



**WESTERN  
AUSTRALIAN  
GOVERNMENT**  
**Gazette**

ISSN 1448-949X

PRINT POST APPROVED PP665002/00041



**PERTH, THURSDAY, 11 DECEMBER 2014 No. 197 SPECIAL**

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 12.00 NOON

© STATE OF WESTERN AUSTRALIA

**LEGAL PROFESSION ACT 2008**

---

**LEGAL PROFESSION  
(FAMILY COURT OF WESTERN  
AUSTRALIA) REPORT AND  
DETERMINATION 2014**

---

**LEGAL PROFESSION  
(STATE ADMINISTRATIVE TRIBUNAL)  
REPORT AND DETERMINATION 2014**

---

**LEGAL PROFESSION  
(OFFICIAL PROSECUTIONS)  
(ACCUSED'S COSTS) REPORT AND  
DETERMINATION 2014**



**LEGAL PROFESSION ACT 2008****LEGAL PROFESSION (FAMILY COURT OF WESTERN AUSTRALIA) REPORT 2014**

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

**PART 1—PRELIMINARY****Citation**

1. (1) This Report may be cited as the *Legal Profession (Family Court of Western Australia) Report 2014*.
- (2) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (Family Court of Western Australia) Determination 2014*.

**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 Profession (Family Court of Western Australia) Determination 2014 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 Chief Justice of Western Australia, The Law Society of Western Australia (Inc), the Western Australian Bar Association (Inc) and 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 2009*<sup>1</sup> (**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) it is appropriate to continue to adopt the hourly and daily rates (inclusive of GST) set out in Table A of the *Legal Profession (Supreme Court) (Contentious Business) Determination 2014*<sup>2</sup> as the hourly and daily rates applicable to legal practitioners and clerks/paralegals in the Family Court of Western Australia jurisdiction as set out in Table A in the *Legal Profession (Family Court of Western Australia) Determination 2014*.

<sup>1</sup> Published in *Government Gazette* dated 31 March 2009

<sup>2</sup> Published in the *Government Gazette* dated 20 June 2014

5. The recommendations of the Legal Costs Committee are not intended to override the entitlement of a legal 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.

Schedule

**LEGAL PROFESSION ACT 2008**

LEGAL PROFESSION (FAMILY COURT OF WESTERN AUSTRALIA) DETERMINATION 2014

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

**Citation**

1. This Determination may be cited as the *Legal Profession (Family Court of Western Australia) Determination 2014*.

**Commencement**

2. This Determination comes into operation on 1 January 2015.

**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**

<b>Fee Earner</b>	<b>Maximum allowable rates</b>
Senior Practitioner (admitted for 5 years or more) (SP) <sup>a</sup> —hourly rate	\$473
Junior Practitioner (admitted for less than 5 years) (JP) <sup>a</sup> —hourly rate	\$330
Clerk/Paralegal (C/PL)—hourly rate	\$231
<b>Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel</b>	
Counsel (C)*—hourly rate	\$385
daily rate	\$3,850
Senior Counsel (SC) <sup>β</sup> —hourly rate	\$671
daily rate	\$6,710

<sup>a</sup> 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.

<sup>β</sup> The reference to Senior Counsel in this Determination means a person within the meaning of item 11 or item 12 of Regulation 5(2) of the *Legal Profession Regulations 2009 (WA)*.

**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 19 November 2014.

---

**LEGAL PROFESSION ACT 2008****LEGAL PROFESSION (STATE ADMINISTRATIVE TRIBUNAL) REPORT 2014**

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

**PART 1—PRELIMINARY****Citation**

1. (1) This Report may be cited as the *Legal Profession (State Administrative Tribunal) Report 2014*.
- (2) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (State Administrative Tribunal) Determination 2014*.

**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 Profession (State Administrative Tribunal) Determination 2014 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 State Administrative Tribunal (**Tribunal**);
  - (3) consulted with the Chief Justice of Western Australia, 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*<sup>3</sup>.

**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; and
  - (c) it is appropriate to continue to adopt the hourly and daily rates (inclusive of GST) set out in Table A in the *Legal Profession (Magistrates Court) (Civil) Determination 2014*<sup>4</sup> as the hourly and daily rates applicable to legal practitioners and clerks/paralegals in the State Administrative Tribunal of Western Australia as set out in Table A in the *Legal Profession (State Administrative Tribunal) Determination 2014*.
5. The recommendations of the Legal Costs Committee are not intended to override the entitlement of a legal 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.

