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**LEGAL PROFESSION ACT 2008**

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**LEGAL PROFESSION ACT 2008****LEGAL PROFESSION (SUPREME COURT) (CONTENTIOUS BUSINESS) REPORT 2016**

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

**PART 1—PRELIMINARY****1. Citation**

- (a) This Report may be cited as the *Legal Profession (Supreme Court) (Contentious Business) Report 2016*.
- (b) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (Supreme Court) (Contentious Business) Costs Determination 2016*.

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

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

**3. Inquiries and submissions under section 277 of the Act**

Before making the *Legal Profession (Supreme Court) (Contentious Business) Determination 2016*, 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) considered the impact of changes in relevant Australian Bureau of Statistics data for the period; and
- (c) consulted with a range of people and organisations within the legal profession in respect to the impact of structural changes in the profession.

**PART 3—REPORT OF LEGAL COSTS COMMITTEE'S CONCLUSIONS****4. Maximum hourly and daily rates changed—scale of costs amended**

- (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 the rates used in the *Legal Profession (Supreme Court) (Contentious Business) Determination 2016*.
- (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 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 subclause 4(a) be varied from the hourly and daily rates used in the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2014*<sup>1</sup> as the basis for the recommended scale of costs which have been generally rounded up or down to represent increases of approximately 2%, inclusive of the Goods and Services Tax and for administrative convenience, are divisible by 11. Those rates are set out in Table A of the *Legal Profession (Supreme Court) (Contentious Business) Determination 2016*.
- (c) It is the recommendation of the Legal Costs Committee, as a result of the inquiries and submissions described in clause 3, the scale of costs be varied in the manner set out in Table B of the *Legal Profession (Supreme Court) (Contentious Business) Determination 2016*.

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<sup>1</sup> Published in Gazette 20 June 2014

- (d) It is the recommendation of the Legal Costs Committee, as a result of the consultations described in clause 3, that the new category of Restricted Practitioner should be introduced in the *Legal Profession (Supreme Court) (Contentious Business) Determination 2016*.
- (e) The recommendations of the Legal Costs Committee are not intended to override any entitlement of a law practice to make a written agreement as to costs with a client under the Act or any successor legislation.

CLARE THOMPSON, Chair.  
ANGELA GAFFNEY, Member.  
MARCUS COCKER, Member.  
JANICE DUDLEY, Member.  
MATTHEW CURWOOD, Member.  
BRENDAN ASHDOWN, Member.

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### *Schedule*

#### **LEGAL PROFESSION ACT 2008**

#### **LEGAL PROFESSION (SUPREME COURT) (CONTENTIOUS BUSINESS) DETERMINATION 2016**

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

#### **1. Citation**

This Determination may be cited as the *Legal Profession (Supreme Court) (Contentious Business) Determination 2016*.

#### **2. Commencement**

This Determination comes into operation on 1 July 2016.

#### **3. Application**

- (a) This Determination applies to the remuneration of legal practitioners, clerks and paralegals in respect of advice given by legal practitioners in respect of contentious business carried out by legal practitioners in or for the purposes of proceedings before—
- (1) the Supreme Court; and
  - (2) the District Court other than contentious business to which the *Legal Profession (District Court Appeals) (Contentious Business) Determination 2016* applies.
- (b) This Determination does not apply to the remuneration of law practices based on a written agreement as to costs under the *Legal Profession Act 2008* or any successor legislation.
- (c) This Determination does not apply to the remuneration of law practices based on costs incurred before 1 July 2016.

#### **4. Application of 0.66, r11(3), r13, r18, r19, r20(3), r21 and r23 of the Rules of the Supreme Court**

In the circumstances set out in Order 66, rules 11(3), 13, 18, 19, 20(3), 21 and 23 of the *Rules of the Supreme Court*, the Legal Costs Committee determines that the Court or the Taxing Officer, as the case may be, has the power to make the orders and allowances referred to in those rules.

#### **5. Item 35 for negotiated motor vehicle personal injury claims**

The introduction of item 35 was explained in the *Legal Profession (Supreme Court) (Contentious Business) Determination 2012* and *Legal Profession (Supreme Court) (Contentious Business) Determination 2014*. Whilst those paragraphs are not reproduced here, they continue to apply and express the Legal Costs Committee's views on the operation of item 35.

The allowance set out in item 35 is intended to apply to claims for personal injury under the *Motor Vehicle (Third Party Insurance) Act 1943* which follow a standard procedural pathway.

