

## **COSTS ASSESSMENT RULES COMMITTEE**

### **GUIDELINE**

## **COSTS PAYABLE BETWEEN PARTIES UNDER COURT ORDERS**

### **(“ORDERED COSTS”, FORMERLY “PARTY/PARTY COSTS”)**

#### **INTRODUCTION**

1. These Guidelines are promulgated by the Costs Assessment Rules Committee, for the guidance of Costs Assessors in the assessment of costs payable between parties under an order of a court or tribunal<sup>1</sup> (“Ordered costs”<sup>2</sup>, formerly “Party/party”<sup>3</sup> costs). In developing these guidelines, the Committee has, as well as drawing on its own experience, consulted with assessors and relevant stakeholders, and had regard to rules of court and scales of costs in other Australian jurisdictions. It is intended that these Guidelines be reviewed annually.
2. Assessors must always consider the criteria set out in the *Legal Profession Uniform Law Application Act 2014*, s 76 (which incorporates *Legal Profession Uniform Law*, s 172).<sup>4</sup> These Guidelines do not substitute for consideration of those matters.
3. These Guidelines are intended to provide guidance for Costs Assessors, in order to promote consistency and predictability. They are not binding on Assessors. They are intended as guidance as to what will usually be appropriate in ordinary cases, and they

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<sup>1</sup> Recommendation 34 of the Chief Justice’s Review of the Costs Assessment Scheme (2014) was that the CARC, in consultation with relevant stakeholders, develop and promulgate guidelines for Assessors on whether, when and in what circumstances, and/or at what rate, frequently occurring items would ordinarily be allowed on party/party assessments, including (a) hourly and daily rates for practitioners of varying seniority and in varying locations; (b) office overheads such as copying, scanning, telephone, faxes, travel expenses and administrative work; (c) agency search and filing fees; (d) research time; (e) reviewing time; (f) conferences between lawyers for the client; (g) briefing senior counsel; (h) retaining experts; and (i) retaining agents. This Guideline is promulgated pursuant to (NSW) *Legal Profession Uniform Law Application Regulation 2015*, s 57(1)(a) and (e).

<sup>2</sup> The term used in the (NSW) *Legal Profession Uniform Law Application Act 2014*.

<sup>3</sup> The term used in the (NSW) *Legal Profession Act 2004*, which continues to apply to party/party assessments where the proceedings to which the costs order relates commenced before 1 July 2015. The *Legal Profession Uniform Law Application Act 2014* applies to “ordered costs” (as party/party costs are now called) where the proceedings to which the costs relate commenced on or after 1 July 2015: see *Legal Profession Uniform Law Application Regulation 2015*, s 59. As almost all assessments will now be under the 2014 regime, references to the 2004 legislation have been removed from the text in the 2023 version of the Guideline, but have been retained as footnotes.

<sup>4</sup> Cf *Legal Profession Act 2004*, s 364.

recognise that there will be unusual circumstances and extraordinary cases which will fall outside them. They are intended to apply to assessments on the ordinary (not the indemnity) basis.<sup>5</sup> All amounts referred to are exclusive of GST.

4. The Guidelines are to be read and construed together with the footnotes.

## GUIDELINES

5. **General.** Costs are to be allowed only if and to the extent that they are no more than fair and reasonable in all the circumstances, were proportionately and reasonably incurred, and are proportionate and reasonable in amount, having regard to the matters referred to in *Legal Profession Uniform Law* s 172.<sup>6</sup>
6. **Hourly and daily rates for legal service providers.** Time incurred by legal service providers performing professional work should be allowed within the ranges described below.<sup>7</sup>

Service provider	Range \$
Senior partner/partner/specialist (10+ years) (hourly)	540 – 900
Senior associate (5 years plus) (hourly)	360 – 600
Employed solicitor / junior associate (1-4 years) (hourly)	240 - 480
Senior counsel, where the assessor considers that it is fair and reasonable to have briefed senior counsel (daily) <sup>8</sup>	6,000 – 10,000
Senior counsel (hourly)	600 – 1,000
Junior counsel (daily) <sup>9</sup>	2,400 - 5,600

<sup>5</sup> As those terms are used in *Civil Procedure Act 2005* s 98.

<sup>6</sup> Cf *Legal Profession Act 2004* s 364.

<sup>7</sup> Where within the applicable range a particular matter sits should be influenced by the factors referred to in *Legal Profession Uniform Law*, s 172 (cf *Legal Profession Act 2004*, s 364).

<sup>8</sup> Daily rates for counsel are for a brief on hearing and include a 10-hour day from 8am to 6pm. Briefs on interlocutory applications should usually be allowed at between one-third and two-thirds of the rate for a brief on hearing, according to the complexity of the application and the time involved. Mentions and directions hearings should be allowed at hourly rates. Cancellation fees, over and beyond the first day of a brief on hearing, should not be allowed.

<sup>9</sup> See note 8.

Junior counsel (hourly)	240 - 560
Paralegals <sup>10</sup> (hourly)	135- 300
Clerks/secretaries <sup>11</sup> (hourly)	90 - 180

7. **Photocopying, document production and other office overheads.** Office overhead costs such as photocopying, printing, document production, scanning, electronic lodgement, telephone, emails and faxes will generally be covered by the hourly rates of the lawyers. Such costs should generally not be allowed either as a professional cost or as a disbursement, when undertaken in house by the lawyer or law practice.

Where a provider of services such as a commercial printer is engaged to carry out reasonable printing or production of material such as evidence or court books, the costs paid to such a provider should be allowed as a disbursement.

It may on occasion be reasonable and proportionate for a lawyer or other staff member of the law firm to carry out such activities (for instance extreme urgency or confidentiality), in which case a claim for the task at the hourly rate of that person may be allowed.

8. **Travelling expenses.** The out-of-pocket expenses of a legal service provider travelling for the purposes of the matter should be allowed as disbursements. The legal service provider's time travelling to and from court or conference should be allowed at one-half of that provider's rate.
9. **Research.** Research time may be allowed, only to the extent that such work is reasonable for the prudent preparation and conduct of the matter.

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<sup>10</sup> This category is intended to cover employees not admitted to practice but holding a law degree or diploma, or equivalent experience. Paralegals should not be allowed if the hourly rate of the relevant legal practitioner is such that it should be regarded as incorporating paralegal services. See also para 7.

<sup>11</sup> This category is intended to cover unqualified employees. Clerks and secretaries should not be allowed if the hourly rate of the relevant legal practitioner is such that it should be regarded as incorporating clerical and secretarial services. See also para 7.

10. **In-house conferences.** In-house conferences may be allowed, only to the extent that they are shown to have contributed to the efficient conduct of the case.

**24 October 2023**