

ASSESSMENT OF COSTS IN NATIVE TITLE MATTERS SEPTEMBER 2011

1. Introduction

1.1 This 'Assessment of Costs in Native Title Matters September 2011' document only applies to an application received on or after the commencement of the *Native Title (Provision of Financial Assistance) Guidelines 2006* (the Guidelines) in October 2011.

1.2 In accordance with paragraph 54 (a) of the Guidelines, this document is to be used to determine if costs claimed by way of assistance are reasonable costs.

2. Solicitor fees

2.1 Assistance for solicitor fees are to authorised with reference to the flat hourly rate of \$290 (inclusive of GST) pro-rata to the nearest minute, subject to any specific provisions in the Guidelines, any additional terms and conditions of the particular grant and this document.

For example, if preparing correspondence takes 14 minutes; the charge should be calculated as $14/60 \times \$290$, which is \$67.67 (inclusive of GST). If reading correspondence takes 31 minutes, the task should be claimed as $31/60 \times \$290$, which is \$149.84 (inclusive of GST).

2.2 The following table provides a comparison of the Department’s previous and current approaches to reasonable costs arising from changes to the Guidelines.

Previous Approach	Current Approach
<p>Schedule 2 of the <i>Federal Court Rules</i> – Scale of costs for work done and services performed</p>	<p>Flat hourly rate of \$290 (inclusive of GST) pro-rata to the nearest minute applies to the following categories of work provided that they do not fall under paragraphs 3.3 and 3.4 of this document</p>
<p>Item 1 – To sue or defend, to appeal or oppose an appeal or for any other originating proceeding.</p> <p>Item 31 – Attendances that involve the exercise of skill or legal knowledge of a lawyer.</p> <p>File notes – Assistance for an attendance for preparation of a file note, memoranda or report may be claimed only where the document is forwarded by way of report to a client.</p> <p>Item 36 – Attendances in court or chambers or before the Registrar.</p>	<p>Attendances that require the skill of a lawyer (including attendances in conference, by telephone, on counsel, appearing in court and instructing in court).</p> <p>File notes – Assistance for an attendance for preparation of a file note, memoranda or report may be claimed only where the document is forwarded by way of report to a client.</p>
<p>Item 8 – Notice of appearance and service by respondent.</p> <p>Item 9 – Application or notice of motion.</p> <p>Item 10 – Simple notice or memorandum such as notice for discovery.</p> <p>Item 11 – Notice to produce, notice to admit or any similar notice.</p> <p>Item 12 – A brief to counsel and attending counsel with brief.</p> <p>Item 20 - Short letters.</p> <p>Item 21 – Ordinary letters.</p> <p>Item 22 – Circular letters.</p> <p>Item 23 - Special letters or letters including an opinion.</p>	<p>Preparing documents (including letters, emails, text messages and instant messaging). The charge for preparing a document is inclusive of typing, printing, posting, faxing and emailing, and any other administrative task relating to the preparation or transmission of that document.</p>
<p>Item 17 – Perusal.</p> <p>Item 18 – Scanning.</p>	<p>Reading documents whether in printed form or otherwise (including letters, emails, text messages and instant messaging).</p>

2.3 *Agent fees*

2.3.1 Assistance for agent fees and disbursements are only authorised if the Department provided prior written approval. Where the applicant's solicitor engages an agent, the agent's costs will be assessed in the same way as the grantee's solicitor costs. Agency costs must not duplicate the costs of the solicitor with primary carriage of the matter.

2.4 *Apportioning cost*

2.4.1 Solicitors must provide accurate information regarding items that are apportioned across more than one matter. Solicitors must apportion costs equally across matters or provide specific statements as to why costs are not apportioned equally.

2.5 *Circular letters*

2.5.1 Assistance for the first circular letter may be authorised by reference to the flat hourly rate of \$290 (inclusive of GST) pro-rata to the nearest minute. Subsequent circular letters must be claimed at the administrative rate of \$27.50 per hour (inclusive of GST) for time reasonably spent on the task.

2.6 *Daily cap and combined daily cap*

2.6.1 Assistance for solicitor fees (at the flat hourly rate of \$290, (inclusive of GST) pro-rata to the nearest minute) and counsel fees (as provided in paragraphs 54- 55 of the Guidelines) are authorised up to a maximum of 8 hours per day.

2.6.2 The daily cap of 8 hours for professional fees also applies where solicitors or counsel apportion costs across several matters.

2.6.3 There is a combined daily cap for travel and professional fees claimable during a 24 hour period. The combined daily cap is equivalent to 8 hours at the flat rate of \$290 (inclusive of GST) pro-rata to the nearest minute and 4 hours at the travel rate specified in the Guidelines or as agreed with the Department as the rate for counsel.

2.7 *One solicitor per matter*

2.7.1 One solicitor is to have primary carriage of a matter unless prior written approval is obtained from the Department to have more than one solicitor to work on a matter. Approval will only be given if it is impracticable to have only one solicitor having primary carriage of the matter. Costs for internal conferencing or supervision (communications between two or more solicitors or operatives of the same firm) are not allowed.

2.8 *Reading documents*

2.8.1 In claims for reading documents, the number of pages read and a description of the document must be provided.

2.9 *Research*

2.9.1 Assistance for legal research will generally not be authorised. Some allowance may be made for research provided that the solicitor demonstrates that the research is reasonable and necessary in the circumstances of a particular matter.

2.10 *Training*

2.10.1 Assistance for training charges for attendance at native title seminars or conferences will not be authorised. It is expected that solicitors working on native title matters will, at their own cost, undertake the necessary training and research to maintain their native title expertise.

