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LEGAL PROFESSION ACT 2008

**LEGAL PRACTITIONERS (DISTRICT
COURT APPEALS) (CONTENTIOUS
BUSINESS) REPORT AND
DETERMINATION 2012**

**LEGAL PRACTITIONERS (FAMILY
COURT OF WESTERN AUSTRALIA)
REPORT AND DETERMINATION 2012**

**LEGAL PRACTITIONERS (OFFICIAL
PROSECUTIONS) (ACCUSED'S COSTS)
REPORT AND DETERMINATION 2012**

**LEGAL PRACTITIONERS (STATE
ADMINISTRATIVE TRIBUNAL)
REPORT AND DETERMINATION 2012**

LEGAL PROFESSION ACT 2008
LEGAL PRACTITIONERS (DISTRICT COURT APPEALS)
(CONTENTIOUS BUSINESS) REPORT 2012

Made by the Legal Costs Committee under Division 5 of Part 10 of the *Legal Profession Act 2008* (the Act).

PART 1—PRELIMINARY

Citation

1. (1) This Report may be cited as the *Legal Practitioners (District Court Appeals) (Contentious Business) Report 2012*.
- (2) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2012*.

PART 2—NOTICE AND INQUIRIES

Notice under section 278 of the Act

2. The Legal Costs Committee has complied with the notice provisions of section 278 of the Act.

Inquiries and submissions under section 277 of the Act

3. Before making the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2012*, the Legal Costs Committee—
 - (a) reviewed all submissions received as a result of the notice given under section 278 of the Act including those made by the Law Society of Western Australia (Inc) and the Western Australian Bar Association (Inc);
 - (b) reviewed the impact of movements in the Consumer Price and Labour Price Indices for the financial year ending June 2011, and for the September 2011, December 2011 and March 2012 quarters; and
 - (c) conferred with other legal practitioners.

PART 3—REPORT OF COMMITTEE'S CONCLUSIONS

Maximum hourly and daily rates—scale of costs amended

4. (a) The information gained as a result of the inquiries and submissions described in clause 3 satisfied the Legal Costs Committee that the manner in which legal services are provided made it appropriate to continue to adopt the hourly and daily rates charged by law practices as the basis for rates used in the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2012*.
- (b) It is the recommendation of the Legal Costs Committee that—
 - (1) as a result of the inquiries and submissions described in clause 3;
 - (2) having considered the impact of relevant Australian Bureau of Statistics data;
 - (3) having considered submissions and data from The Law Society of Western Australia and the Western Australian Bar Association; and
 - (4) taking into account the incidental administrative implications of the calculation of the Goods and Services Tax,
the hourly and daily rates referred to in sub-clause 4(a) be varied from the hourly and daily rates used in the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2010*¹ as the basis for the recommended scale of costs which have been generally rounded up or down to represent various, increases of between 5.13% and 7.41% inclusive of the Goods and Services Tax and for administrative convenience, divisible by 11. Those rates are set out in Table A of the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2012*.
- (c) As a result of the information gained from the inquiries and submissions described in clause 3 it is the recommendation of the Legal Costs Committee that the scale of costs as set out in Table B of the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2012* be adopted for appeals in the District Court.
- (d) The recommendations of the Legal Costs Committee are not intended to override the entitlement of a law practice to make a written agreement as to costs with a client under the Act or any successor legislation.

TED SHARP, Chairman.
ANGELA GAFFNEY, Member.
CLARE THOMPSON, Member.
MARCUS COCKER, Member.
JANICE DUDLEY, Member.
MATTHEW CURWOOD, Member.

¹ Published in *Gazette* 29 June 2010.

*Schedule***LEGAL PROFESSION ACT 2008****LEGAL PRACTITIONERS (DISTRICT COURT APPEALS)
(CONTENTIOUS BUSINESS) DETERMINATION 2012**

Made by the Legal Costs Committee under section 275 of the *Legal Profession Act 2008 (the Act)*.

Citation

1. This Determination may be cited as the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2012*.

Commencement

2. This Determination comes into operation on 1 January 2013.

Application

3. This Determination applies to the remuneration of law practices in respect of appeals to a Judge of the District Court of Western Australia, whether from a Registrar of that Court or from another Court or Tribunal.

