

August
2017

ROUSSOS LEGAL ADVISORY

Strategic Business Counsel



Northern Territory *Supreme Court Rules*

Amendment – *Supreme Court Amendment (Cost) Rules 2017*

In a nutshell

In June 2017, the Chief Justice and Justices of the Supreme Court of the Northern Territory made amendments to the Northern Territory *Supreme Court Rules* effecting some important changes to the *legal costs* provisions of the Court Rules.

These changes commenced 12 July 2017.

Court assessed costs

The Court Rules relating to legal costs apply to the assessment of costs one party has to pay another party.

The agreement for the payment for services between a lawyer and client is determined separately, in accordance with the particular agreement and the *Legal Profession Act*.

Where the Court makes an order as to legal costs; or there is agreement about an order for the payment of legal costs, costs are assessed under a specific scale set out in the Court Rules.

The assessment is based on what is known as the ‘standard’ basis or ‘indemnity’ basis. In either case, the costs are assessed according to the guidelines set out in the Supreme Court Rules; the only difference being when costs are assessed on an ‘indemnity’ basis, all costs assessed under the Court Scale are allowed; and any doubt about whether a particular item is reasonable or reasonably incurred is resolved in favour of the party entitled to costs.

Depending on the case, in the Supreme Court, it could be a successful party obtains 60 to 65 percent of their actual costs on taxation under the Court scale, on the ‘standard’ basis. A taxation on an ‘indemnity’ basis (because, for example, the party declined a reasonable offer to settle the proceeding) may see the unsuccessful party pay 80 to 85 per cent of actual costs.

Usually, parties try and agree costs. If agreement cannot be reached, then the party entitled to costs prepares a detailed itemised *Bill of Costs* that is sent to the other side; who can then set out objections.

The parties attend a taxation where the Taxing Master evaluates these objections and disputed items.

2017 amendments

- There is a movement towards introducing tools to encourage settlement; including in relation to costs. Effective July 2017, new SCR 63.73A encourages the party entitled to costs to make an offer. If costs are assessed more than the offer, the Master has discretion to reward the initiative of making an offer, by increasing the costs allowed by up to 20%.
- On the other hand, if the amount claimed for costs on a taxation of costs is reduced by 20% or more; or the other side makes a reasonable offer to settle costs that was not accepted; or the Master thinks is fair in the circumstances, the Master may disallow the costs regarding preparing the Bill of Costs and the taxation. The Master also has discretion to direct the solicitor who filed the Bill of Costs to personally pay the costs of attending the taxation incurred by the other party.

Given these incentives, parties entitled to costs, and those opposing a taxation, should consider making a written offer in relation to costs.

- The legal costs part of the Rules set out:
 - a schedule of lump sum costs that can be claimed under the ‘composite’ schedule for specific items of work.
 - an hourly rate that can be claimed under the Rules.

Each of these has been updated.

Regarding the lump sum ‘composite’ scale, this has been updated for the amount that can be claimed; for example, costs on a Writ.

Regarding the hourly rates, previously, an hourly rate was considered for a ‘solicitor’ and ‘clerk.’ This is now expanded to other contemporary categories – Administrative Assistant; Clerk; Graduate Clerk; Law Clerk; and Legal Secretary; as follows (hourly rates):

- Solicitor, at least 10 years – \$350.64.
 - Solicitor, at least 5 years but less than 10 years – \$320.08.
 - Solicitor, at least 2 years but less than 5 years – \$270.54.
 - Solicitor, less than 2 years – \$240.00.
 - Law clerk – \$180.00.
 - Legal Secretary – \$140.40.
 - Graduate Clerk – \$120.00.
 - Administrative Assistant – \$70.20.
- A new Rule (SCR 63.72A) has been introduced to regulate the amount that can be claimed for cancellation fees for Counsel. In the event a trial settles, a cancellation fee for counsel of 60% of counsel’s daily fee for each day allocated for the trial will be allowed for (a) an ordinary proceeding (ie a proceeding that is not a large proceeding) that was settled 2 weeks or less before the trial was due to start; or (b) a large proceeding that was settled 4 weeks or less before the trial was due to start. Whether the matter is a large proceeding will be determined by the Master taking into account the length and complexity of the matter. For any other proceeding, no cancellation fee for counsel will be allowed.

- Along the pathway to hearing in Court, applications may be issued in relation to pre-trial aspects of the litigation. Interlocutory (or interim) applications can incur considerable and unanticipated cost. In relation to interlocutory or other applications, previously, each party was required to bear their own costs, unless the Court otherwise orders. This has altered so these costs are now costs in the proceeding unless the Court otherwise orders (SCR 63.18).
- Other changes include:
 - the Taxing Master may disallow multiple items claimed as one item in a bill (SCR63.40(9)).
 - a new Rule extends, and facilitates, the taxation of costs process to costs agreed in settlement agreements (SCR 63.63A).

For further information please get in touch with our lawyers at

Roussos Legal Advisory
office@roussoslegaladvisory.com
+61 8 8981 8783
www.roussoslegaladvisory.com

This update is provided for the benefit of clients of Roussos Legal Advisory. Our Note is intended to provide commentary and general information only. The discussion should not be relied upon as legal advice. Formal legal advice should be sought in particular transactions or on matters of interest arising from this Note.