#### **6. Catastrophic personal injury claims**

The introduction of the items in the determinations relating to catastrophic personal injuries was explained in the *Legal Profession (Supreme Court) (Contentious Business) Determination 2012* and *Legal Profession (Supreme Court) (Contentious Business) Determination 2014*. Whilst those paragraphs are not reproduced here, they continue to apply and express the Legal Costs Committee's views on the operation of those items which relate to catastrophic personal injuries.

#### **7. Item 28 in the 2014 Determination deleted**

- (a) In making this Determination, the Legal Costs Committee has considered a submission that Item 28 of the *Legal Profession (Supreme Court) (Contentious Business) Determination 2014* ought to be amended to reflect the change in practice on seeking prerogative relief occasioned by the amendments to the Rules of the Supreme Court made in December 2013, including an amendment to reflect the title of Order 56, being Judicial Review.

- (b) The Legal Costs Committee has determined that the appropriate course is to incorporate applications made under Order 56 into item 11, with appropriate amendments, which applies to originating motions, originating summons and originating applications, and has consequently deleted item 28 of the *Legal Profession (Supreme Court) (Contentious Business) Determination 2014*.

#### 8. Amendments to items 10 and 11

- (a) An allowance for Senior Counsel has been included in items 10 and 11 in this Determination in recognition of the increasing complexity of matters covered by those items of the Determination.
- (b) It is not intended that fees for both Senior Counsel and Counsel be recoverable unless the Court is of the opinion that it was reasonable to brief two counsel.
- (c) It is not intended that fees for Senior Counsel be recoverable unless the Court is of the opinion that it was reasonable to brief Senior Counsel.

#### 9. New item 34—Travel

- (a) This Determination introduces a new item 34 which makes an allowance for travel.
- (b) It is the Committee's view that minor travel, which means incidental travel associated with attendance at court for a hearing where that travel is of a minor duration (**minor travel**) is properly included in the costs recoverable for the appearance for which it is associated, and notes paragraph 4.7.1.1 of the Supreme Court's Consolidated Practice Directions, which provides standard allowances for chambers appearances for amounts which include preparation and attendance at the hearing. Item 34 is intended to apply to travel necessary to undertake work other than minor travel. Examples of minor travel include, but are not limited to—
- (1) a practitioner walking from their usual place of business to a court;
  - (2) a practitioner walking from a carpark to a court; or
  - (3) a practitioner walking or taking public transport from one centrally located court to another centrally located court.
- (c) Item 34, is intended to cover all travel other than minor travel including, but not limited to—
- (1) travel by car or public transport within metropolitan Perth from a practitioner's usual place of business to a suburban court or a court in the City of Perth, for example, driving from Joondalup to the CBD, or taking the train to Armadale from the CBD;
  - (2) travel by car or public transport from a practitioner's usual place of business to visit a client or witness or to undertake any meeting or view necessary for the purposes of the proceedings, regardless of where the destination is;
  - (3) travel by any means from outside the metropolitan area to Perth, for example, flying from Port Hedland; or
  - (4) travel by any means from Perth to outside the metropolitan area, for example, taking the train to Mandurah.
- (d) Items 34(a) and (b) provide for the circumstances where travel is recoverable as part of the party—party costs in a proceeding. Item 34(b) is intended to cover circumstances where the Court convenes at a location other than its usual location for those proceedings. Examples of the situations covered by item 34(b) include, but are not limited to—
- (1) travel required to attend at a court ordered mediation scheduled to take place in Geraldton when the proceedings are case managed by the Court in Perth;
  - (2) travel required to attend a site visit or view, with the Court in attendance;
  - (3) travel required to attend a court ordered examination of a witness prior to trial in Esperance, when the proceedings are case managed by the Court in Perth; or
  - (4) travel required to attend the trial of proceedings in Perth when the proceedings were case managed by the Court in Kalgoorlie.
- (e) Travel to attend a location which does not include the Court and the parties attending together at that location falls within item 34(c).
- (f) Travel to attend at a directions hearing or similar in a centrally located court, from a non-centrally located business address of the legal practitioner, other than that component which falls within the definition of minor travel, falls within item 34(c). Examples of this include, but are not limited to—
- (1) travel by car or public transport from Perth to Mandurah to attend any court hearing;
  - (2) travel by car or public transport from Joondalup to Fremantle to attend any court hearing; or
  - (3) travel from interstate to Perth to attend any court hearing.
- (g) In making its decision in this Determination, the Legal Costs Committee has taken note of the Law Society of Western Australia's Standard Costs Agreement, which contains a provision that a law practice will charge travel at 50% of the agreed hourly rates.
- (h) The Legal Costs Committee has also considered an informal policy of the Legal Profession Complaints Committee that travel should not ordinarily be charged at a rate of more than 50% of a law practice's normal hourly charge-out rate.

