trial is a Standard Criminal Trial?

This assessment should occur when the trial is listed by the court.

For the purposes of seeking an exception to brief a Non-Preferred Barrister, we will use the initial number of days the trial is listed for when considering whether a trial is a Standard Criminal Trial.

### Can I brief a Non-Preferred Barrister for a Standard Criminal Trial?

You must be granted an exception in writing from Grants and Quality Assurance before briefing a Non-Preferred Barrister for a Standard Criminal Trial.

### What happens if I was granted an exception to brief a Non-Preferred Barrister for a Standard Criminal Trial and it becomes a Major Criminal Trial?

If an exception is granted for you to brief a Non-Preferred Barrister for a Standard Criminal Trial and it becomes a Major Criminal Trial, you may retain the Non-Preferred Barrister until the matter finalises.

You do not need to inform Grants and Quality Assurance of this. However, you must request an extension of assistance for the additional trial days.

## Major Criminal Trial

### When do I assess whether a trial is a Major Criminal Trial?

This assessment should occur when the trial is listed by the court.

We will use the initial number of days the trial is listed for when considering whether a trial is a Major Criminal Trial. However, if a Major Criminal Trial is severed into Standard Criminal Trials or becomes a Standard Criminal Trial, we will consider an application seeking an exception to brief a Non-Preferred Barrister.

### Can I brief a Non-Preferred Barrister for a Major Criminal Trial?

No. You must brief a Preferred Barrister for a Major Criminal Trial. Exceptions will not be granted to brief a Non-Preferred Barrister for a Major Criminal Trial.

### What if a Major Criminal Trial becomes a Standard Criminal Trial and I want to seek an exception to brief a Non-Preferred Barrister?

If you have a current grant of assistance for trial and want to seek an exception to brief a Non-Preferred Barrister, you must seek an exception via *submit correspondence* and provide all the relevant information.\*

If you are seeking a grant of assistance for trial and want to seek an exception to brief a Non-Preferred barrister, you may request this via the Simplified Process – Indictable Crime – Trial application form.

NOTE: If you initially briefed a Preferred Barrister for the Major Criminal Trial and decide to brief a Non-Preferred Barrister for the Standard Criminal Trial, Victoria Legal Aid will not pay additional fees for the Non-Preferred Barrister.

## Trial days

### Are voir dires considered part of the trial?

The number of days required to conduct a *voire dire* will be counted as part of the overall number of trial days.

### Are Basha inquiries considered part of the trial?

The number of days required to conduct a *Basha enquiry* will be counted as part of the overall number of trial days.

## Transitional arrangements

### What are the transitional arrangements and how does that affect me?

The transitional period is from 31 July 2015 to 30 September 2015.

The transitional arrangements allow you to retain Non-Preferred Barrister/s already briefed for a criminal trial (either a Standard Criminal Trial or a Major Criminal Trial) commencing during the transitional period, without the need to seek an exception.

If you have already briefed a Non-Preferred Barrister for a Standard Criminal Trial commencing after 30 September 2015, you must either:

* re-brief a Preferred Barrister; or
* obtain an exception to retain a Non-Preferred Barrister, via *submit correspondence* and provide all the relevant information \*

If you have already briefed a Non-Preferred Barrister for a Major Criminal Trial commencing after 30 September 2015, you must:

* re-brief a Preferred Barrister

If you have a current grant of assistance for trial and have already briefed a Preferred Barrister or a Non-Preferred Barrister for a trial commencing during the transitional period, you do not need to inform Grants and Quality Assurance. However, in completing the ‘Submit Payment Claim’ screen on ATLAS, you must enter the name of the barrister who appeared at the trial in the *Payee Service Provider* field.

If you are seeking a grant of assistance for trial commencing during the transitional period, you will be prompted in ATLAS to provide the Preferred Barrister and/or the Non-Preferred Barrister’s name.

See ATLAS user guide, [Direct payments to barristers (doc, 547 KB)](http://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-direct-payments-to-barristers_2013.doc), [transitional arrangements](http://www.legalaid.vic.gov.au/information-for-lawyers/doing-legal-aid-work/criminal-trial-preferred-barrister-list) for further information.

## Seeking an exception to brief a Non-Preferred Barrister

### Who can seek an exception to brief a Non-Preferred Barrister?

Panel practitioners can seek an exception to brief a Non-Preferred Barrister.

Barristers are not permitted to seek an exception.

### When can I seek an exception to brief a Non-Preferred Barrister?

You can seek an exception to brief a Non-Preferred Barrister as soon as the matter is listed for trial but before the trial commences. The expectation is that you seek an exception to brief a Non-Preferred Barrister as soon as the matter is listed for trial.

## When you have been granted an exception to brief a Non-Preferred Barrister

### What does it mean when I am granted an exception to brief a Non-Preferred Barrister?

When Grants and Quality Assurance grant an exception for you to brief a Non-Preferred Barrister, that exception is barrister and matter specific. This means that the exception allows you to brief a specific Non-Preferred Barrister for the matter you have indicated you intend to brief them for. The exception does not extend to other Non-Preferred Barristers or other matters.

