

Schedule 3—Costs allowable for work done and services performed

(rules 40.29, 40.41, 40.42, 40.43 and 40.44)

1A Application of this Schedule

- 1A.1 This Schedule, as amended by the *Federal Court Amendment (Costs and Other Measures) Rules 2013*, applies to work done or services performed on or after 1 January 2014.

1 Attendances

- 1.1 Attendances by a lawyer requiring the skill of a lawyer (including attendances in conference, by telephone, on counsel, appearing in court, instructing in court and travelling), for each unit of 6 minutes a sum in all circumstances not exceeding \$58:
- (a) having regard to the lawyer's skill and experience; and
 - (b) having regard to the complexity of the matter or the difficulty or novelty of the questions involved.
- 1.2 Where any attendance referred to in item 1.1 is capable of performance by a law graduate or articulated clerk for each unit of 6 minutes: \$22.
- 1.3 Attendances capable of performance by a clerk or paralegal—for each unit of 6 minutes: \$11.

2 Preparing documents

- 2.1 All documents, whether in printed form or otherwise (but excluding correspondence)—for each 100 words: \$52.
- 2.2 Correspondence (including letters, emails, text messages and instant messaging)—up to 50 words: \$22.
- 2.3 Correspondence (including letters, emails, text messages and instant messaging)—up to 100 words: \$42.
- 2.4 Correspondence (including letters, emails, text messages and instant messaging)—over 100 words: in accordance with item 2.1.

2.5 Bill of costs—at the discretion of the taxing officer.

3 Reading

- 3.1 All documents, whether in printed form or otherwise (but excluding correspondence falling within item 3.2 or 3.3): in accordance with item 1, or at the discretion of the taxing officer, having regard to the number of pages read.
- 3.2 Correspondence (including letters, emails, text messages and instant messaging)—up to 50 words: \$16.
- 3.3 Correspondence (including letters, emails, text messages and instant messaging)—up to 100 words: \$32.

4 Delegation and supervision

- 4.1 Where it is appropriate for more than one lawyer to be involved in the conduct of the matter, allowance may be made for attendances to delegate or supervise: in accordance with item 1.

5 Research

- 5.1 Where it is appropriate to research a legal question of some complexity that is not procedural in nature: in accordance with item 1.

6 Electronic document management

- 6.1 Database creation, database administration (including establishing design and agreement of protocols), database design and implementation: in accordance with item 1.2.
- 6.2 Document preparation and document description (including necessary redaction and duplication), in compliance with the Federal Court Practice Note dealing with the use of technology in the management of discovery and conduct of litigation: in accordance with item 1, having regard to the complexity of the issues involved.
- 6.3 Imaging of documents to searchable format including rendering to PDF and scanning where necessary: in accordance with item 1.3.
- 6.4 Publishing including:

- (a) electronic exchange and discovery; and
- (b) write-to CD/CD ROM/USB or other agreed media: in accordance with item 1.3.

7 Masking

7.1 Masking documents:

- (a) if the taxing officer is satisfied that the masking required the skill of a lawyer—in accordance with item 1.1;
- (b) otherwise—in accordance with item 1.3.

8 Collation, pagination and indexing

8.1 Collation (including collation for the purposes of copying), pagination and indexing of documents for the purposes of discovery, inspection, briefs to counsel, instruction to expert witnesses, court books, appeal books, exhibits or annexures to court documents or similar (but excluding maintaining files)—in accordance with item 1.3, or at the discretion of the taxing officer, having regard to the number of pages and the number of documents collated, paginated or indexed

9 Copying

9.1 Copying documents: at the discretion of the taxing officer.

10 Personal service

10.1 Personal service, inclusive of all attempts (where required): \$106.

11 Skill care and responsibility

11.1 An additional amount may be allowed, having regard to all the circumstances of the case, including the following:

- (a) the complexity of the matter;
- (b) the difficulty or novelty of the questions involved in the matter;
- (c) the skill, specialised knowledge and responsibility involved and the time and labour expended by the lawyer;
- (d) the number and importance of the documents prepared and read, regardless of their length;
- (e) the amount or value of money or property involved;

- (f) research and consideration of questions of law and fact;
- (g) the general care and conduct of the lawyer, having regard to the lawyer's instructions and all relevant circumstances;
- (h) the time within which the work was required to be done;
- (i) allowances otherwise made in accordance with this scale (including any allowances for attendances in accordance with item 1.1); and
- (j) any other relevant matter.