- (i) Whilst the Legal Costs Committee recognises that during a travel period a law practice may not necessarily utilise legal skill and knowledge, there is a recognition of a loss of opportunity for the time spent travelling.
- (j) The Legal Costs Committee notes that, having regard to the above—
  - (1) it is the responsibility of a law practice to allocate the cost of time spent on travel fairly and reasonably where the travel is necessary to service more than one client on the day of travel; and
  - (2) whilst nothing contained in this Determination prevents a law practice from charging time spent on a client matter or client matters in the course of travel (air travel by way of example), the law practice is not entitled to charge a client or clients for both time spent on a client matter (regardless of whether that that time relates to the client for whom the travel is being undertaken) and the amount allowed under item 34.

#### 10. Introduction of new Restricted Practitioner category

- (a) This determination introduces the new category Restricted Practitioner. This category includes all Australian legal practitioners engaging in restricted legal practice pursuant to section 50 of the Act, during the period when that person is undertaking the “required experience”, as defined in section 50 of the Act, and whilst an endorsement to that effect remains on their practising certificate.
- (b) A Restricted Practitioner is not intended to include an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practise under supervision for disciplinary, medical or other reasons.
- (c) The Legal Costs Committee consulted the profession regarding the necessity for amendments to the levels of practitioner set out in Table A, in light of the changing nature of legal practice in this State. In particular the Legal Costs Committee was conscious of the changes to admission requirements and pathways to admission, which have resulted in practitioners being admitted to practise without the close supervision of legal practice formerly afforded by articles of clerkship but with a longer period of restricted practice. The effect of this is that practitioners become senior practitioners with less experience than they previously have had, which has the effect of increasing the legal costs to consumers of their services.
- (d) It is the Legal Costs Committee’s view, as expressed in this Determination, that the Determination should as far as possible reflect the regulated structure of the profession and thereby provide consumers of legal services with additional transparency as to the experience of the practitioner providing the legal services.
- (e) So as not to adversely affect clients of legal services provided by those practitioners who would, but for this change, have been Junior Practitioners or Senior Practitioners, transitional arrangements apply so that—
  - (1) practitioners admitted after 1 July 2014, but before 1 July 2016, are entitled to recover their legal costs as if they were Junior Practitioners until 30 June 2018, or the date on which they would, but for this clause, become Junior Practitioners under this Determination; and
  - (2) practitioners admitted after 1 July 2011, but before 1 July 2014, are entitled to recover their legal costs as if they were either Junior Practitioners or Senior Practitioners, whichever category would have applied but for this change, until 30 June 2018, or the date on which they would, but for this clause, become Senior Practitioners under this Determination.

#### 11. Maximum hourly and daily rates

- (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. Each item in the scale of costs specifies a dollar amount with reference to the practitioner.
- (b) The rates referred to in paragraph (a) were ascertained in the manner set out in clause 4 of the *Legal Profession (Supreme Court) (Contentious Business) Report 2016*.
- (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.
- (d) The items in Table B are not intended to be calculated on the basis of a minimum 6 minute unit.

Table A

| Fee Earner  | Maximum allowable<br>hourly and daily rates |
|---|---|
| Senior Practitioner (permitted to practise on his or her own account for 5 years or more) (SP) <sup>o</sup>   | hourly rate<br>\$484                        |
| Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) <sup>o</sup> | hourly rate<br>\$341                        |

| Fee Earner   | Maximum allowable<br>hourly and daily rates |         |
|--|---|---------|
| Restricted Practitioner (RP) °, #  | hourly rate                                 | \$297   |
| Clerk/Paralegal (C/PL) ##  | hourly rate                                 | \$231   |
| Counsel fees charged as a disbursement to practitioners or<br>charged by in-house Counsel: |   |         |
| Counsel (C)*   | hourly rate                                 | \$396   |
|  | daily rate                                  | \$3,960 |
| Senior Counsel (SC)**  | hourly rate                                 | \$682   |
|  | daily rate                                  | \$6,820 |

° The reference to Restricted Practitioner, Junior Practitioner or 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 practising certificate, the length of unrestricted legal practice in that other jurisdiction is to be counted in assessing that practitioner's years of practice for the purposes of this Determination.