Maximum hourly and daily rates

4. (a) The hourly and daily rates set out in Table A are the maximum hourly and daily rates, inclusive of GST, which the Legal Costs Committee determines shall be used to calculate the dollar amounts in the scale of costs set out in Table B.
- (b) The rates referred to in paragraph (a) were ascertained in the manner set out in clause 4 of the *Legal Practitioners (District Court Appeals) (Contentious Business) Report 2012*.
- (c) The daily rates set out in Table A are intended to cover all work done on a hearing or trial day, whether in or out of court, including preparation of written submissions and are not intended to be supplemented in any way by additional hourly charges given that the maximum number of hours allowed for the daily rate is 10 hours per day.

Table A

Fee Earner		Maximum allowable hourly and daily rates
Senior Practitioner (admitted for 5 years or more) (SP) ^a	hourly rate	\$451
Junior Practitioner (admitted for less than 5 years) (JP) ^a	hourly rate	\$319
Clerk/Paralegal (C/PL)	hourly rate	\$220
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel—		
Counsel (C) [*]	hourly rate	\$363
	daily rate	\$3,630
Senior Counsel (SC) [†]	hourly rate	\$638
	daily rate	\$6,380

^a The reference to Junior Practitioner or to Senior Practitioner in this Determination includes all legal practitioners even if the services were rendered in another State or Territory. Where a local practitioner has held an interstate practice certificate, the length of admission in that other jurisdiction is to be counted in assessing that practitioner's years of admission for the purposes of this Determination.

^{*} The reference to Counsel in this Determination means a practitioner acting as a barrister other than as Senior Counsel.

[†] The reference to Senior Counsel in this Determination includes reference to Queens Counsel or Senior Counsel appointed in Western Australia, or appointed in any State or Territory in Australia and whose appointment is afforded recognition by the Chief Justice of Western Australia.

Costs

5. Subject to the provisions of the Act permitting a law practice to make a written agreement as to costs with a client, the costs of or in relation to a party to an action or other proceeding (inclusive of GST and counsel fees, but exclusive of other disbursements)—

- (a) recoverable by one party from another party; or
- (b) payable by a party to that party's own law practice,

shall not exceed the amounts set out in Table B.

Table B
DISTRICT COURT APPEALS SCALE OF COSTS 2012

Item	Description	Time	Fee Earner	\$ Amount
1.	Notice of appeal or Notice of Contention—			
	(a) Appeal notice (pursuant to Rule 15 of <i>District Court Rules 2005</i>)	1 hour	SP	451
	(b) Other appeals	5 hours	SP	2,255
2.	Interlocutory hearings—as required (including preparation)	per hour	SP C	451 363
3.	Preparation of appeal for hearing (including preparation of appeal books)	10 hours	SP	4,510
4.	Counsel fee on hearing (including preparation)	2 days preparation; 1 day hearing	C	10,890
			SC	19,140
5.	Counsel fee for second and each successive day of hearing		C SC	3,630 6,380
6.	Attendance at appeal by instructing legal practitioner	per hour	SP	451
7.	Attending on reserved decision (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders)	per hour	SP	451
8.	Settling and extracting order disposing of appeal—			583
				220
9.	Other notices and certificates referred to or required by the Rules or procedures of the Court (including practice directions)			66
10.	Taxing including drawing—		SP	Such amounts as are reasonable in the circumstances
	(a) Drawing bill of costs and service			
	(b) Taxation of costs (including time spent preparing for the taxation)			
11.	Copies where reasonably necessary, including of documents for which allowance is otherwise made in this Determination	per page		0.165
12.	Disbursements			
	In addition to the fees and charges allowed under this Determination—			
	(a) As between a law practice and client, a law practice may charge and be allowed disbursements necessarily or reasonably incurred; and			
	(b) As between party and party, a party may be allowed disbursements incurred by that party except insofar as they are of an unreasonable amount or have been unreasonably incurred, so that subject to the above exceptions, that party is fully reimbursed for its disbursements.			