3. *Administrative work*

3.1 Assistance for administrative work undertaken by administrative staff will be authorised by reference to the administrative rate of \$27.50 (inclusive of GST) per hour in accordance with paragraph 54(c) of the Guidelines provided that the work is not the type described in paragraphs 3.3 and 3.4 below.

3.2 Administrative work includes (but not limited to) time spent on:

- typing
- photocopying
- printing
- collation, pagination and indexing
- faxing
- posting
- filing court documents
- service of any document (including by delivery or by post), inclusive of all attempts

3.3 Assistance for general administrative work, including file maintenance/management, attendances to organise meetings or travel and set up or maintain databases, will not be authorised without the prior written approval from the Department.

3.4 The following administrative tasks are not authorised regardless of the person (solicitor, administrative staff, articulated clerk or paralegal) undertaking them:

- attendance to leave a telephone message, and
- attendance to receive and file documents (letters, emails, text messages or instant messaging).

3.5 Administrative staff or a paralegal or an articulated clerk cannot separately charge for administrative work in relation to solicitor costs in preparing a document, as a charge for preparing a document is inclusive of all administrative tasks (eg. typing, printing, posting, faxing and emailing) relating to that document (see Table in paragraph 2.2 above).

3.6 Where a solicitor undertakes a task that is purely 'administrative' in nature (does not require legal skill or knowledge), assistance will be authorised by reference to the administrative rate of \$27.50 (inclusive of GST) per hour (except for any task described in paragraphs 3.3 and 3.4 above). An example of this type of task is a telephone attendance to the Federal Court requesting the time or date of a directions hearing.

3.7 Assistance for work undertaken by a paralegal or articulated clerk will be authorised at the maximum rate of \$66.00 (inclusive of GST) per hour in accordance with paragraph 54(d) of the Guidelines provided that:

- if requested, the law firm can produce evidence to substantiate that the person undertaking such work is a paralegal or articulated clerk,
- prior written approval is obtained from the Department, and
- the work is not the type described in paragraphs 3.3 and 3.4 above.

3.8 The Department, having regard to all the circumstances of a particular case, can determine that a particular attendance could reasonably have been undertaken by an administrative officer, a paralegal or articulated clerk and is to be paid at such rates as provided under the Guidelines.

4. *Disbursements*

4.1 Items such as general office overheads (including office equipment), office maintenance, and account keeping fees are not regarded as disbursements claimable under the grant.

4.2 *Photocopying*

4.2.1 Assistance for photocopies are authorised at \$0.275 per page (inclusive of GST). Further, when photocopying costs are in excess of 5% of the solicitor fees for that invoice period, particulars must be provided and the reasonableness will be assessed by the Department.

4.3 Assistance for anthropologist and other expert's fees are authorised in accordance with the provisions set out in the Guidelines (at paragraph 63) and will only be authorised if the Department provided prior written approval to engage the expert.

5. *Counsel Fees*

5.1 Assistance for counsel fees will only be authorised if the Department provided prior written approval.

5.2 Assistance for counsel fees is authorised at the rates specified in the Guidelines (at paragraph 55) or as determined from time to time by the Attorney-General.

6. *Group representative costs*

6.1 Assistance for group representatives will be authorised in accordance with the Guidelines (at paragraphs 47 – 52 and 57 – 60).

7. Travel

7.1.1 Assistance for travel will be authorised in accordance with the provisions set out in the Guidelines (at paragraphs 56–60). Travel time and travel costs incurred within the city of the place of business are not authorised.

7.1.2 All travel in relation to grants of assistance requires prior written approval from the Department.

7.1.3 Receipts or tax invoices must be provided to substantiate all travel related costs.

7.1.4 In relation to any proposed travel:

- if it is unclear whether the costs of the proposed travel are likely to be met under the existing terms of the grant, it is advisable to seek specific prior written approval from the Department,
- travel and meal allowances are approved for the person identified in the travel request and may not be used for the travel or meal expenses of other persons, and
- if accommodation costs are not claimed then the funding that has been approved for those costs does not become available for other costs, unless approved by the Department.

7.2 Accommodation, meals and incidentals

7.2.1 Assistance for accommodation and meals for solicitors, native title officers, group representatives and witnesses are authorised at the rates specified by the Department in the ‘Maximum Travel Allowance Rates’ document which is available at: www.ag.gov.au/financialassistance.

7.2.2 Assistance for incidentals covers items that are incidental to the trip that would not be incurred at home – eg, a newspaper, toothpaste etc.

7.3 Air travel

Assistance for all air travel is authorised at economy class rates. Discounted airfares should be used where possible.

7.4 Travel time

Assistance for travel time for solicitors and group representatives is authorised in accordance with the Guidelines (at paragraph 59).

7.5 Vehicle mileage rates

Assistance for mileage is authorised at the rate specified by the Australian Tax Office. Current rates are contained in Schedule 1 of the *Income Tax Assessment Regulations* 1997 as in force 1 July 1997.

8. GST

8.1 Assistance for GST is not payable from grant funds.

8.2 Any accounts rendered to the Department must be in the form of, or accompanied by, a tax invoice to the 'Attorney General's Department' that clearly identifies the GST component of the invoice.

8.3 GST components for each disbursement item and third party invoices must be indicated on the invoice. Where GST has not been incurred on a disbursement or an invoice from a third party (for example for title searches or transcript) the invoice should set out the disbursement cost plus 10% GST. You will need to remit GST to the Australian Taxation Office in the usual way.

Approved:
Sarah Chidgey
A/g First Assistant Secretary
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