# The reference to Restricted Practitioner in this Determination includes practitioners undertaking restricted legal practice for the purposes of obtaining the required experience set out in section 50 of the Act and does not include a reference to an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practise under supervision for disciplinary, medical or other reasons.

## The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.

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

## 12. Costs

(a) 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)—

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

shall not exceed the amounts set out in Table B (except as otherwise provided in item 32 of Table B.

(b) Allowances made under item 32 of Table B are only to be awarded as between a law practice and its client, or if costs are awarded on an indemnity basis and not between party and party, unless the Court otherwise orders.

(c) Allowances made under item 34(b) of Table B are only to be awarded as between a law practice and its client, or if costs are awarded on an indemnity basis and not between party and party, unless the Court otherwise orders.

## 13. Fixed amounts

Based upon the Legal Costs Committee's enquiries it has determined that items 1(b), 3(a), 7(a), 14, 23(a), 25(b), 28(a) and 35 in Table B should be fixed amounts.

**Table B**

### Supreme Court Scale of Costs 2016

| Item | Time   | Fee earner | \$    |
|------|--|------------|-------|
| 1.   | <b>Writ—</b>   |            |       |
|      | (a) Writ of summons, whether specially or generally endorsed, including instructions, but excluding Statement of Claim | 1.5 hours  | SP    |
|      | (b) For each additional defendant  |            | 77    |
|      | (c) Statement of Claim   | 10 hours   | SP    |
|      |  |            | 4,840 |
| 2.   | Next friend or guardian <i>ad litem</i>  | 3 hours    | RP    |
|      |  |            | 1,023 |
| 3.   | <b>Defence—</b>  |            |       |
|      | (a) Memorandum of appearance   |            | 99    |
|      | (b) Defence  | 10 hours   | SP    |
|      | (c) Counterclaim   | 10 hours   | SP    |
|      |  |            | 4,840 |

| Item |   | Time  | Fee earner                                 | \$   |
|------|---|---|--|--|
| 4.   | <b>Reply and other pleadings—</b><br>Reply (if necessary), defence to counterclaim, or any other pleading   | 10 hours  | SP   | 4,840  |
| 5.   | (a) Third party notice<br>(b) Pleadings in third party proceedings  | 2 hours<br>6 hours  | SP<br>SP                                   | 968<br>2,904   |
| 6.   | (a) Requesting particulars of a pleading (where and to the extent necessary)<br>(b) Giving particulars of a pleading  | 3 hours<br>5 hours  | JP<br>JP                                   | 1,023<br>1,705   |
| 7.   | <b>Discovery—</b><br>(a) Notice requiring discovery<br>(b) Giving discovery of documents  | 10 hours  | SP   | 66<br>4,840  |
| 8.   | <b>Inspection—</b><br>Inspection and giving inspection of discovered documents whether by personal attendance or otherwise  | per hour  | SP   | 484  |
| 9.   | <b>Interrogatories—</b><br>(a) Delivery of interrogatories<br>(b) Answers to interrogatories  | 5 hours<br>10 hours   | SP<br>SP                                   | 2,420<br>4,840   |
| 10.  | <b>Chambers—</b><br>(a) Proceedings in Chambers other than proceedings to which item 11 applies<br>(b) Attending on a reserved judgment in Chambers (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders)<br>(c) Consent Orders including conferral but excluding extraction   | 2 days preparation,<br>1 day hearing;<br>per hour<br><br>1.5 hours  | SC<br>C<br><br><br>SC<br>C<br>SP<br>SC     | 20,460<br>11,880<br><br>484<br><br>506                   |
| 11.  | <b>Motions and originating process—</b><br>(a) Originating motion, originating summons or originating application and applications for Judicial Review under Order 56<br><br>(1) if senior counsel is briefed without second counsel<br>(2) if senior counsel is briefed with second counsel<br>(3) if counsel alone is briefed<br>(b) For 2nd and each successive day of hearing<br>(c) Attendance at hearing by instructing legal practitioner<br>(d) Attendance at directions hearings, strategic conferences, status conferences or other case management hearings where required by order of the Court, by the <i>Rules of the Supreme Court</i> or by practice direction<br><br><b>Note:</b> an allowance under item 11(a)(2) should only be made where in the opinion of the Court it was reasonable to brief two counsel. | 2 days preparation;<br>1 day hearing and preparation of case—50 hours<br><br><br><br><br><br><br><br><br><br>per hour<br><br>per hour | SC<br>C<br>SP<br>SC<br><br><br><br>C<br>SP | 44,660<br><br>56,540<br><br>36,080<br><br>6,820<br>3,960 |

