

# Legal Aid ACT



## *SCALES OF COSTS*

Revised August 2011

**INDEX**

<b>DESCRIPTION</b>	<b>PAGE</b>
General Notes	3
General Notes on Payments to Counsel	4
Criminal Law Scale of Costs for Payments to Counsel	6
Civil Law Scale of Costs for Payments to Counsel	9
Family Law Scale of Costs for Payments to Counsel	11
General Notes on Payments to Solicitors	12
Criminal Law Scale of Costs for Payments to Solicitors	14
Civil Law Scale of Costs for Payments to Solicitors	17
Duty Lawyer Service	18
Family Law Scale of Costs for Payments to Solicitors	19

**SCALES OF COSTS PAYABLE TO PRIVATE LEGAL PRACTITIONERS****Notes**

1. These Scales are determined pursuant to s31C *Legal Aid Act 1977*.
2. "Commission" includes where the meaning is appropriate "Review Committee" and the Chief Executive Officer of the Commission, his or her delegate or nominee, but will generally mean the Commission carrying on business as Legal Aid ACT.
3. These Scales should be read subject to the obligations and rights of the Commission under the *Legal Aid Act 1977*, subject to the Terms and Conditions of Referral of Legal Assistance and to the Guidelines and Determinations of the Commission.
4. **Date of Effect**  
Unless otherwise stated these Scales apply to grants, or extensions to grants of legal assistance made on and after 1 October 2011.

## **SCALES OF PAYMENTS TO COUNSEL**

### **GENERAL NOTES**

These General Notes form part of each Scale. All items are exclusive of GST.

#### 1. Brief fees

- (a) Include payment of all preparation including normal reading, pre-arraignment conferences and preparation (in criminal matters) and a preliminary conference and the first day of trial. In matters of exceptional complexity a further reading fee may be approved.
- (b) In these Scales chamber work includes advising, conferences, views and similar work.
- (c) No separate allowance in the nature of care, skill and attention shall be paid.
- (d) In an exceptional case as determined by the Commission being a case where two or more junior counsel are engaged, the senior of those counsel may, in the discretion of the Chief Executive Officer be allowed a fee not exceeding a fee allowable to a senior counsel.

#### 2. Additional Days/Refreshers

- (a) Additional days after the first day includes all conferences, preparation and day in Court.
- (b) Additional half day includes all conferences, preparation and half day in Court.

Note: Where the hearing concludes early, the fee will be calculated and paid up to and including the date of conclusion.

#### 3. Senior counsel or equivalent

In exceptional circumstances permission may be granted to brief Senior Counsel or equivalent. The fee allowable will be that allowed for junior counsel plus 50%.

#### 4. Non-Resident Counsel

Non-resident counsel may not be briefed except with the prior permission of the Chief Executive Officer

5. Travel and Accommodation for Counsel

Reasonable expenses necessarily incurred and where necessary airfares at economy class and standard rate nonluxury accommodation will be paid in addition to any other fee prescribed. No other fee by way of loading will be permitted. Receipts must be produced.

6. Counsel's Accounts

When counsel is briefed at an hourly rate the account should include details of the time spent on the matter.

7. Marking of Briefs

Counsel is requested not to accept unmarked briefs. It is essential that the fee payable and the fact that the matter is a Legal Aid matter be established when the brief is handed to Counsel.

8. Matters in which Counsel may not be briefed

- (a) Criminal matters in Magistrates (including Childrens) Court and Sentence Administration Board unless in the opinion of the Chief Executive Officer, the proceedings (whether committal or summary) are extraordinarily complex and involve a serious charge.
- (b) Family law and civil matters in the ACT Magistrates (including Childrens) Court, the Federal Magistrates Court and the Family Court unless in the opinion of the Chief Executive Officer the proceedings are of such complexity or otherwise involve an issue of such substance that counsel should be briefed.
- (c) Generally, in all jurisdictions, in mentions and like appearances unless the briefing of counsel would procure a saving of costs or prior approval has been obtained from the Chief Executive Officer.