12 Where client not charged on a time costing basis

12.1 In matters where the lawyer has not charged the client on a time costing basis, items 1 to 11 above do not apply and a fair and reasonable amount will be allowed, having regard to:

- (a) the complexity of the matter;
- (b) the difficulty or novelty of the questions involved;
- (c) the skill, specialised knowledge and responsibility involved;
- (d) the work actually done by the lawyer;
- (e) the extent to which the work was reasonably necessary;
- (f) the period during which the work was done;
- (g) the time spent on performing the work;
- (h) the quality of the work;
- (i) the number and importance of the documents prepared and read, regardless of length;
- (j) the amount or value of money or property involved;
- (k) the terms of the costs agreement between the lawyer and client; and
- (l) any other relevant matter.

13 Corporations Act 2001—short form bills

13.1 Short form amount that may be claimed by a plaintiff on the making of a winding-up order or on the dismissal of such an application, up to and including entry and service of the order under section 470 of the *Corporations Act 2001* and the obtaining of a certificate of taxation: \$3,776.

Additional costs are allowable for any adjournment in which costs have been reserved by the Court in accordance with this scale.

14 Bankruptcy Act 1966—short form bills

14.1 Short form amount that may be claimed by an applicant on the making of a sequestration order: \$2,426.

Additional costs are allowable for any adjournment for which costs have been reserved by the Court in accordance with this scale.

14.2 Short form amount that may be claimed by an applicant on the dismissal of a petition: \$2,088.

Additional costs are allowable for any adjournment for which costs have been reserved by the Court, in accordance with this scale.

15 Migration Act 1958—short form bills

15.1 Short form amount, including costs and disbursements, that may be claimed by:

- (a) a respondent in a migration case on dismissal or discontinuance of the case: \$2,178; or
- (b) a party in an application for leave to file a migration appeal or extension of time within which to file a migration appeal: \$1,756; or
- (c) a party in a migration appeal case finalised before a final hearing: \$4,098; or
- (d) a party in a migration appeal case finalised after a final hearing: \$6,439.

16 Counsel's fees

16.1 An amount may be allowed for counsel's fees according to the circumstances of the case. That amount may be assessed by reference to the National Guide to Counsel Fees. The fees are to be claimed as a disbursement.

16.2 If a lawyer briefs another lawyer as counsel, the fees of the lawyer acting as counsel are to be assessed in accordance with item 16.1.

17 Witnesses' expenses

17.1 Any witness (other than a party or an expert retained in accordance with Practice Note CM 7) may be allowed an amount equal to:

- (a) if the witness is paid by way of wages, any wages actually lost by reason of the witness' attendance at court to give evidence; and
- (b) if the witness is paid by way of fees, any fees actually lost by reason of the witness' attendance at court to give evidence, less a deduction in relation to discretionary overheads, but not to exceed: \$527 per day.

17.2 An expert may be allowed an amount equal to the expert's actual fees for preparing to give evidence and of attending to give evidence.

18 Disbursements

18.1 All court fees and other fees and payments may be allowed in the amounts actually incurred.

19 Fees not here provided for

19.1 An amount may be allowed for work not otherwise contemplated by this Schedule.

20 Notes

20.1 *Lawyer* is defined in section 4 of the *Federal Court of Australia Act 1976*.

20.2 The rates specified at item 1.1 should not exceed the rates actually charged by the lawyer to the client. Accordingly, bills of costs should set out the hourly rate (or rates) actually charged by the lawyer.

20.3 The charge for preparing documents (item 2) is inclusive of typing, printing, posting, faxing and emailing, and any other administrative task relating to the preparation or transmission of a document, by whatever means. There is to be no charge for such administrative tasks.

20.4 There is no scale item for printing documents. Accordingly, litigants should not expect to recover the cost of this task.

20.5 The word count for correspondence in items 2.2, 2.3, 3.2 and 3.3 excludes any signature block, disclaimer or similar wording.