



## Notice to the Profession

The Chief Justice has authorised the issue of the following notice.

### New Scale of Costs

1. In December 2022, the Supreme Court of Victoria and the County Court of Victoria published a Consultation Paper containing a draft proposal for a time-based costing regime, which would replace the Scale of Costs as a basis for party/party costs recovery in Victoria.
2. A working group, co-chaired by the Hon Justice Jack Forrest and her Honour Kathryn Kings, received and considered submissions from legal service providers concerning issues raised in the Consultation Paper. The Hon Justice Andrea Tsalamandris has taken over from Justice Forrest as co-chairperson of this working group.
3. On 30 November 2023, the Supreme Court's Council of Judges endorsed the following items in principle:
  - (i) A new Scale is to be incorporated within Appendix A of the *Supreme Court (General Civil Procedure) Rules 2015 (the Rules)*, to replace the current Scale. It should include items 1, 2 and 3 as identified in the attached **proposed Appendix A**. In overview, those items provide:
    - Item 1:** Where the party entitled to costs is charged on the basis of hourly rates, different maximum hourly rates according to a practitioner's years of post-admission experience, requiring legal skill or knowledge, will apply;
    - Item 2:** In determining the reasonableness of hourly rates, regard will be had to the factors listed in an amended r 63.48 of the Rules, as proposed.
    - Item 3:** Where the party entitled to costs is not charged on the basis of hourly rates, a reasonable amount will be allowed having regard to item 2;
  - (ii) The commencement date of the new Scale is to be **1 January 2025**;

- (iii) The Costs Court should be given the discretion to assess costs on a gross sum basis in lieu of taxed costs, on its own motion or, on application by a party.
4. The Rules and the *Supreme Court (Corporations) Rules 2013* will require amendment. This will include any amending Rule required to incorporate transitional arrangements, and the balance of the items to be contained in Appendix A. It is anticipated that such amendments will be proposed to the Council of Judges in the first half of 2024.
  5. The County Court will also develop, and seek approval through its usual process, any corresponding amendments to the *County Court Civil Procedure Rules 2018*, consistent with the Supreme Court amendments.
  6. The working group will undertake further consultation in respect of the following matters:
    - The draft new Scale is expressed to be exclusive of GST. The working group will consult further as to whether an individual litigant, not entitled to an input tax credit, can recover the GST component of the costs paid for the provision of legal services from the unsuccessful party to the litigation.
    - Under the draft new Scale, the hourly rate is to be applied to six minute units. The working group considers that in the medium to long-term, given advances in technology, it is preferable that costs under the Scale be calculated based on 'actual time spent', rather than six minute units. There will be further consultations with the Law Institute of Victoria and other stakeholders as to the suitable timing of a sunset provision in respect of the application of six minute units. A further recommendation will be made to the Council of Judges once this consultation has been completed.
    - Whether the Costs Court should have the power to award costs above the maximum sums stated in Appendix A, including Counsel's fees.

Vivienne Mahy  
Executive Associate to the Chief Justice  
1 December 2023

## Items for inclusion in Appendix A – Supreme Court Scale of Costs

Fees and charges to be paid to a party to whom costs are payable (whether the basis of taxation is the ‘standard basis’ or the ‘indemnity basis’) for work done by legal service providers on and after 1 January 2025 in relation to matters in the Supreme Court of Victoria.

The charges in this Scale are exclusive of GST.

### 1. Where the party entitled to costs is charged on the basis of hourly rates:

- (a)(i) Time spent by a legal practitioner of 10 or more years post admission experience, requiring legal skill or knowledge –  
(in 6 minute units), a reasonable amount up to a maximum of \$900 per hour
- (a)(ii) Time spent by a legal practitioner of between 5 and 9 years post admission experience, requiring legal skill or knowledge –  
(in 6 minute units), a reasonable amount up to a maximum of \$650 per hour
- (a)(iii) Time spent by a legal practitioner of less than 5 years post admission experience, requiring legal skill or knowledge –  
(in 6 minute units), a reasonable amount up to a maximum of \$450 per hour
- (b) Time spent by an employee of a legal practice (including a law graduate) who is not a legal practitioner
  - (i) exercising legal skill or knowledge –  
(in 6 minute units), a reasonable amount up to a maximum of \$390 per hour
  - (ii) doing work not requiring legal skill or knowledge, capable of performance by a clerk –  
(in 6 minute units), a reasonable amount up to a maximum of \$290 per hour
  - (iii) exercising professional skills and expertise complementing or supporting the delivery of legal services, including but not limited to accountants, financial advisors, information technology specialists, data analysts or forensic analysts, a reasonable amount per hour will be allowed having regard to the matters referred to in item 2 below, in so far as they are applicable.

### 2. Reasonable Hourly Rates

In determining the reasonableness of the hourly rates claimed by the party entitled to costs, including whether to allow an hourly rate in excess of the maximum hourly rate, the assessor shall have regard to (the proposed amended) rule 63.48 *Supreme Court (General Civil Procedure) Rules 2015* (“the Rules”):

- (a) *the complexity of the matter or the importance of the issues in dispute;*
- (b) *the difficulty or novelty of the questions involved in the matter;*
- (c) *the amount of money or value of the property involved;*
- (d) *the number and importance of the documents prepared and examined, regardless of length;*
- (e) *the skill and specialised knowledge of the legal practitioner including the practitioner's accreditation as a specialist in the relevant area of practice by a recognised professional association or body mandated to give such accreditation;*
- (f) *the responsibility involved, including delegation to and supervision of legal practitioners;*
- (g) *the time and labour expended by the legal practitioner;*
- (h) *extent to which the legal practitioner appears as Counsel;*
- (i) *research and consideration of questions of law and fact;*
- (j) *the general care and conduct of the legal practitioner, having regard to the instructions and all relevant circumstances;*
- (k) *the time within which the work was required to be done;*
- (l) *any other relevant matter*

**3. Where the party entitled to costs is not charged on the basis of hourly rates:**

In matters where the party entitled to costs is not charged on the basis of hourly rates, a reasonable amount will be allowed having regard to item 2 above.