**THE CRIMINAL LAW SCALE OF COSTS FOR COUNSEL**

1.	<b><u>MAGISTRATES (INCLUDING CHILDRENS AND CORONERS) COURT</u></b>	
(a)	Application for evidence to be taken at Committal Hearing	480
(b)	Committal proceedings and matters determined summarily Fee on brief includes all preparation, reading, conferences and first day in court	1,200
(c)	Additional day after the first day of hearing	1,200
(d)	Additional half day	720
(e)	Plea of Guilty, breach of recognizance, and similar Fee on brief includes all preparation, reading, conferences and court appearances	720
(f)	Bail applications fee on brief:	
	(i) Opposed application	600
	(ii) Unopposed application	240
(g)	Necessary mentions, unopposed applications taking reserved judgments, Case Status Enquiries and similar	240
2.	<b><u>SUPREME COURT</u></b>	
(a)	Trials and conviction appeals Fee on brief includes: (i) Preparation, reading and conferences (ii) Pre-arraignment conferences and preparation (iii) First day of trial including pre-trial hearing in sexual and violent offences	1,920
(b)	Additional day after the first day of trial	1,200

(c)	Additional half day	720
(d)	Pleas and severity appeals Fee on brief includes all preparation, reading, conferences and court appearances	1,200
(e)	Breach of Orders Fee on brief includes all preparation, reading, conferences and court appearances	720
(f)	Bail applications fee on brief: (i) Opposed application (ii) Unopposed application	600 240
(g)	Applications not otherwise provided for Fee on brief includes all preparation, reading, conferences and court appearances (i) Opposed application (ii) Unopposed application	960 480
(h)	Necessary mentions and taking reserved judgments	240
3.	<b><u>HIGH COURT AND ACT COURT OF APPEAL</u></b>	
(a)	Appeals (including any application for leave to appeal) Fee on brief includes all preparation, reading, conferences and court appearances	2,880
(b)	Necessary mentions and taking reserved judgments	240
(c)	Interlocutory applications fee on brief: (i) Defended (ii) undefended	1,200 480

4.	<b><u>CHAMBER WORK</u></b>	
	per hour or pro rata	240
5.	<b><u>SENTENCE ADMINISTRATION BOARD</u></b>	
	Fee on brief includes all preparation, reading, conferences and appearances	720

**NOTE: -**1. **CO-ACCUSED**

For each legally assisted person after the first, a brief fee not exceeding one-third of the brief fee prescribed for the first legally assisted person shall be paid.

2. **MATTERS UNEXPECTEDLY NOT REACHED**

Costs of the day to be paid at full additional day rate.

3. **MATTERS WHERE CLIENT CHANGES TO GUILTY PLEA ON DATE OF TRIAL**

Fee on brief for the trial day only plus half additional day for sentencing.

**THE CIVIL LAW SCALE OF COSTS FOR COUNSEL**

1.	<b><u>FEDERAL MAGISTRATES COURT AND ACT MAGISTRATES COURT</u></b>	
(a)	Fee on brief includes all preparation, reading, conferences and first day in court	1,440
(b)	Additional days	1,200
(c)	Additional half day	760
2.	<b><u>SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY</u></b>	
A.	<b><u>SINGLE JUDGE</u></b> (or where appropriate, Master or Registrar)	
(a)	Causes (including hearings, civil trials, appearances before a commissioner, an examination de bene esse, assessments and like proceedings)	
	(i) Fee on brief – inclusive reading, preparation, conferences and first day hearing	1,920
	(ii) Additional day	1,200
	(iii) Additional half day	720
(b)	Matters not covered by paragraph (a) above including but not limited to interlocutory applications, ex parte applications for injunctions or similar orders.  Fee on brief – inclusive reading, preparation, conferences and all Court appearances	1,200
(c)	Appeals from another Court or tribunal.  Fee on brief – inclusive reading, preparation, conferences and all Court appearances	1,680
(d)	Chamber work per hour or pro rata	240
(e)	Necessary mentions and taking reserved judgment	240

3.	<b><u>HIGH COURT OF AUSTRALIA AND ACT COURT OF APPEAL</u></b>	
(a)	Appeals, (including any applications for leave to appeal) Fee on brief includes all preparation, reading, conferences and court appearances	2,880
(b)	Necessary mentions and taking reserved judgment	240
4.	<b><u>AAT AND ACAT</u></b>	
	Fee on brief includes all preparation, reading, conferences and first day of hearing	1,200
5.	<b><u>MENTAL HEALTH TRIBUNAL APPLICATIONS</u></b>	
	Fee on brief includes all preparation, reading, conferences and appearances	720

