



Law Council
OF AUSTRALIA

2020 Inquiry into Legal Practitioners' Scales of Costs

Joint Costs Advisory Committee

3 September 2020

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About the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Law Firms Australia, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- Law Firms Australia
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of more than 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2020 Executive as at 1 January 2020 are:

- Ms Pauline Wright, President
- Dr Jacoba Brasch QC, President-elect
- Mr Tass Liveris, Treasurer
- Mr Ross Drinnan, Executive Member
- Mr Greg McIntyre SC, Executive Member
- Ms Caroline Counsel, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.

Acknowledgement

The Law Council acknowledges the assistance of the following Constituent Bodies and Law Council Sections in the preparation of this submission:

- Law Institute of Victoria;
- Law Society of New South Wales;
- Law Society of South Australia;
- Law Society of Western Australia;
- New South Wales Bar Association;
- Queensland Law Society;
- Family Law Section; and
- Federal Litigation and Dispute Resolution Section.

Introduction

1. The Law Council is grateful for the opportunity to provide a submission to the Joint Costs Advisory Committee's (**JCAC**) 2020 inquiry into the quantum of costs allowable to legal practitioners pursuant to the scales of costs contained in the rules of the High Court of Australia (**High Court**), Federal Court of Australia (**Federal Court**), Family Court of Australia (**Family Court**) and Federal Circuit Court of Australia (**Federal Circuit Court**). The JCAC's inquiry again provides an opportunity to ensure that parties awarded costs are, as much as possible, not out-of-pocket following resolution of their legal matter in a federal court.
2. The cost of litigation and accessing legal representation in Australia is an issue of ongoing concern to the community and the legal profession. Clients must be able to have confidence that what is charged by lawyers, and what may be recovered, is appropriate and reasonable, while legal practitioners have a right to be fairly remunerated for their skill and labour.
3. The award of costs should provide a just result to the successful party, who should not be substantially out-of-pocket after an order for costs is made. As the Law Council has submitted in previous years, it is concerned that the scales of costs have failed to keep pace with actual costs incurred by parties and do not reflect the value of the intellectual work undertaken by practitioners; current charging practices; or changes in the technology used within firms and by practitioners. The Law Council understands that in some cases, the actual costs incurred by firms has increased as a result of the COVID-19 pandemic.
4. The Law Council submits that the recommendations of the JCAC each year should be expeditiously enacted by the various federal courts to ensure that any discrepancy between the scales and the actual costs incurred is minimised and therefore that practitioners and their clients are not losing the benefit of the annual increases recommended by the JCAC.

Federal Costs Advisory Committee formula

5. The Law Council is aware that under the JCAC's Terms of Reference, in reviewing the quantum of costs contained in the rules of the federal courts, the JCAC is required to consider the Federal Costs Advisory Committee (**FCAC**) formula 'as an indicative mechanism, to be adjusted according to available data (including but not exclusive to statistics provided by the Australian Bureau of Statistics)'.

Calculation

6. The FCAC formula is as follows:

$$\begin{aligned} \text{Suggested increase} &= Ax + By + Cz \\ &= (1.82 \times 0.31) + (-0.35 \times 0.39) + (1.82 \times 0.30) \\ &= 0.97\% \text{ (see Table 2 below)} \end{aligned}$$

Where:¹

A = percentage change in wages and salaries, as indicated by the change in the wage price index (**WPI**) = 1.82% (see Table 1 below);

B = percentage change in other overheads, as indicated by the change in the consumer price index (**CPI**) = -0.35% (see Table 1 below);

C = percentage partners' salaries and profits as indicated by the change in the WPI = 1.82% (see Table 1 below);

x = the weighting given to wages and salaries = 31%;

y = the weighting given to other overheads = 39%; and

z = the weighting given to partners' salaries and profit = 30%.