<sup>3</sup> Published in *Government Gazette* dated 16 December 2008

<sup>4</sup> Published in the *Government Gazette* dated 20 June 2014

## Schedule

**LEGAL PROFESSION ACT 2008**

## LEGAL PROFESSION (STATE ADMINISTRATIVE TRIBUNAL) DETERMINATION 2014

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

**Citation**

1. This Determination may be cited as the *Legal Profession (State Administrative Tribunal) Determination 2014*.

**Commencement**

2. This Determination comes into operation on 1 January 2015.

**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) <sup>a</sup> —hourly rate	\$396
Junior Practitioner (admitted for less than 5 years) (JP) <sup>a</sup> —hourly rate	\$297
Clerk/Paralegal (C/PL)—hourly rate	\$143
<b>Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel</b>	
Counsel (C)*—hourly rate	\$319
daily rate	\$3,190
Senior Counsel (SC) <sup>β</sup> —hourly rate	\$528
daily rate	\$5,280

<sup>a</sup> 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.

<sup>β</sup> The reference to Senior Counsel in this Determination means a person within the meaning of item 11 or item 12 of Regulation 5(2) of the *Legal Profession Regulations 2009 (WA)*.

**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 State Administrative 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 19 November 2014.

**LEGAL PROFESSION ACT 2008****LEGAL PROFESSION (OFFICIAL PROSECUTIONS) (ACCUSED'S COSTS) REPORT 2014**

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

**PART 1—PRELIMINARY****Citation**

1. (1) This Report may be cited as the *Legal Profession (Official Prosecutions) (Accused's Costs) Report 2014*.
- (2) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2014*.

**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 Profession (Official Prosecutions) (Accused's Costs) Determination 2014*, 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 Profession (Official Prosecutions) (Accused's Costs) Determination 2014* 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 Profession (Official Prosecutions) (Accused's Costs) Determination 2014*.
- (3) The daily rates referred to in sub clause (1) are set out in Table B of the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2014*.
- (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 Profession (Official Prosecutions) (Accused's Costs) Determination 2014* be adopted.
- (5) It is the further recommendation of the Legal Costs 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 Profession (Official Prosecutions) (Accused's Costs) Determination 2014*.

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



## Schedule

**LEGAL PROFESSION ACT 2008****LEGAL PROFESSION (OFFICIAL PROSECUTIONS) (ACCUSED'S COSTS) DETERMINATION 2014**

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

**Citation**

1. This Determination may be cited as the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2014*.

**Commencement**

2. This Determination comes into operation on 1 January 2015.

**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 maximum hourly rates, inclusive of GST, 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**

<b>Fee Earner</b>		<b>Rates</b>
Senior Practitioner <sup>α</sup> (admitted for 5 years or more) (SP)	hourly rate	\$396
Junior Practitioner <sup>α</sup> (admitted for less than 5 years) (JP)	hourly rate	\$297
Clerk/Paralegal (CPL)	hourly rate	\$143

<sup>α</sup> 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 maximum daily rates, inclusive of GST, 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**

<b>Fee Earner</b>		<b>Rates</b>
Counsel <sup>§</sup>	daily rate	\$3,190
Senior Counsel*	daily rate	\$5,280

<sup>§</sup> 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 means a person within the meaning of item 11 or item 12 of Regulation 5(2) of the *Legal Profession Regulations 2009 (WA)*.

(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 Profession (Supreme Court) (Contentious Business) Determination 2014\**.

\* Published in the Government Gazette on 20 June 2014 (pp2063 -2071).

**TABLE C  
OFFICIAL PROSECUTIONS (ACCUSED'S COSTS) SCALE OF COSTS**

<b>Item No</b>	<b>Item</b>	<b>Maximum Time</b>	<b>Maximum Amount</b>
1	<b>Adjournments</b>		
	(a) Subject to paragraphs (b) and (c), allow for one adjournment only	1 hour	\$396
	(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	\$396
2	<b>Bail application</b>		
	(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	\$1,386
	(b) Preparation for, and appearance at, application to vary bail conditions	1.5 hours	\$594
3	Directions hearing, including preparation	4 hours	\$1,584
4	<b>Trial</b>		
	(a) Preparation of case and half day trial, including counsel fee		\$7,172
	(b) Second half day		\$792
5	Second or each successive day of trial		\$3,190
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	<b>Counsel's fee</b>		
	For attending court for remand appearance, directions hearing, status conference, mention, callover, reserved decision or other appearance not otherwise accounted for	3 hours	\$957
8	<b>Disbursements</b>		
	Copies		\$0.165 per page
	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.		

Made by the Legal Costs Committee on 19 November 2014.