| Item |  | Time   | Fee earner               | \$  |
|------|--|--|--------------------------|---|
| 12.  | Proceedings in Court not otherwise provided for, including appeals from a Registrar  | 2 days preparation;<br>½ day hearing         | C                        | 9,900   |
| 13.  | <b>Listing Conference—</b><br>Attending at a Listing Conference (convened pursuant to Order 29 Rule 8 of the Rules of the Supreme Court or Rule 43 of the District Court Rules) and all necessary preparation  | per hour                                     | SP                       |   |
| 14.  | Entry of judgment without trial  |  |                          | 231   |
| 15.  | <b>Offers of compromise, notices, practice directions, etc—</b><br>(a) Payment into or out of Court<br>(b) Offer of compromise under O.24A<br>(c) Acknowledgment of offer under O.24A<br>(d) Acceptance of offer of compromise under O.24A<br>(e) Notice of offer to consent to judgment<br>(f) Other notices and certificates referred to or required by the Rules or procedures of the court (including practice directions)   | 2 hours<br>4 hours<br><br>4 hours<br>2 hours | JP<br>SP<br><br>SP<br>SP | 682<br>1,936<br><br>1,936<br>968<br>77            |
| 16.  | <b>Entry for trial/Entry for hearing—</b><br>(a) Advising on, and preparing, documents required to be filed by the Rules of the Supreme Court or the Rules of the District Court<br>(b) Preparation of Schedules (if any) required by District Court Rules 45C and 45D<br>(c) Advice on evidence<br><b>Note:</b> In relation to particulars of damages under District Court Rule 45C, if the claim is one declared by the Court to be a catastrophic personal injury claim, the time reasonably spent by a legal practitioner, or by a clerk or paralegal of a legal practitioner in preparation of case for trial, shall not be limited to 8 hours but shall be an amount which is reasonable in the circumstances. | 2 hours<br><br>8 hours<br><br>per hour       | SP<br><br>SP<br><br>C/SC | 968<br><br>3,872<br><br>                          |
| 17.  | <b>Preparation of case—</b><br>Preparation of case for trial (includes work reasonably and necessarily undertaken prior to commencement of proceedings)<br><b>Note:</b> If the claim is one declared by the Court to be a catastrophic personal injury claim, the time reasonably spent by a legal practitioner, or by a clerk or paralegal of a legal practitioner in preparation of case for trial shall not be limited to 120 hours but shall be an amount which is reasonable in the circumstances.  | 120 hours                                    | SP                       | 58,080  |
| 18.  | Examination of witness before trial, pursuant to order   |  |                          | An allowance in accordance with item 20(c) or (d) |
| 19.  | Application for and striking jury  | 1 hour                                       | JP                       | 341   |

| Item |  | Time   | Fee earner   | \$  |
|------|--|--|--|---|
| 20.  | <p><b>Trial—</b><br/>Counsel fees</p> <p>(a) Fee on brief, i.e. first day of trial and preparation (including submissions)</p> <p>(b) Fee on brief for Senior Counsel, i.e. first day of trial and preparation (including submissions)</p> <p>(c) Counsel fee for the second and each successive day of hearing</p> <p>(d) Counsel fee for Senior Counsel for second and each successive day of hearing</p> <p>(e) Instructing legal practitioner attending trial</p> <p>(f) Clerk or Restricted Practitioner attending trial</p> <p>(g) Preparation of written closing submissions—</p> <p>(1) when ordered by the trial judge;</p> <p>(2) for filing and service prior to an adjourned date for oral addresses, or in substitution of oral addresses; and</p> <p>(3) which could not reasonably have been undertaken during the course of the trial</p> <p>(h) Attending on reserved judgment (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders)</p> <p>(i) for each five hearing days after the first five, additional fee on brief</p> <p><b>Note:</b> If the claim is one declared by the Court to be a catastrophic personal injury claim, the time reasonably spent by Counsel or Senior Counsel in preparation of case for trial shall not be limited to 3.5 days but shall be an amount which is reasonable in the circumstances.</p> | <p>3.5 days preparation; 1st day of trial</p> <p>3.5 days preparation; 1st day of trial</p> <p>per hour</p> <p>per hour</p> <p>per hour</p> <p>1 day</p> | <p>C</p> <p>SC</p> <p>C</p> <p>SC</p> <p>SP</p> <p>C/PL<br/>RP</p> <p>SC/C</p> <p>SP</p> <p>SC/C</p> | <p>17,820</p> <p>30,690</p> <p>3,960</p> <p>6,820</p> <p>An amount which is reasonable in the circumstances</p> |
| 21.  | <p><b>Re-trial or Re-hearing</b></p> <p>(a) Preparation of case for re-trial or re-hearing</p> <p>(b) Re-trial or re-hearing</p>   |  |  | An amount which is reasonable in the circumstances  |
| 22.  | <p>(a) Special case, case stated (otherwise than by way of appeal) or trial of an issue</p> <p>(b) For the second and each successive day of the trial or hearing</p>  |  |  | An amount which is reasonable in the circumstances  |