Table 1. Movement in indices

| | June 2019 | June 2020 | Change in indices | % change in indices |
|------------------------|-----------|-----------|-------------------|---------------------|
| WPI² | 132 | 134.4 | 2.4 | 1.82 |
| CPI³ | 114.8 | 114.4 | -0.4 | -0.35 |

Table 2. Application of the FCAC formula

| | Weighting | % change in indices | % increase |
|--|-----------|---------------------|-------------|
| Wages and Salaries | 0.31 | 1.82 | 0.56 |
| Other Overheads | 0.39 | -0.35 | -0.14 |
| Partners Salaries and Profit Share | 0.3 | 1.82 | 0.55 |
| Result of application of the FCAC formula | | | 0.97 |

Analysis

7. Over the past three years the Law Council, following the application of the FCAC formula, has recommended that the scales of costs be adjusted by between 1.95 per cent and 2.00 per cent.⁴ The application of the FCAC formula in 2020 has

¹ The relative weight of each component is determined by reference to the Australian Bureau of Statistics' *Legal Services Australia* survey, most recently undertaken in 2007-08 (published June 2009). The Law Council reiterates its concern that these weightings have not been adjusted in more than a decade and are unlikely to reflect current economic conditions or legal practice expenditures.

² In 2017 and 2018 the Law Council, upon applying the FCAC formula, recommended a increase to the scales of costs of at least 2.0 per cent. In 2019, the Law Council recommended an increase of at least 1.95 per cent.

³ Australian Bureau of Statistics, *Wage Price Index, Australia, Jun 2020* (Catalogue No 6345.0, 12 August 2020).

⁴ Australian Bureau of Statistics, *Consumer Price Index, Australia, Jun 2020* (Catalogue No 6401.0, 29 July 2020).

resulted in a figure of 0.97 per cent – roughly half of the recommended adjustments over the past three years. This outcome has arisen due to the impacts of the COVID-19 pandemic.

8. In relation to the WPI figure, the Australian Bureau of Statistics has noted that:
 - the rise of 0.2 per cent in June quarter 2020 is the lowest quarterly rise since the commencement of the WPI series in September quarter 1997; and
 - the 1.8 per cent rise in the WPI over the year to June quarter 2020, is the lowest recorded annual rate of growth rise since the commencement of the WPI series.⁵
9. Similarly, the CPI fell by 1.9 per cent in the June 2020 quarter – the largest quarterly fall since the commencement of the CPI series.⁶ The decrease of 0.3 per cent over the year to June quarter 2020 is also the first time since March 1998 that Australia has recorded a period of annual deflation.⁷
10. While the growth in the CPI and WPI may have significantly reduced in the June 2019-June 2020 period, in the Law Council's view, these reductions are not applicable to the legal profession. In fact, in many respects, there has been a larger than normal increase in costs incurred by practitioners due to the COVID-19 pandemic.
11. COVID-19 has significantly impacted the operation of the Courts and the legal profession leading to an unprecedented reliance on the use of audio-visual link (**AVL**) technology in the federal courts where in-person hearings and interactions have not been safe or practicable due to public health and safety restrictions. Itemised costs currently provided for under the fee scales should be reviewed against the types of costs reasonably incurred by practitioners when conducting matters by AVL to ensure the fee scales represent a fair and accurate estimate of work reasonably required to be undertaken.
12. In the Law Council's view, the FCAC formula is not relevant in the context of the impacts of the COVID-19 and should not be applied by the JCAC in this instance. To apply the FCAC formula in the current circumstances would only serve to further increase the gap between the scales of recoverable costs and the actual costs incurred by parties. As such, the Law Council submits that, at a minimum, an adjustment of between 1.95 per cent and 2.00 per cent (in line with the Law Council's previous submissions) be recommended by the JCAC.

⁵ Australian Bureau of Statistics, *Wage Price Index, Australia, Jun 2020* (Catalogue No 6345.0, 12 August 2020).