### Can I brief the Non-Preferred Barrister in a different trial?

No. The approval is barrister and matter specific. If you intend to brief the Non-Preferred Barrister in a different trial, you must seek a separate exception.

### What happens if I obtain an exception to brief a Non-Preferred Barrister for a Standard Criminal Trial and a re-trial is ordered or the trial is adjourned?

The exception allows you to brief the Non-Preferred Barrister until the matter is finalised.

## When you have a current grant of assistance for trial

### What should I do if I intend to brief a Preferred Barrister?

You do not need to inform Grants and Quality Assuranceof this. However, in completing the ‘Submit Payment Claim’ screen on ATLAS, you must enter the name of the barrister who appeared at the trial in the *Payee Service Provider* field.

See ATLAS user guide, [Direct payments to barristers (doc, 547 KB)](http://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-direct-payments-to-barristers_2013.doc) for further information.

### What should I do if I intend to brief a Non-Preferred Barrister?

If you have a current grant of assistance for trial and wish to seek an exception to brief a Non-Preferred Barrister, you must seek an exception via *submit correspondence* and provide all the relevant information.\*

## Solicitor advocate

### Can I brief a solicitor advocate for a Major Criminal Trial?

Yes. Practitioners may appear as solicitor advocates for a Standard Criminal Trial or a Major Criminal Trial. Solicitor advocates are not required to be on the Criminal Trial Preferred Barrister List to appear in criminal trials.

Practitioners may only appear in their own matter/s as a solicitor advocate or brief a solicitor advocate in their own firm who is a Level 1 Panel Certifier on the Indictable Crime Panel.

### Do I need to inform Grants and Quality Assuranceif I intend to brief a solicitor advocate?

If you have a current grant of assistance for trial and intend to brief a solicitor advocate, you do not need to inform Grants and Quality Assurance. However, in completing the ‘Submit Payment Claim’ screen on ATLAS, you must enter the solicitor advocate’s name in the ‘Practitioner who performed the work’ field.

If you are seeking assistance for trial, you will be prompted in ATLAS to indicate whether you intend to brief a solicitor advocate. ATLAS will not prompt you for the name of the solicitor advocate. However, in completing the ‘Submit Payment Claim’ screen on ATLAS, you must enter the solicitor advocate’s name in the *Practitioner who performed the work* field.

See ATLAS user guides for [ATLAS Changes to the ‘Submit Claims’ screen (doc, 337 KB)](http://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-changes-to-the-submit-claims-screen.doc) and [Changes to the Simplified Process Indictable Trial application form (docx, 428 KB)](https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-atlas-changes-simplified-process-indictable-crime-application-form.docx).

### What should I do if I informed Grants and Quality Assurance that I intend to brief a solicitor advocate but later decide to brief a Preferred Barrister?

You do not need to do anything. You do not need to inform Grants and Quality Assurance of this.

However, in completing the ‘Submit Payment Claim’ screen on ATLAS, you must enter the name of the barrister who appeared at the trial in the *Payee Service Provider* field.

See ATLAS user guide, [Direct payments to barristers (doc, 547 KB)](http://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-direct-payments-to-barristers_2013.doc) for further information.

### What should I do if I informed Grants and Quality Assurance that I intend to brief a solicitor advocate but later decide to brief a Non-Preferred Barrister?

You must seek an exception to brief a Non-Preferred Barrister if the trial commences after 30 September 2015.

If you have a current grant of assistance for trial, you need to *submit correspondence* and provide all the relevant information. \*

See[Guideline 4 – Trials in the County or Supreme courts](http://handbook.vla.vic.gov.au/handbook/3-criminal-law-guidelines/guideline-4-trials-in-county-or-supreme-courts)and[Notes on trials in the County or Supreme courts](http://handbook.vla.vic.gov.au/handbook/3-criminal-law-guidelines/guideline-4-trials-in-county-or-supreme-courts/notes-on-trials-in-county-or-supreme-courts)for further information.

## Decision to brief a different barrister after submitting an application

### What if I need to brief a different barrister after I have submitted my application?

If you need to brief a Preferred Barrister for a Standard Criminal Trial or a Major Criminal Trial, you do not need to inform Grants and Quality Assurance. However, in completing the ‘Submit Payment Claim’ screen on ATLAS, you must enter the name of the barrister who appeared at the trial in the *Payee Service Provider* field.

See ATLAS user guide, [Direct payments to barristers (doc, 547 KB)](http://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-direct-payments-to-barristers_2013.doc) for further information.

If you need to brief a Non-Preferred Barrister for a Standard Criminal Trial, you must seek an exception from Grants and Quality Assurance.

You cannot brief a Non-Preferred Barrister for a Major Criminal Trial.