Made by the Legal Costs Committee on 12 December 2012.

LEGAL PROFESSION ACT 2008**LEGAL PRACTITIONERS (FAMILY COURT OF WESTERN AUSTRALIA) REPORT 2012**

Made by the Legal Costs Committee under Division 5 of Part 10 of the *Legal Profession Act 2008* (the Act).

PART 1—PRELIMINARY**Citation**

1. (1) This Report may be cited as the *Legal Practitioners (Family Court of Western Australia) Report 2012*.

(2) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Practitioners (Family Court of Western Australia) Determination 2012*.

PART 2—NOTICE AND INQUIRIES**Notice under section 278 of the Act**

2. The Legal Costs Committee has complied with the notice provisions of section 278 of the Act.

Inquiries and submissions under section 277 of the Act

3. (a) Before making the *Legal Practitioners (Family Court of Western Australia) Determination 2012* the Legal Costs Committee—

- (1) reviewed all submissions received as a result of the notice given under section 278 of the Act;
- (2) consulted with the Family Court of Western Australia (**Family Court**);
- (3) consulted with The Law Society of Western Australia (Inc), the Western Australian Bar Association (Inc), The Family Law Practitioners' Association of WA; and
- (4) had regard to relevant provisions of the *Family Law Rules 2004*.

(b) In the *Legal Practitioners (Family Court of Western Australia) Report 2009¹ (2009 Report)* the Legal Costs Committee noted that—

- (1) the effect of changes brought about by the Family Law Amendment Rules 2008 to the Family Law Rules 2004 is that the Supreme Court of Western Australia is now responsible for the regulation of legal practitioner/client costs in the Family Court;
- (2) as a consequence of the rule changes in the Family Court of Australia prior to the 2009 Report, the Family Court would no longer be setting a scale for legal practitioner/client costs;
- (3) the General Rule pursuant to section 117 of the *Family Law Act 1975* (Commonwealth) is that each party to proceedings under that Act bears their own costs;
- (4) most legal practitioners and their clients in the Family Court's jurisdiction, enter into costs agreements;
- (5) the Act contains substantial cost disclosure obligations; and
- (6) party/party costs are provided for under the Family Court's federal jurisdiction and therefore it is only legal practitioner/client costs that the Legal Costs Committee is concerned with.

The Legal Costs Committee considers the above matters continue to be relevant.

PART 3—REPORT OF COMMITTEE'S CONCLUSIONS**Hourly rates and scale of costs established**

4. The Legal Costs Committee has determined that as a consequence of the information gained from the inquiries, the submissions described in clause 3, and having regard to the provisions of the *Family Law Rules 2004*—

- (a) it is unnecessary as at the date of this Report to recommend the implementation of a scale of fees in the Family Court in respect of party/party costs; but
- (b) it is appropriate to determine a scale of fees applicable to the work of legal practitioners, clerks and paralegals in and in connection with the Family Court on a legal practitioner/client basis; and
- (c) the recommendations of the Legal Costs Committee are not intended to override the entitlement of a practitioner to make a written agreement as to costs with a client under the Act.

TED SHARP, Chairman.
ANGELA GAFFNEY, Member.
CLARE THOMPSON, Member.
MARCUS COCKER, Member.
JANICE DUDLEY, Member.
MATTHEW CURWOOD, Member.

¹ Published in *Gazette* dated 31 March 2009.

*Schedule***LEGAL PROFESSION ACT 2008****LEGAL PRACTITIONERS (FAMILY COURT OF WESTERN AUSTRALIA)
DETERMINATION 2012**

Made by the Legal Costs Committee under section 275 of the *Legal Profession Act 2008* (the Act).

Citation

1. This Determination may be cited as the *Legal Practitioners (Family Court of Western Australia) Determination 2012*.

Commencement

2. This Determination comes into operation on 1 January 2013.

Application

3. This Determination applies to the remuneration of legal practitioners, clerks and paralegals in respect of advice given by legal practitioners in or for the purposes of proceedings or potential proceedings before the Family Court of Western Australia (**Family Court**).