⁶ Australian Bureau of Statistics, *Consumer Price Index, Australia, Jun 2020* (Catalogue No 6401.0, 29 July 2020). See also Matthew Cranston, 'Deflation arrives for first time in 22 years', *Australian Financial Review* (online, 29 July 2020) <<https://www.afr.com/policy/economy/deflation-arrives-for-first-time-in-22-years-20200728-p55gbv>>; Ben Butler, 'Australian inflation has biggest ever quarterly fall dropping 1.9% partly due to free childcare' (The Guardian, 29 July 2020) <<https://www.theguardian.com/australia-news/2020/jul/29/australian-inflation-has-biggest-ever-quarterly-fall-dropping-19-partly-due-to-free-childcare>>.

⁷ Ibid.

Recommendations:

- **Due to the impact of the COVID-19 pandemic, the FCAC formula should not be applied by the JCAC in 2020. Rather, the JCAC should recommend that, at a minimum, an increase of between 1.95 per cent and 2.00 per cent be applied to the scales of costs.**
- **The JCAC should review the scales of costs against the types of costs reasonably incurred by practitioners when conducting matters by AVL to ensure that they represent a fair and accurate estimate of work reasonably required to be undertaken.**

Federal Court National Guide to Counsel Fees

13. Barristers' work is encompassed within the scale of costs in both the Family Court and the Federal Circuit Court. Consequently, the recoverable fees for barristers' work undertaken in matters in those Courts are directly impacted by the implementation of the JCAC's recommendations and any other revisions to the scales of costs. However, barristers' fees are not encompassed within either the Federal Court or High Court scales of costs. The Federal Court has a National Guide to Counsel Fees (**Guide**) which may be applied by taxing officers; however, it is a guide only. The Guide was issued on 28 June 2013 and took effect from 1 July 2013. It has not been updated since. There is no published guideline with respect to barristers' fees in the High Court.
14. The Guide has now not been updated for seven years and is no longer reflective of the actual rates charged by barristers and fails to take into account market and cost-of-living changes over that time. The amounts set out in the Guide should be increased to reflect the rates being charged by counsel appearing in the Federal Court.
15. The Law Council is advised that even in South Australia, where rates charged by members of the South Australian Bar have not increased to the same extent as the larger Bars of Victoria, New South Wales and Queensland since 2013, it is becoming more common for counsel of the level of experience typically briefed in the complex work the Federal Court presides over to be charging at or over the maxima prescribed in the Guide. The Law Council is advised that market rates for senior counsel in New South Wales are now often double (or more) 2013 rates included in the Guide. While these rates may be reduced on a party/party taxation (or assessment of costs in New South Wales), the disparity between actual rates and the amounts set out in the Guide indicates to the Law Council that revision of the Guide is urgently required.
16. Failure to take into account market and cost-of-living changes over time and revise amounts in the Guide has also meant that barristers' fees payable under the Guide have decreased in real dollar terms.
17. In its submission to the JCAC's 2019 Inquiry, the Law Council recommended that:

the JCAC recommend that the Federal Court update the National Guide to Counsel Fees to recognise changes in market rates and market conditions affecting barristers' fees since 2013.
18. The Law Council repeats this recommendation in relation to the JCAC's 2020 Inquiry. In the Law Council's view, the JCAC should encourage both the High Court

and the Federal Court to ensure that continuing changes in market rates and market conditions affecting barristers' fees are properly reflected in the scales of costs and any guidance material. The Law Council submits that the Guide should be updated in the first instance to recognise changes since 2013, and that future reviews and updates of the guidance document be conducted at the same time as reviews and updates of solicitors' fees. Should the not to be updated, then the Law Council suggests that it should be removed.

19. In order to ensure the ranges within the Guide fairly reflect the rates paid by litigants to their counsel for routine through to complex matters, the Law Society of South Australia (**LSSA**) suggests that an increase of at least 25 per cent is justified. Table 3 sets out the relevant rates with a 25 per cent increase.