**THE FAMILY LAW SCALE OF COSTS FOR COUNSEL**

<b><u>FAMILY COURT AND FEDERAL MAGISTRATES COURTS</u></b>		
AND		
<b><u>ACT CHILDRENS COURT</u></b>		
(a)	Appeals before the Full Family Court Fee on brief includes all preparation, reading, conferences and appearances	1,920
(b)	Short defended hearings Fee on brief includes all preparation, reading, conferences and appearances	960
(c)	Defended hearings/Less Adversarial Trial Fee on brief includes all preparation, reading, conferences and first day hearing	1,920
(d)	Additional day after the first day	1,200
(e)	Additional half day	720
(f)	Mentions and other appearances in Court or before the Registrar where authorised by the Chief Executive Officer (including undefended applications)	240
(g)	Chamber work per hour basis	240
(h)	Taking reserved judgement	240

Counsel shall not be briefed by an Independent Children's Lawyer unless the matter raises complex issues of fact or law or there are other exceptional circumstances.

## **SCALES OF PAYMENTS TO SOLICITORS**

### **GENERAL NOTES**

#### 1. Lump Sum Grants

- (a) Lump Sum grants have been set on a stage of matter basis on most matters. Under such circumstances, solicitors are not paid on an hourly basis and will not be paid for actual time spent.
- (b) Where no lump sum has been set, solicitors will be paid on a pro rata basis for actual time spent.
- (c) There is no right of appeal against the decision to grant aid by way of lump sum grants. There can be no appeal against the amount of the lump sum grant or refusal to increase that lump sum grant.

#### 2. Reading/Preparation/Conferences/Appearances

The lump sum grant covers all preparation, conferences, reading time and appearances for the stage. Payments of additional fees outside the fee scale will only be approved in exceptional circumstances.

#### 3. Solicitor appearing as Counsel Uninstructed

Wherever a solicitor appears uninstructed as Counsel a higher rate shall be paid as appears in the Scale of Costs below.

#### 4. Witness Expenses

Witnesses called because of their professional, scientific or other special skills or knowledge shall require the prior approval of the Chief Executive Officer at a negotiated fee.

#### 5. Witnesses Generally

If remunerated in their occupation by wages, salary or fees, the amount lost by the witness by the attendance at Court, not to exceed \$300 per day, provided that the Chief Executive Officer shall have a discretion to allow a higher fee in appropriate circumstances. Documentary evidence will be required.

6. Clerks

Where a clerk performs payable work including instructing counsel, payment will be at \$50 per hour.

7. Photocopying/facsimiles

These Scales include payment for regularly anticipated photocopying and facsimiles. Extra necessary photocopying is payable at 75c per page copied. In similar circumstances facsimiles are payable at 75c per page sent. Bulk photocopying shall be paid at commercial printers' rates.

8. Co-accused in criminal matters

Where a solicitor appears for more than one legally assisted person an amount not exceeding one third of the amount prescribed for the first legally assisted person shall be paid.

9. More than one charge in legally assisted criminal matters

Where a grant of legal assistance covers a number of charges or counts the payments itemised in these Scales whether for counsel or solicitor may be paid for separate charges or counts only if in the opinion of the Chief Executive Officer it is reasonable that they be the subject of separate preparation and conduct.

10. Matters capable of summary determination committed to the Supreme Court

In the absence of reasonable justification the Commission shall pay the amount prescribed for the Magistrates Court.

11. Retained Agents

- (a) Prior to retaining solicitors as agents, the Commission requires that the practitioner be satisfied that those solicitors accept the Commission's Terms and Conditions of Referral and will accept payment pursuant to the Commission's relevant scale.
- (b) The grant for agent must be paid out of the assigned practitioner's lump sum fee for any Court attendances.