No minimum charge

4. In no respect is this Determination to be seen as providing a minimum charge for any work.

Hourly rates

5. The hourly and daily rates set out in Table A are the maximum hourly and daily rates, inclusive of GST, which the Legal Costs Committee determines shall be used to calculate the dollar amounts chargeable by a legal practitioner, clerk or paralegal in providing advice and services to their own clients in respect of proceedings and potential proceedings in the Family Court.

Table A

Fee Earner		Maximum allowable rates
Senior Practitioner (admitted for 5 years or more) (SP) ^a	hourly rate	\$451
Junior Practitioner (admitted for less than 5 years) (JP) ^a	hourly rate	\$319
Clerk/Paralegal (C/PL)	hourly rate	\$220
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel—		
Counsel (C)*	hourly rate	\$363
	daily rate	\$3,630
Senior Counsel (SC) ^β	hourly rate	\$638
	daily rate	\$6,380

^a The reference to Junior Practitioner or to Senior Practitioner in this Determination includes all Australian legal practitioners even if the services were rendered in another State or Territory. Where a local legal practitioner has held an interstate practising certificate, the length of admission in that other jurisdiction is to be counted in assessing that practitioner's years of admission for the purposes of this Determination.

* The reference to Counsel in this Determination means a practitioner acting as a barrister other than as Senior Counsel.

^β The reference to Senior Counsel in this Determination includes reference to Queens Counsel or Senior Counsel appointed in Western Australia, or appointed in any State or Territory in Australia and whose appointment is afforded recognition by the Chief Justice of Western Australia.

Disbursements

6. In addition to the fees and charges allowed under this Determination as between a law practice and client, a law practice may charge and be allowed disbursements necessarily or reasonably incurred.

Costs

7. Unless a practitioner has made a written agreement as to costs with a client under the provisions of section 282 of the Act, the costs of or in relation to a party to an action or other proceeding (inclusive of GST and Counsel fees but exclusive of other disbursements) in the Family Court are payable by a party to that party's own legal practitioner, but shall not exceed an amount calculated at the hourly rates in this Determination.

Made by the Legal Costs Committee on 12 December 2012.

LEGAL PROFESSION ACT 2008
LEGAL PRACTITIONERS (OFFICIAL PROSECUTIONS)
(ACCUSED'S COSTS) REPORT 2012

Made by the Legal Costs Committee under Division 5 of Part 10 of the *Legal Profession Act 2008* (the Act).

PART 1—PRELIMINARY

Citation

1. (1) This Report may be cited as the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Report 2012*.
- (2) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2012*.

PART 2—NOTICE AND INQUIRIES

Notice under section 278 of the Act

2. The Legal Costs Committee has complied with the notice provisions of section 278 of the Act.

Inquiries and submissions under section 277 of the Act

3. Before making the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2012*, the Legal Costs Committee—
 - (a) consulted with the Chief Justice of Western Australia, the Chief Judge of the District Court of Western Australia, the Chief Magistrate, the State Solicitor, Director of Legal Aid Western Australia, the Western Australian Bar Association and the Criminal Lawyers Association; and
 - (b) reviewed a submission from the Law Society of Western Australia.

PART 3—REPORT OF THE COMMITTEE'S CONCLUSIONS

Maximum Hourly Rates and Scale of Costs Established

4. (1) It is the recommendation of the Legal Costs Committee, after reviewing the information gained as a result of the inquiries and the submission described in clause 3, that the hourly and daily rates set out in Table A and Table B of the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2012* be adopted for the supply of legal services for an official prosecution and the awarding of costs to a successful accused under sections 5 or 7 of the *Official Prosecutions (Accused's Costs) Act 1973*.
- (2) The hourly rates referred to in sub clause (1) are set out in Table A of the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2012*.
- (3) The daily rates referred to in sub clause (1) are set out in Table B of the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2012*.
- (4) It is the recommendation of the Legal Costs Committee as a result of inquiries and submissions described in clause 3 that the scale of costs set out in Table C of the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2012* be adopted.
- (5) It is the further recommendation of the Committee given that the amendments to the hourly and daily rates set out in the Tables to clause 5 and the scale of costs set out in the Table to clause 6 of the *Legal Practitioners (Official Prosecutions) (Defendant's Costs) Determination 2002* were inclusive of any provision for the Goods and Services Tax (GST), the daily and hourly rates and scale of costs continue to be inclusive of GST.
- (6) The Legal Costs Committee considers that it is impossible to include an item for witness fees because of the wide range of occupations of witnesses who are called to give evidence. Witness fees should be allowed as a disbursement and at the discretion of the Court or the taxing officer but loss of earnings foregone of a witness or the accused are not intended to be recoverable.
- (7) The recommendation of the Legal Costs Committee in sub clause (6) is not intended to affect the generality of item 8 of the scale of costs set out in Table C of the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2012*.