| Item |   | Time   | Fee earner  | \$   |
|------|---|--|---|--|
| 23.  | <p><b>Appeals to the Court of Appeal and Single Judge appeals (including appeals by way of case stated) and applications for leave to appeal</b></p> <p>(a) Appeal Notice, Service Certificate, Notice of Respondent's Intention</p> <p>(b) Appellant's Case, Respondent's Answer including relevant forms and all annexures</p> <p>(c) Appellant's Reply to Notice of Contention, when required</p> <p>(d) Settling appeal book indexes (including drafting and settling appeal book index)</p> <p>(e) An application in an appeal, an interlocutory or directions hearing before a single Judge or Registrar</p> <p>(f) Preparation of case appeal for hearing</p> <p>(g) Counsel fee on hearing (including preparation)</p> <p>(h) Counsel fee for Senior Counsel (including preparation)</p> <p>(i) Counsel fee for the second and each successive day of hearing</p> <p>(j) Counsel fee for Senior Counsel for the second and each successive day of hearing</p> <p>(k) Instructing legal practitioner attending appeal</p> <p>(l) Attending on reserved decision (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders)</p> | <p>40 hours</p> <p>10 hours</p> <p>8 hours</p> <p>10 hours</p> <p>10 hours</p> <p>2 days preparation; 1 day hearing</p> <p>2 days preparation; 1 day hearing</p> <p>per hour</p> <p>per hour</p> | <p>SC</p> <p>SC</p> <p>SP</p> <p>C</p> <p>SP</p> <p>C</p> <p>SC</p> <p>C</p> <p>SC</p> <p>JP/SP</p> <p>SP</p> | <p>484</p> <p>27,280</p> <p>6,820</p> <p>3,872</p> <p>3,960</p> <p>4,840</p> <p>11,880</p> <p>20,460</p> <p>3,960</p> <p>6,820</p> |
| 24.  | <p><b>Pretrial, mediation, conferrals, or other conferences</b></p> <p>(a) Where required by order of the Court, by the <i>Rules of the Supreme Court</i> or by practice direction</p> <p>(b) including informal conferences where reasonably held before or after commencement of proceedings</p> <p>(c) attendances by Counsel and instructing legal practitioners at the conferrals and conferences set out in paragraphs (a) and (b) of this item</p> <p>(d) preparation reasonably undertaken for the conferrals and conferences described in paragraphs (a), (b) and (c) of this item</p> <p>(e) conferences between Counsel and own instructing legal practitioner where reasonably necessary</p>  | <p>per hour</p> <p>per hour</p> <p>per hour</p> <p>per hour</p> <p>per hour</p>  | <p>SP/SC/C</p> <p>SP/SC/C</p> <p>SP/SC/C</p> <p>C</p> <p>SP/SC/C</p>  |  |

| Item |  | Time                     | Fee earner                        | \$   |
|------|--|--------------------------|-----------------------------------|--|
| 25.  | <b>Orders—</b><br>Settling and extracting judgment or order<br>(a) With appointment<br>(b) Without appointment   | 2 hours                  | RP                                | 594<br>297   |
| 26.  | Arbitration proceedings where costs are to be assessed under section 33B(5) of the <i>Commercial Arbitration Act 2012 (WA)</i>   |                          |                                   | The same costs as in an action                     |
| 27.  | Proceedings, whether by action or otherwise, for the recovery of compensation for the taking or resumption of land or any other property by the Crown in right of the State or of the Commonwealth or by any other person, body or instrumentality pursuant to any statutory power   |                          |                                   | An amount which is reasonable in the circumstances |
| 28.  | (a) Execution<br>(b) If against land, an additional  | 3 hours                  | RP                                | 341<br>891   |
| 29.  | <b>Taxing including drawing—</b><br>(a) Drawing bill of costs and service; and<br>(b) Taxation of costs (including the time spent in preparing for the taxation)   |                          | SP                                | An amount which is reasonable in the circumstances |
| 30.  | <b>Copying—</b><br>Copies where reasonably necessary, including of documents for which allowance is otherwise made in this Determination.<br>This item covers all forms of electronic reproduction and copying.  | per page                 |                                   | 0.165  |
| 31.  | <b>Accounts and inquiries—</b><br>Taking accounts, inquiries   |                          | SP                                | An amount which is reasonable in the circumstances |
| 32.  | <b>Other work—</b><br>(a) Time reasonably spent by a legal practitioner on work requiring the skill of a legal practitioner (of the standing indicated) but not covered by any other item;<br>or<br>(b) Time reasonably spent by a legal practitioner, or by a clerk or paralegal of a legal practitioner, on work not covered by any other item or by paragraph (a)<br><br><b>Note:</b> Allowances under item 32 are only to be awarded as between a law practice and its client, or if costs are awarded on an indemnity basis and <i>not</i> between party and party unless the Court otherwise orders. | per hour<br><br>per hour | SC<br>SP<br>C<br>JP<br>RP<br>C/PL |  |
| 33.  | <b>Disbursements—</b><br>In addition to the fees and charges allowed under this Determination—<br>(a) As between a law practice and client, a law practice may charge and be allowed disbursements necessarily or reasonably incurred; and<br>(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.  |                          |                                   |  |