**THE CRIMINAL LAW SCALE OF COSTS FOR SOLICITORS**

<b><u>MAGISTRATES/CHILDRENS COURT</u></b>		
1.	a. Initial conference, preparation , reading, court attendances, representation to DPP, up to entry of plea	600
	b. Where there is an existing current grant and subsequent grant issued for other or new charges or breach of orders up to entry of plea	240
2.	a. Plea of Guilty includes all preparation, reading, conference and court attendances subsequent to entering of plea	360
	b. Defended hearing and full committal hearing includes all preparation, reading, conference and 1 day in court	600
3.	a. Committal Guilty plea (Hand up Brief)	120
	b. Committal Not Guilty (Hand up Brief)	240
4.	a. Subsequent half day in court	360
	b. Subsequent full day in court	600
5.	a. Applications including for evidence to be taken or mental health at ACAT include all preparation and appearances	240
6.	a. Mentions (after first 3 appearances in court post entry of plea) /taking Reserved Judgement	120
7.	a. Opposed Bail Application	240
	b. Unopposed Bail Application	120
8.	a. Exceptional preparation, reading and conferences, pro rata on hourly basis	120

<b><u>SUPREME COURT</u></b>		
1.	Pleas and appeals including all preparation, reading, conferences and appearances	
	a. Solicitor appearing uninstructed as Counsel	1,080
	b. Solicitor instructing Counsel	720
2.	Applications/Motions and Breach of Orders applications including all preparation, reading, conferences and appearances	
	a. Solicitor appearing uninstructed as Counsel	720
	b. Solicitor instructing Counsel	360
3.	Trials including pre-trial hearing in sexual and violent offences, special hearings Including all preparation, reading, conferences, all interlocutory appearances and first day in Court	
(a)	(i) Solicitor appearing uninstructed as Counsel	1,800
	(ii) Additional day uninstructed as Counsel	900
	(iii) Additional half day uninstructed as Counsel	540
(b)	(i) Solicitor instructing Counsel	1,200
	(ii) Additional day instructing Counsel in Court	600
	(iii) Additional half day instructing Counsel	360
4.	Bail applications	
(a)	(i) Opposed – uninstructed as Counsel	480
	(ii) Unopposed – uninstructed as Counsel	180
(b)	(i) Opposed – instructing Counsel	240
	(ii) Unopposed – instructing Counsel	120

5.	a. Exceptional preparation, reading and conferences	120
6.	Necessary mentions and taking judgement	
	a. Solicitor appearing uninstructed as Counsel	180
	b. Solicitor instructing Counsel	120

	<b><u>HIGH COURT AND ACT COURT OF APPEAL</u></b>	
1.	Appeals including leave applications, all conferences, reading time and all Court appearances	
	a. Solicitor appearing as Counsel	2,160
	b. Solicitor instructing Counsel	1,440
2.	Necessary mentions and taking reserved judgments	120
	<b><u>SENTENCE ADMINISTRATION BOARD AND TRIBUNALS NOT OTHERWISE PROVIDED FOR</u></b>	
1.	All preparation, conferences, reading and appearances	480

<b><u>CIVIL SCALE OF COSTS FOR SOLICITORS IN ALL COURTS</u></b>		
1.	Investigate and report	450
2.	Brief Counsel and initiate proceedings	600
3.	Negotiations and other preparatory work at \$150 p/h. (max 10 hours)	1,500
4.	Interlocutory Application including all preparation, conferences and Court appearances uninstructed	900
5.	Instructing Counsel \$120 per hour Max. 6 hours per day	720
<b><u>ACT MAGISTRATES AND CHILDREN'S COURT</u></b>		
1.	Matters under the Domestic Violence and Protection Orders Act	
	a. DV1A/DV1R – all preparation and attendance at Registrar's Conference	420
	b. DV2A/DV2R – all preparation, negotiations and Consent Orders after Registrar's Conference	420
	c. DV3A/DV3R – all preparation and attending at Final Hearing	600
2.	Care Proceedings	
	a. Initial instruction and first court attendance	450
	b. Case Management Conference including preparation, taking instructions and appearances	450
	c. (i) Hearing at \$150 per hour, Max. 5 hours per day	750
	(ii) Half day	450
3.	Victims of Crime Compensation Includes all preparation, conferences and appearances (as fixed by legislation)	650
<b><u>MENTAL HEALTH APPLICATION ACAT</u></b>		
	Includes all preparation, conferences, all tribunal attendances	240

<b><u>DUTY LAWYER SERVICE</u></b>		
1.	Domestic Violence	210
2.	a. Contested bail application	240
	b. Uncontested bail application/subsequent other bail applications on same day	120
3.	Mental Health	210
4.	Legal advice (family /DV where authorised prior)	130