Table 3. LSSA proposed revisions to the Guide

| | Junior Counsel | Senior Counsel |
|------------------------------------|-----------------------|-----------------------|
| Fee on Brief | \$1500 - \$6350 | \$2600 - \$9500 |
| Appearance daily rate | \$1100 - \$5250 | \$2575 - \$8000 |
| Short Interlocutory hearing | \$460 - \$2650 | \$530 - \$3980 |
| Long Interlocutory hearing | \$860 - \$5175 | \$1060 - \$8000 |
| Hourly rates for other work | \$330 - \$660 | \$530 - \$925 |

20. Alternatively, the Law Society of New South Wales (**LSNSW**) suggests that it would not be unreasonable for the current rates to be increased to at least the figures detailed in Table 4 below:⁸

Table 4. LSNSW proposed revisions to the Guide

| | Junior Counsel | Senior Counsel |
|--|-----------------------|-----------------------|
| Appearance daily rate | \$6,500 | \$13,000 |
| Interlocutory Applications: Interlocutory hearing <ul style="list-style-type: none"> • short (up to 2 hours) • long (2 hours plus) | \$650 per hour | \$1,300 per hour |
| Other: Hourly rate for: <ul style="list-style-type: none"> • Directions hearing • Preparation time | \$650 per hour | \$1,300 per hour |

⁸ It is noted that most counsel in New South Wales do not charge a 'Fee on Brief' and accordingly no provision is made for this in Table 4. All rates are GST exclusive amounts.

| | | |
|---|--|--|
| <ul style="list-style-type: none"> • Conferences (not occurring on day of hearing) • Settling applications, statements of claim, affidavits, defence, other documents • Opinions, advice on evidence • Written submissions (where not allowed above) • Attending to receive judgment (where appropriate) • Not otherwise provided for | | |
|---|--|--|

21. As another alternative, the Law Society of Western Australia (**LSWA**) considers that a national approach to setting hourly and daily rates in the Guide should involve consideration of the rates that apply in the State and Territory Supreme Courts across Australia. The LSWA has prepared a table (**Attachment A**) comparing these rates according to the relevant costs determination, rules or guidelines in the various states and territories.
22. Having regard to the hourly and daily rates that apply in the various State and Territory Supreme Courts (which vary considerably) and the discussion of the concept of 'fee on brief' below, the LSWA proposes that the Guide adopt the following wording:

General. *Subject to Rules 40.29 and 40.30 of the Federal Court Rules 2011, counsel fees 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 maximum rates set out below:*

| Service provider | Range |
|--|--------------|
| Senior counsel, where the assessor considers that it is fair and reasonable to have briefed senior counsel (daily) | \$10,000 |
| Senior counsel (hourly) | \$1000 |
| Junior counsel (daily) | \$5,500 |
| Junior counsel (hourly) | \$550 |

Note: Daily rate is based on a 10-hour day and allows for time spent in preparation on the day for the hearing

Recommendations:

- That the JCAC recommend that the High Court and the Federal Court ensure that continuing changes in market rates and market conditions affecting barristers' fees receive equal recognition to similar changes affecting solicitors' fees and charges.
- That the JCAC recommend that the Federal Court update the National Guide to Counsel Fees to recognise changes in market rates and market conditions affecting barristers' fees since 2013.

Concept of 'fee on brief'

23. The Law Council is advised that in Western Australia, the use of the concept of 'fee on brief' is becoming less frequent, though it is acknowledged that the concept is useful in providing a benchmark for the determination of reasonableness of counsel fees.⁹
24. While the Western Australian state scales of costs still utilise the term 'fee on brief', the term is rarely seen in counsel fee notes. It is more common for counsel to express their fee notes by reference to daily and/or hourly rates. In addition, special costs orders are made in the Supreme Court of Western Australia where a party is able to demonstrate that due to the unusual difficulty, complexity or importance of a case, the Scale limits are inadequate.¹⁰ There is a substantial volume of case law that has developed over the years in relation to special costs in Western Australia, and the courts often grant special orders pursuant to the above subsection 280(2) of the *Legal Profession Act 2008* (WA). In cases where special costs orders have been made, counsel fees are normally assessed by reference to daily and hourly rates rather than by reference to the concept of 'fee on brief'.
25. In New South Wales, where the use of scales of costs was abolished in 1994, almost invariably counsel will express their fee notes by reference to daily and/or hourly rates. This is consistent with the Guidelines of the New South Wales Costs Assessment Rules Committee entitled 'Costs Payable Between Parties Under Court Orders' (**NSW Guidelines**) (last updated March 2016).
26. The NSW Guidelines provide as set out below (footnotes have been omitted and the information relating to solicitors' rates has been excluded):