**LEGAL PROFESSION ACT 2008****LEGAL PROFESSION (SUPREME COURT AND DISTRICT COURT)  
(CRIMINAL) REPORT 2016**

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

**PART 1—PRELIMINARY****1 Citation**

- (a) This Report may be cited as the *Legal Profession (Supreme Court and District Court) (Criminal) Report 2016*.
- (b) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (Supreme Court) (Criminal) Determination 2016*.

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

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

**3 Inquiries and submissions under section 277 of the Act**

Before making the *Legal Profession (Supreme Court and District Court) (Criminal) Determination 2016*, the Legal Costs Committee—

- (a) reviewed all submissions received as a result of the notice given under section 278 of the Act including those submitted by The Law Society of Western Australia (Inc) and The Western Australian Bar Association (Inc);
- (b) considered the impact of changes in relevant Australian Bureau of Statistics data for the period; and
- (c) consulted with a range of people and organisations within the legal profession in respect to the impact of structural changes in the profession.

**PART 3—REPORT OF LEGAL COSTS COMMITTEE'S CONCLUSIONS****4 Maximum hourly and daily rates changed—scale of costs amended**

- (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 the rates used in the *Legal Profession (Supreme Court and District Court) (Criminal) Determination 2016*.
- (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) taking into account the incidental administrative implications of the calculation of the Goods and Services Tax; and
  - (4) to be consistent with the hourly and daily rates referred to in the *Legal Profession (Supreme Court) (Contentious Business) Determination 2016* to be gazetted at or about the same time as this Report,

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 (Supreme Court and District Court) (Criminal) Determination 2014*<sup>1</sup> as the basis for the recommended scale of costs which have been generally rounded up or down to represent increases of approximately 2%, inclusive of the Goods and Services Tax, and for administrative convenience, are divisible by 11. Those rates are set out in Table A of the *Legal Profession (Supreme Court and District Court) (Criminal) Determination 2016*.

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<sup>1</sup> Published in Gazette 20 June 2014

- (c) It is the recommendation of the Legal Costs Committee, as a result of the consultations described in clause 3, that the new category of Restricted Practitioner should be introduced in the *Legal Profession (Supreme Court and District Court) (Criminal) Determination 2016*.
- (d) The recommendations of the Legal Costs Committee are not intended to override any entitlement of a law practice to make a written agreement as to costs with a client under the Act or any successor legislation.

CLARE THOMPSON, Chair.  
ANGELA GAFFNEY, Member.  
MARCUS COCKER, Member.  
JANICE DUDLEY, Member.  
MATTHEW CURWOOD, Member.  
BRENDAN ASHDOWN, Member.

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### *Schedule*

#### **LEGAL PROFESSION ACT 2008**

##### **LEGAL PROFESSION (SUPREME COURT AND DISTRICT COURT) (CRIMINAL) DETERMINATION 2016**

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

#### **1 Citation**

This Determination may be cited as the *Legal Profession (Supreme Court and District Court) (Criminal) Determination 2016*.

#### **2 Commencement**

This Determination comes into operation on 1 July 2016.

#### **3 Application**

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 criminal proceedings or potential criminal proceedings which are ultimately dealt with in the Supreme Court of Western Australia and the District Court of Western Australia.