TED SHARP, Chairman.
ANGELA GAFFNEY, Member.
CLARE THOMPSON, Member.
MARCUS COCKER, Member.
JANICE DUDLEY, Member.
MATTHEW CURWOOD, Member.

*Schedule***LEGAL PROFESSION ACT 2008****LEGAL PRACTITIONERS (OFFICIAL PROSECUTIONS)
(ACCUSED'S COSTS) DETERMINATION 2012**

Made by the Legal Costs Committee under section 275 of the *Legal Profession Act 2008 (the Act)*.

Citation

1. This Determination may be cited as the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2012*.

Commencement

2. This Determination comes into operation on 1 January 2013.

Interpretation

3. Words and phrases used in this Determination have the same meaning as in the *Official Prosecutions (Accused's Costs) Act 1973*.

Application

4. (1) This Determination applies to the remuneration of legal practitioners in respect of an official prosecution in or for the purposes of proceedings before a Magistrates Court or an Appeal Court, as defined in the *Official Prosecutions (Accused's Costs) Act 1973* and the amount of costs ordered to be paid to a successful accused under sections 5 or 7 of the *Official Prosecutions (Accused's Costs) Act 1973*.

(2) This Determination does not apply to the remuneration of legal practitioners or the calculation of costs to be awarded to a successful accused for costs incurred in respect of business carried out before the commencement of this Determination.

Rates

5. (1) The hourly rates set out in Table A are the hourly rates which the Legal Costs Committee determines shall apply to the remuneration of legal practitioners and the award of costs to a successful accused (where the successful accused has been represented by a legal practitioner) in respect of an official prosecution in or for the purposes of proceedings before a Magistrates Court and shall be used to calculate the dollar amounts in the scale of costs set out in Table C.

Table A

Fee Earner		Rates
Senior Practitioner ^a (admitted for 5 years or more) (SP)	hourly rate	\$374
Junior Practitioner ^a (admitted for less than 5 years) (JP)	hourly rate	\$275
Clerk/Paralegal (C/PL)	hourly rate	\$132

^a The reference to Junior Practitioner or to Senior Practitioner in this Determination includes all Australian legal practitioners even if the services were rendered in another State or Territory. Where a local legal practitioner has held an interstate practising certificate, the length of admission in that other jurisdiction is to be counted in assessing that practitioner's years of admission for the purposes of this Determination.

(2) The daily rates set out in Table B are the daily rates which the Legal Costs Committee determines shall apply to the remuneration of legal practitioners in respect of an official prosecution in or for the purposes of proceedings before a Magistrates Court.

Table B

Fee Earner		Rates
Counsel§	daily rate	\$2,970
Senior Counsel*	daily rate	\$4,950

§ The reference to Counsel in this Determination means a practitioner acting as a barrister other than as Senior Counsel.

* The reference to Senior Counsel in this Determination includes reference to Queen's Counsel or Senior Counsel appointed in Western Australia, or appointed in any State or Territory in Australia and whose appointment is afforded recognition by the Chief Justice of the Supreme Court of Western Australia.

(3) The daily rates set out in Table B are intended to cover all work done on a hearing or trial day whether in or out of court including preparation of written submissions and is not intended to be supplemented in any way by additional hourly charges given that the maximum number of hours allowed for the daily rate is 10 hours per day.

Scale of costs

6. Subject to clause 7, the costs recoverable by a successful accused in an official prosecution (inclusive of counsel fees but exclusive of other disbursements) shall not exceed the amounts set out in Table C.