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 Legal Profession Uniform Law s 172 (or, where applicable, Legal Profession Act 2004 s 364).*

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.*

⁹ The *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2020* (WA) provides at item 22(a) for 3.5 days preparation and the first day of trial for 'Fee on brief, i.e. first day of trial and preparation, including submissions'.

¹⁰ *Legal Profession Act 2008* (WA) s 280(2).

| Service provider | Range |
|--|-------------------|
| Senior counsel, where the assessor considers that it is fair and reasonable to have briefed senior counsel (daily) | \$5,000 – \$8,000 |
| Senior counsel (hourly) | \$500 - \$950 |
| Junior counsel (daily) | \$2,000 - \$5,000 |
| Junior counsel (hourly) | \$200 - \$500 |

27. The Law Council proposes that the concept of ‘fee on brief’ in the Guide be replaced by guidelines similar to the NSW Guidelines.

Relationship to solicitors’ costs under the scales of costs

28. While the Law Council strongly supports increasing the rates set out in the Guide, it also notes that that rates for experienced barristers under the Guide are higher than the rates allowed for experienced solicitors under Schedule 3 of the *Federal Court Rules 2011* (Cth). The fact that the rates contained in the Guide are considered very low and not reflective of actual practice yet are significantly higher than allowed for experienced solicitors, indicates that the scales may need to be increased significantly. The Law Council notes that in the course of any update to the scales of costs and the Guide, consideration should be given to ensure any difference between solicitors and barrister rates is proportionate to, and reflects, the differing nature of work undertaken, and the skill and expertise brought to bear in undertaking this work.

Federal Court

29. The Federal Court Scale of Costs is set out in Schedule 3 of the *Federal Court Rules 2011* (Cth).
30. In Western Australia, scales of costs are set out in a table with explanatory notes in separate subsidiary legislation. See, for example, the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2020* (WA). The Law Council notes that having a scale in this form is helpful and less time-consuming when giving disclosure to clients and when preparing bills of costs as the scale is more reflective of the form that a bill of costs takes. However, the Law Council acknowledges there will likely be fewer instances where it is necessary to prepare a bill of costs given the Federal Court’s *Costs Practice Note (GPN-COSTS)*, which notes the Court’s preference for making lump sum costs orders wherever it is practicable and appropriate to do so. The Law Council supports this approach to making costs orders.

Federal Circuit Court and Family Court

31. The Law Council suggests that for consistency consideration be given to increasing the allowances for counsel in both the Federal Circuit Court and Family Court scales of costs by reference to the amounts set out in the Federal Court's Guide.

Federal Circuit and Family Court of Australia Bill 2019 (Cth)

32. The Law Council notes that the Federal Circuit and Family Court of Australia Bill 2019 (Cth) is currently the subject of an ongoing inquiry by the Senate's Legal and Constitutional Affairs Legislation Committee. The merger proposal continues to be opposed by the legal profession for reasons comprehensively outlined by the Law Council and its Constituent Bodies in submissions to other inquiries. However, it is important to note for the purpose of the JCAC's Inquiry that in the event any structural change were made to the federal Courts during 2020-21, the scales of costs would need to be further and promptly reviewed.