**FAMILY LAW SCALE OF COSTS FOR SOLICITORS**

	<b><u>Stage 1</u> – take instructions, advising and reporting including considering FDR or initiating proceedings</b>	320
	<b><u>Stage 1(a): FDR early intervention stage</u></b>	
(i)	Representing assisted person at FDR session including all preparation for FDR	640
(ii)	Preparing consent orders, if appropriate	160
	<b><u>Stage 1(b): FDR litigation intervention (at any stage)</u></b>	
(i)	Representing assisted person at FDR session including all preparation for FDR	640
(ii)	Preparing consent orders, if appropriate	160
	<b><u>Stage 2(a): Initiating court proceedings – up to conclusion of directions hearings in the Family Court after initial instructions</u></b>	
	Taking further instructions, communication, preparation of documents, filing and service of documents and court attendance	800
	<b><u>Stage 2(ab): Initiating applications to the Federal Magistrates Court after taking initial instructions</u></b>	
(i)	Affidavit, communication, negotiating, filing and service of documents	800
(ii)	All Court attendances for interim orders	640
	<b><u>Stage 2(b): Initiating court proceedings – up to conclusion of directions hearing/s including application for interim relief in the Family Court after taking initial instructions</u></b>	
	This is for legal assistance for an Application for Initiating Proceedings and an Application for Interim Relief filed at the same time	
(i)	Further instructions for initiating court proceedings and for preparation	800

	of affidavits, documents, filing and serving	
(ii)	Court attendance and negotiations	640
<b><u>Stage 2(c): Interim or summary hearing – as a discrete event – in the Family Court/Federal Magistrates Court</u></b>		
	This stage applies to an interim application commenced as a discrete event, as in enforcement proceedings or a summary proceeding of a type not otherwise addressed in this fee structure.  It does not include the stages 2 (a) or 2 (b) fee component.  (refer to stage 2(g) for application for recovery orders)	
	Instructions for application and affidavit, court documents, obtaining short service and court attendance	1,440
<b><u>Stage 2(d): Up to conclusion of conciliation conference (if any) in the Family Court/ Federal Magistrates Court including further attendances or mention</u></b>		
	File management, instructions, court attendance and consent orders, if appropriate	480
<b><u>Stage 2(e): Case review (if any) in the Family Court including Less Adversarial Trial, further mentions in FMC</u></b>		
(i)	Court documents – if any, instructions, court attendance and consent orders, if appropriate	480
(ii)	If LAT additional payment (2 hours)	320
<b><u>Stage 2(f): Up to conclusion of pre-trial process/Trial Notice List</u></b>		
	File management, instruction, prepare client for family report process, read family report, court attendance and consent orders, if appropriate	480
<b><u>Stage 2(g): Application for recovery order in the Family Court or the Federal Magistrates Court, report watch list, enforcement of orders and contravention proceedings</u></b>		
(i)	Instructions, court documents	480
(ii)	Court attendance	480

<b><u>Stage 3: After pre-hearing conference and release of family report in the Family Court</u></b>	
Prepare client for family report process, read family report, advise client and consent order, if appropriate	480
<b><u>Stage 4: Preparation for trial in the Family Court and the Federal Magistrates Court</u></b>	
Taking instructions, interviewing witnesses, preparing documents, subpoena, case management guideline trial documents, preparing and delivering brief to counsel and conference with counsel	1,600
<b><u>Stage 5: Trial costs for legal practitioner in the Family Court / Federal Magistrates Court</u></b>	
Each hearing day – Solicitor instructing	660
Half day	330
Each hearing day – Solicitor as Counsel	1,080
Half day	540
To take judgement and explain orders	160
<b><u>Stage 6: Appeals from the Family Court and the Federal Magistrates Court</u></b>	
This stage is based on the allocation of a legal practitioner’s time only. Counsel’s fees are part of disbursements.	
Appeal to single Judge of the Family Court , all preparation including 1 <sup>st</sup> day in court – 12 hours	
a) Solicitor instructing - \$110 p.h.	1,320
b) Solicitor as Counsel – 7 hours at \$110 = \$770 5 hours at \$180 = \$900	1,670
Appeal to the Full Court of the Family Court – all preparation including 1 <sup>st</sup> day in court – 10 hours	
a) Solicitor instructing - \$110 p.h.	1,100

	b) Solicitor as Counsel – 5 hours at \$110 = \$550 5 hours at \$180 = \$900	1,450
	<b><u>Miscellaneous</u></b>	
	Outside Stage of Matter and exceptional preparation, reading and conferences on hourly basis	160