Complex matters, and matters involving a high degree of skill or urgency or require Senior Counsel

7. (1) Where a matter is complex, or involves a high degree of skill or urgency or requires Senior Counsel, notwithstanding the rates or scale set out in the Tables to this Determination, the accused is entitled to recover a fee that is greater than the one that is set out in this Determination, if it is reasonable in the circumstances.

(2) Work undertaken by Senior Counsel shall be allowable in accordance with the rates in Table B of this Determination.

Appeals

8. All costs incurred in relation to an appeal to the Supreme Court of Western Australia are to be taxed in accordance with the relevant items in Table B of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2012**.

Table C
OFFICIAL PROSECUTIONS (ACCUSED'S COSTS) SCALE OF COSTS

Item No.	Item	Maximum Time	Maximum Amount
1	Adjournments		
	(a) Subject to paragraphs (b) and (c), allow for one adjournment only	1 hour	\$374
	(b) Costs for additional adjournments to be awarded on application to, and at the discretion of, the presiding Magistrate		
	(c) Each Court ordered adjournment (see clause 5)	1 hour	\$374
2	Bail application		
	(a) Preparation for application for, and appearance at, initial bail application and/or apply for bail in respect of serious offences set out in the <i>Bail Act 1982 (WA)</i>	3.5 hours	\$1,309
	(b) Preparation for, and appearance at, application to vary bail conditions	1.5 hours	\$561
3	Directions hearing, including preparation	4 hours	\$1,496
4	Trial		
	(a) Preparation of case and half day trial, including counsel fee		\$6,688
	(b) Second half day		\$748
5	Second or each successive day of trial		\$2,970
6	An allowance for preparation where the trial does not proceed or the prosecution offers no evidence		Such amounts as are reasonable in the circumstances
7	Counsel's fee For attending court for remand appearance, directions hearing, status conference, mention, callover, reserved decision or other appearance not otherwise accounted for	3 hours	\$891
8	Disbursements Copies In addition to the fees allowed under this Determination disbursements (for example transport, accommodation, meals and travel costs of an accused, solicitor, counsel or witness actually incurred by an accused as a necessary incident to defending an official prosecution) may be allowed as are necessarily or reasonably incurred.		\$0.165 per page

Made by the Legal Costs Committee on 12 December 2012.

* Published in *Gazette* dated 29 October 2012 (pp 5164-5170).

LEGAL PROFESSION ACT 2008
LEGAL PRACTITIONERS (STATE ADMINISTRATIVE TRIBUNAL)
REPORT 2012

Made by the Legal Costs Committee under Division 5 of Part 10 of the *Legal Profession Act 2008* (the Act).

PART 1—PRELIMINARY

Citation

1. (1) This Report may be cited as the *Legal Practitioners (State Administrative Tribunal) Report 2012*.

(2) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Practitioners (State Administrative Tribunal) Determination 2012*.

PART 2—NOTICE AND INQUIRIES

Notice under section 278 of the Act

2. The Legal Costs Committee has complied with the notice provisions of section 278 of the Act.

Inquiries and submissions under section 277 of the Act

3. (a) Before making the *Legal Practitioners (State Administrative Tribunal) Determination 2012* the Legal Costs Committee—

- (1) reviewed all submissions received as a result of the notice given under section 278 of the Act;
- (2) consulted with the Tribunal;
- (3) consulted with The Law Society of Western Australia (Inc) and the Western Australian Bar Association (Inc); and
- (4) had regard to relevant provisions of the *State Administrative Tribunal Act 2004*.

(b) The Legal Costs Committee acknowledges that the overriding philosophy of the Tribunal, as expressed through its enabling legislation, is that parties appearing before the Tribunal are to bear their own costs of proceedings.

However, the Legal Costs Committee also recognises that there are many types of matters heard before the Tribunal which are of a substantial nature in respect of which legal advice may be sought, but not necessarily made the subject of any costs orders in the Tribunal.

Consequently, and in light of the costs disclosure obligations contained in the Act, the Legal Costs Committee considers it is appropriate to determine a scale of fees on a legal practitioner/client basis as established under the *Legal Practitioners (State Administrative Tribunal) Determination 2008*¹.