Legal Profession Uniform Law cost disclosure requirements

33. While not directly related to the scales of costs, on behalf of the Law Institute of Victoria (**LIV**), the Law Council raises the following issues regarding the operation of the Legal Profession Uniform Law (**LPUL**) in respect of cost disclosure requirements.¹¹

Increasing Costs Disclosure Lower Threshold from \$750 to \$1500

34. As considered by the Legal Services Council in 2018,¹² the LIV considers it appropriate to adopt the non-Uniform Law lower cost disclosure threshold of \$1500 in Uniform Law jurisdictions, instead of the current threshold of \$750, to adequately reflect the increased costs of legal services.
35. The LIV acknowledges the possibility that this may lead to less consumer protection for low costs matters below \$1500 in Uniform Law states, as it would not be subject to the disclosure obligations contained in subsections 174(1) and (3) of Schedule 1 of the LPUL. However, the LIV considers that there remain sufficient protections for consumers who fall within this category, including a statutory right to assess legal costs to ensure that they are fair and reasonable, as well as protections under the Uniform Law costs agreement provisions. Consumers will continue to have contractual rights and can access the Uniform Law complaints provisions for both consumer and disciplinary matters. Additionally, implicit within rule 7 of the Australian Solicitor Conduct Rules pertaining to the communication of advice,¹³ is the need for clients to be sufficiently informed of the legal options available through frank disclosure.

¹¹ *Legal Profession Uniform Law* (NSW), ss 174, 178.

¹² Legal Services Council, 'Options for Cost Disclosure under the Uniform Law' (July 2018) Attachment A, Option 6. Note, in January 2019, the Legal Service Council advised the Law Council that it had decided that the (practitioner-client) cost disclosure thresholds should remain unchanged, notwithstanding the views of the Law Council and others that they should be increased.

¹³ *Legal Profession Uniform Law Australian Solicitor Conduct Rules 2015*, Rule 7.

New Upper threshold of \$5000

36. The LIV recommends an increase in the upper threshold from \$3000 to \$5000 for the following reasons:
- (a) Sole practitioners and smaller law practices generally have a high turnover rate for low cost matters. Compliance with subsections 174(1) and (3) of the LPUL by sole practitioners and smaller law practices generally requires a higher proportion of non-recoverable administrative time than that required in larger law practices.
 - (b) As with the lower threshold disclosure requirements under subsection 174(4) of the LPUL, disclosure will be mandatory under subsection 175(1) of the LPUL if the law practice retains counsel or a 'second law practice' on behalf of the client. Compliance with the higher threshold under subsection 174(5) of the LPUL would still require compliance with the standard disclosure form. This requirement would apply even if professional fees excluding goods and services tax is less than the disclosure thresholds.
 - (c) Disclosure is still necessary under section 177 of the LPUL for negotiated settlements of litigious matters, regardless of the disclosure thresholds.
 - (d) In addition to the multiple consumer protection avenues discussed above, the consequences of non-disclosure obligations under subsection 174(5) and sections 175 and 177 provide further consumer protections.

Accredited Specialisation

37. The LIV notes that for nearly three decades, its Accredited Specialisation scheme has provided a means by which solicitors' competence in specific areas of law can be independently-verified through rigorous testing.
38. Scales of costs have long recognised the appropriateness of higher remuneration of senior counsel in Federal Courts. The LIV submits that accredited specialist solicitors who take on more complex work should have that accreditation recognised by the scales of costs, the principle relevance of which is in party/party costs applications.
39. The authority assessing the appropriate quantum of costs will be required to have regard to the complexity of the matter, prior to certifying – as is the case now – where the appropriateness of engaging senior counsel must be considered before costs are certified. In the LIV's view, the 'uplift' for accredited specialist solicitors should be akin to that of senior counsel.

