



SUPREME COURT OF VICTORIA

Practice Note 1 of 2013

The New Scale of Costs and Counsel fees

1. The Chief Justice has authorised the issue of the following practice note.
2. Significant changes have been introduced to the Supreme Court of Victoria scale of costs contained in Appendix A and to the provisions in Rule 63 of the *Supreme Court (General Civil Procedure) Rules 2005* generally. The changes are effective from 1 April 2013 and apply to work undertaken after that date.
3. The basis of allowance of costs has changed to abolish the default “necessary or proper” test for party and party costs. The standard basis of costs that are “reasonable in amount and reasonably incurred” is now the usual basis for assessment or taxation of party and party costs. Indemnity costs may be allowed if the Court so orders.
4. The Rules allow the Judge, Associate Judge, Costs Judge, Judicial Registrar or costs registrar full discretion to allow any fee, cost or disbursement in full or in part or such other fee, costs or disbursement as is fair or reasonable to compensate for the work actually done.
5. Item 19 in the new scale now contains maxima fees for Counsel. Where costs are taxed pursuant to an order of the Supreme Court, Counsel’s fees in excess of scale cannot be allowed by the Costs Court unless the Supreme Court otherwise orders. Therefore where costs are sought pursuant to an order of the Supreme Court, and a party seeks sums for Counsel’s fees in excess of the maximums in the scale, an application will need to be made to the Supreme Court at the time a costs order is sought and an order made that Counsel’s fees in excess of the scale be allowed before they can be allowed on taxation by the Costs Court.
6. The Supreme Court may fix the rate or amount of Counsel’s fees above scale, or direct the Costs Court to allow the fees of Counsel in excess of scale when assessing or taxing the costs. In the latter case

the Costs Judge, Judicial Registrar or Costs Registrar will fix the rate of charge in excess of the scale amount.

7. The Costs Court will only have a full discretion to allow fees in excess of the maximum in limited circumstances. For example, pursuant to a Notice of Discontinuance or arising from the acceptance of a formal Offer of Compromise, or taxation pursuant to the terms of a Release, or in reviews under the *Legal Profession Act 2004* where the reviews are conducted in accordance with scale.
8. Additional changes have also been made including:
 - (a) The scale is exclusive of GST. This amendment allows legal practitioners who charge their clients on scale to add GST to the total sum to be charged.
 - (b) The scale has been changed to allow a higher hourly rate for attendances but now in 6-minute units in line with most time recording systems currently used by law firms. The hourly rates actually charged by the individuals who performed the work will need to be included in the bill as well.
 - (c) The cost of photocopying is entirely discretionary in the scale. Guidelines for photocopying will be issued from time to time. The guide is not intended to limit the discretion to allow higher or lower fees if it is considered appropriate. Guidelines appears at paragraph 11 below.
 - (d) The scale provides an allowance for solicitors to approve documents drawn by Counsel prior to filing and service.
 - (e) The scale provides for the leaving of messages by email or SMS or other means that are 20 words or less.
 - (f) The charges for letters include delivery by any means. No additional charge applies.
 - (g) The scale includes a charge to receive correspondence by any means and placing a copy of the letter on a file. This includes the printing of emails or facsimiles.
 - (h) The scale differentiates between perusal, scanning and examination of documents.
 - (i) Items 11, 12, and 13 of the scale include allowances for review and consideration, delegation and supervision, and research. Applications to the Costs Court for allowances for these items will need to be supported by file notes or other means. The Costs Court has a full discretion to make allowances for claims made pursuant to these items depending on the proof produced and the particular claims made for perusal, scanning and examination in the bill of costs.
 - (j) Any claim made for research will not be allowed unless the research involves a legal question of some complexity that is not procedural in nature.
 - (k) The scale provides allowances for redaction and collation, pagination and indexing of documents. These allowances are

for the time taken to complete each task that is reasonable in the circumstances.

- (l) Item 17 of the scale includes an allowance of an additional amount having regard to the circumstances of the case. Rule 63 provides that bills of costs are to be prepared on an itemised and chronological basis without differentiation between instructions for brief or preparation for trial work and any other work.
- (m) Fixed fees are provided in relation to Corporations short form bills. Additional costs in the way of reasonable disbursements can be allowed.

10. Appendix B of the scale includes allowances for Witness Expenses and interpreters' fees. An additional fee or higher fees may be allowed if the Court makes an order for a higher rate.

11. Guide to reproduction of documents

The scale of costs allows a discretion in relation to copy documents. The new scale provides at item 4 that reproduction by photocopy or other machine made copy including hard copies of electronic documents shall be at the discretion of the Costs Court.

As a guide, the Costs Court will allow reproduction as follows:

Reproduction— for each printed side of a page
0.22

If printed out of the office, the amount charged by the service provider should be claimed as a disbursement and will be allowed if reasonable

18 March 2013
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