PART 3—REPORT OF COMMITTEE'S CONCLUSIONS

Hourly rates and scale of costs established

4. The Legal Costs Committee has determined that as a consequence of the information gained as a result of the inquiries and submissions described in clause 3, and having regard to the provisions of the *State Administrative Tribunal Act 2004* and the *State Administrative Tribunal Rules 2004*—

- (a) it is unnecessary as at the date of this Report to recommend the implementation of a scale of fees in the Tribunal in respect of party/party costs; but
- (b) as a consequence of the costs disclosure provisions in the Act, it is appropriate to continue to determine a scale of fees applicable to the work of legal practitioners, clerks and paralegals in, and in connection with the Tribunal on a legal practitioner/client basis.

5. The recommendations of the Legal Costs Committee are not intended to override the entitlement of a practitioner to make a written agreement as to costs with a client under the Act.

TED SHARP, Chairman.
ANGELA GAFFNEY, Member.
CLARE THOMPSON, Member.
MARCUS COCKER, Member.
JANICE DUDLEY, Member.
MATTHEW CURWOOD, Member.

¹ Published in *Gazette* dated 16 December 2008.

*Schedule***LEGAL PROFESSION ACT 2008**LEGAL PRACTITIONERS (STATE ADMINISTRATIVE TRIBUNAL)
DETERMINATION 2012

Made by the Legal Costs Committee under section 275 of the *Legal Profession Act 2008 Act (the Act)*.

Citation

1. This Determination may be cited as the *Legal Practitioners (State Administrative Tribunal) Determination 2012*.

Commencement

2. This Determination comes into operation on 1 January 2013.

Application

3. This Determination applies to the remuneration of legal practitioners, clerks and paralegals in respect of advice given by legal practitioners in or for the purposes of proceedings or potential proceedings before the State Administrative Tribunal.

No minimum charge

4. In no respect is this Determination to be seen as providing a minimum charge for any work.

Hourly rates

5. The hourly and daily rates set out in Table A are the maximum hourly and daily rates, inclusive of GST, which the Legal Costs Committee determines shall be used to calculate the dollar amounts chargeable by a legal practitioner, clerk or paralegal in providing advice and services to clients in respect of proceedings and potential proceedings in the State Administrative Tribunal under the *State Administrative Tribunal Act 2004*.

Table A

Fee Earner		Maximum allowable rates
Senior Practitioner (admitted for 5 years or more) (SP) ^a	hourly rate	\$374
Junior Practitioner (admitted for less than 5 years) (JP) ^a	hourly rate	\$275
Clerk/Paralegal (C/PL)	hourly rate	\$132
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel—		
Counsel (C)*	hourly rate	\$297
	daily rate	\$2,970
Senior Counsel (SC) ^β	hourly rate	\$495
	daily rate	\$4,950

^a The reference to Junior Practitioner or to Senior Practitioner in this Determination includes all Australian legal practitioners even if the services were rendered in another State or Territory. Where a local legal practitioner has held an interstate practising certificate, the length of admission in that other jurisdiction is to be counted in assessing that practitioner's years of admission for the purposes of this Determination.

* The reference to Counsel in this Determination means a practitioner acting as a barrister other than as Senior Counsel.

^β The reference to Senior Counsel in this Determination includes reference to Queens Counsel or Senior Counsel appointed in Western Australia, or appointed in any State or Territory in Australia and whose appointment is afforded recognition by the Chief Justice of Western Australia.

Disbursements

6. In addition to the fees and charges allowed under this Determination as between a law practice and client, a law practice may charge and be allowed disbursements necessarily or reasonably incurred.

Costs

7. Unless a practitioner has made a written agreement as to costs with a client under the provisions of section 282 of the Act, the costs of or in relation to a party to an action or other proceeding (inclusive of GST and Counsel fees but exclusive of other disbursements) in the Tribunal are payable by a party to that party's own legal practitioner, but shall not exceed an amount calculated at the hourly rates in this Determination.

Made by the Legal Costs Committee on 12 December 2012.