Counsel rates — Comparison between Australian State and Territory Supreme Courts

| | Western Australia ¹ | New South Wales ² | Victoria ³ | South Australia ⁴ | Northern Territory ⁵ | Queensland ⁶ | Tasmania ⁷ | Australian Capital Territory ⁸ |
|-------------------------------------|--------------------------------|------------------------------|-----------------------|---|---|---|--|---|
| Service provider | Maximum | Range | Maximum | Range | Maximum | | | |
| Senior counsel (daily) | \$6,820 | \$5,000 – \$8,000 | \$9,060 | Appeals: Day Fee for the first day, including preparation of Summary of Argument \$4,800 - \$7,200 Day Fee: For appearance at trial or subsequent day/s of an appeal \$3,200 - \$4,800 | Court preparation \$5,263 | No daily or hourly rates for senior counsel or junior counsel | No daily or hourly rate for senior counsel or junior counsel | No daily or hourly rates for senior counsel or junior counsel but: <ul style="list-style-type: none"> in the Court of Appeal or the Full Court of the Supreme Court, the hourly rate for conferences and settling Notice of Appeal or other documents is \$470 - \$910 per hour Before a single judge in the Supreme Court, the hourly rate for advice on evidence or opinions, conferences, chamber work, etc is \$470 - \$680 |
| Senior counsel (hourly) | \$682 | \$500 – \$950 | \$906 | \$400 - \$600 | Court preparation \$758 | | | |
| Junior counsel (or counsel) (daily) | \$4,510 | \$2,000 - \$5,000 | \$6040 | Appeals: Day Fee for the first day, including preparation of Summary of Argument \$3,000 - \$4,800 Day Fee: For appearance at trial or subsequent day/s of an appeal \$2,000 - \$3,200 | Senior junior rate for court preparation \$3,289 Junior rate for court preparation \$2,103 | | | |

| | | | | | | | |
|--------------------------------------|-------|---------------|-------|---------------|---|--|--|
| Junior counsel (or counsel) (hourly) | \$451 | \$200 – \$500 | \$604 | \$250 - \$400 | Senior junior rate for court preparation \$475 Junior rate for court preparation \$362 | | |
|--------------------------------------|-------|---------------|-------|---------------|---|--|--|

¹ *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2020* (WA)

<https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_s52555.html>.

² New South Wales Costs Assessment Rules Committee, *Guideline: Costs Payable between Parties under Court Orders* (16 March 2016)

<http://www.supremecourt.justice.nsw.gov.au/Documents/Forms%20and%20Fees/Costs%20Assessment%20Forms/Guidelines_costs_payable.doc>.

³ *Supreme Court (General Civil Procedure) Rules 2015* (Vic), Appendix A – Supreme Court Scale of Costs <<https://www.liv.asn.au/PDF/Practice-Resources/LIV-Legal-costing/Supreme-Court-Scale-of-Costs-2020.aspx>>.

⁴ South Australia, *Supreme and District Courts Indicator on Counsel Fees: Guide to Counsel Fees Applicable from 1 June 2017 to date*

<<https://www.lawsociety.sa.asn.au/pdf/SC%20and%20DC%20Indicator%20on%20Counsel%20Fees%20applicable%20from%201%20June%202017.pdf>>.

⁵ Supreme Court of the Northern Territory, *Taxation Guidelines, Interest Rates, Costs, Limits on Personal Injuries Claims and Counsel Fees*

<https://supremecourt.nt.gov.au/_data/assets/pdf_file/0006/727593/V2_VARIATION-TO-SCALE-APPLICABLE-June-2020.pdf>.

⁶ *Uniform Civil Procedure Rules 1999* (Qld), Schedule 1 – Scale of costs – Supreme Court and District Court

<<https://www.legislation.qld.gov.au/view/html/inforce/current/sl-1999-0111#sch.1>>.

⁷ *Supreme Court Rules 2000* (Tas), Schedule 1 – Fees and costs <<https://www.legislation.tas.gov.au/view/html/inforce/current/sr-2000-008#JS1@EN>>.

⁸ Supreme Court of the Australian Capital Territory, *Counsel's Fees Scale (excluding GST)* (1 July 2017).