## Decision to brief a different barrister after an exception has been granted

### What if I need to brief a different barrister after I have been granted an exception to brief a Non-Preferred Barrister?

If you need to brief a Preferred Barrister after you have been granted an exception to brief a Non-Preferred Barrister, you do not need to inform Grants and Quality Assurance. However, in completing the ‘Submit Payment Claim’ screen on ATLAS, you must enter the name of the barrister who appeared at the trial in the *Payee Service Provider* field.

See ATLAS user guide, [Direct payments to barristers (doc, 547 KB)](http://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-direct-payments-to-barristers_2013.doc) for further information.

If you need to brief a different Non-Preferred Barrister after you have been granted an exception to brief a specific Non-Preferred Barrister, you must seek another exception to brief a different Non-Preferred Barrister via *submit correspondence* and provide all the relevant information.\*

## Senior Counsel

### How do I seek assistance for a Preferred Senior Counsel?

If you have a current grant of assistance for trial and want to seek assistance for Senior Counsel, you should submit an extension of assistance and complete the *special disbursement* field in the ‘Disbursement’ menu item and include the following information:

* Senior Counsel’s full name; and
* details of the trial (including charges, nature of the defence and complexity of the matter);

### How do I seek an exception to brief Senior Counsel who is not on the Preferred Barrister List?

If you have a current grant of assistance for trial and want to seek assistance for Senior Counsel, you should submit an extension of assistance and complete the *special disbursement* field in the ‘Disbursement’ menu item and include the following information:

* Senior Counsel’s full name;
* details of the trial (including charges, nature of the defence and complexity of the matter); and
* reasons why the Non-Preferred Barrister is requested and the benefits of briefing that barrister, including the availability of Preferred Barristers and reasons why they are not suitable.

If you are seeking assistance for trial, you will need to indicate that you are seeking an exception to brief a Non-Preferred Senior Counsel, in addition to selecting who you intend to brief. You will be prompted in ATLAS to provide the above information.

See ATLAS user guide for [Changes to the Simplified Process Indictable Trial application form (docx, 428 KB)](https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-atlas-changes-simplified-process-indictable-crime-application-form.docx).

### Do I need to apply for a grant of assistance for Senior Counsel if they are prepared to accept Senior Junior fees?

No. If Senior Counsel is prepared to accept the fees in accordance with [Table F](http://handbook.vla.vic.gov.au/handbook/24-payments-to-lawyers-and-service-providers/costs-payable-in-criminal-law-matters/fee-schedule-1-lump-sum-and-other-fees-payable-in-criminal-law-matters/table-f-lump-sum-fees-for-county-court-and-supreme-court-stage) and [Table M](http://handbook.vla.vic.gov.au/handbook/24-payments-to-lawyers-and-service-providers/costs-payable-in-criminal-law-matters/fee-schedule-4-counsels-fees-in-criminal-trials/table-m-guide-to-fees-for-counsel-in-criminal-trials) there is no need for you to apply for a grant of assistance for Senior Counsel.

### What fee is Senior Counsel entitled to if I do not have a grant of assistance for Senior Counsel?

If you brief Senior Counsel without an appropriate grant of assistance, they will be paid at Senior Junior fees in accordance with [Table F](http://handbook.vla.vic.gov.au/handbook/24-payments-to-lawyers-and-service-providers/costs-payable-in-criminal-law-matters/fee-schedule-1-lump-sum-and-other-fees-payable-in-criminal-law-matters/table-f-lump-sum-fees-for-county-court-and-supreme-court-stage) and [Table M](http://handbook.vla.vic.gov.au/handbook/24-payments-to-lawyers-and-service-providers/costs-payable-in-criminal-law-matters/fee-schedule-4-counsels-fees-in-criminal-trials/table-m-guide-to-fees-for-counsel-in-criminal-trials).

## Briefing barristers for proceedings other than trials

### Can I brief a Non-Preferred Barrister for a contested committal, appeals to either the County Court/Court of Appeal, County Court or Supreme Court plea?

Yes. The requirement to brief a Preferred Barrister only relates to criminal trials. It does not include committals, proceedings in the Magistrates’ Court, appeals to either the County Court or Court of Appeal, and plea hearings in the County or Supreme courts.

### Can I brief a Preferred Barrister for proceedings other than trials?

Yes. We encourage you to brief a Preferred Barrister.

\* The relevant information includes the following:

* the Non-Preferred Barrister’s full name; and
* the criminal trial details (including the trial date, estimated trial length that has been agreed with the prosecution and which has been communicated to the court, charges and nature of the defence); and
* reasons why the Non-Preferred Barrister is requested and the benefits of briefing that barrister, including the availability of Preferred Barristers and reasons why they are not suitable.

## Further information

For further information, please contact:

Victoria Legal Aid

Grants and Quality Assurance

Level 9, 570 Bourke Street

Melbourne VIC 3000

Grants@vla.vic.gov.au

Phone: (03) 9269 0600 (03) 9606 5254