#### **4 No minimum charge**

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

#### **5 Introduction of new Restricted Practitioner category**

- (a) This determination introduces the new category Restricted Practitioner. This category includes all Australian legal practitioners engaging in restricted legal practice pursuant to section 50 of the Act, during the period when that person is undertaking the “required experience”, as defined in section 50 of the Act, and whilst an endorsement to that effect remains on their practising certificate.
- (b) A Restricted Practitioner is not intended to include an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practise under supervision for disciplinary, medical or other reasons.
- (c) The Legal Costs Committee consulted the profession regarding the necessity for amendments to the levels of practitioner set out in Table A, in light of the changing nature of legal practice in this State. In particular the Legal Costs Committee was conscious of the changes to admission requirements and pathways to admission, which have resulted in practitioners being admitted to practise without the close supervision of legal practice formerly afforded by articles of clerkship but with a longer period of restricted practice. The effect of this is that practitioners become senior practitioners with less experience than they previously have had, which has the effect of increasing the legal costs to consumers of their services.
- (d) It is the Legal Costs Committee’s view, as expressed in this Determination, that the Determination should as far as possible reflect the regulated structure of the profession and thereby provide consumers of legal services with additional transparency as to the experience of the practitioner providing the legal services.
- (e) So as not to adversely affect clients of legal services provided by those practitioners who would, but for this change, have been Junior Practitioners or Senior Practitioners, transitional arrangements apply so that—
  - (1) practitioners admitted after 1 July 2014, but before 1 July 2016, are entitled to recover their legal costs as if they were Junior Practitioners until 30 June 2018, or the date on which they would, but for this clause, become Junior Practitioners under this Determination; and
  - (2) practitioners admitted after 1 July 2011, but before 1 July 2014, are entitled to recover their legal costs as if they were either Junior Practitioners or Senior Practitioners, whichever category would have applied but for this change, until 30 June 2018, or the date on which they would, but for this clause, become Senior Practitioners under this Determination.

## 6 Maximum hourly and daily rates

- (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 chargeable by a law practice in providing advice and services to clients in respect of criminal proceedings and potential criminal proceedings which are ultimately dealt with in the Supreme Court of Western Australia and the District Court of Western Australia.
- (b) 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.

| <b>Table A</b>  |             |   |
|---|-------------|---|
| <b>Fee Earner</b>   |             | <b>Maximum allowable hourly and daily rates</b> |
| Senior Practitioner (permitted to practise on his or her own account for 5 years or more) (SP) <sup>o</sup>   | hourly rate | \$484   |
| Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) <sup>o</sup> | hourly rate | \$341   |
| Restricted Practitioner (RP) <sup>o</sup> , #   | hourly rate | \$297   |
| Clerk/Paralegal (C/PL) ##   | hourly rate | \$231   |
| Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel:                       |             |   |
| Counsel (C)*  | hourly rate | \$396   |
|   | daily rate  | \$3,960   |
| Senior Counsel (SC)**   | hourly rate | \$682   |
|   | daily rate  | \$6,820   |

<sup>o</sup> The reference to Restricted Practitioner, Junior Practitioner or 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 practising certificate, the length of unrestricted legal practice in that other jurisdiction is to be counted in assessing that practitioner's years of practice for the purposes of this Determination.

# The reference to Restricted Practitioner in this Determination includes practitioners undertaking restricted legal practice for the purposes of obtaining the required experience set out in section 50 of the Act and does not include a reference to an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practise under supervision for disciplinary, medical or other reasons.

## The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.

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

## 7 Disbursements

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

## 8 Travel

- (a) For the purposes of this Determination, minor travel means incidental travel associated with attendance at court for a hearing where that travel is of a minor duration. Examples of minor travel include, but are not limited to—
- (1) a practitioner walking from their usual place of business to a court;
  - (2) a practitioner walking from a carpark to a court; or
  - (3) a practitioner walking or taking public transport from one centrally located court to another centrally located court.
- (b) As between a law practice and its own client, time spent travelling by a law practice, other than minor travel, is to be charged at no more than one half of the rates set out in Table A, with a maximum of 8 hours in any one day.

- (c) In making its decision in this Determination, the Committee has taken note of the Law Society of Western Australia's Standard Costs Agreement, which contains a provision that a law practice will charge travel at 50% of the agreed hourly rates.
- (d) The Legal Costs Committee has also considered an informal policy of the Legal Profession Complaints Committee that travel should not ordinarily be charged at a rate of more than 50% of a law practice's normal hourly charge-out rate.
- (e) Whilst the Legal Costs Committee recognises that during a travel period a law practice may not necessarily utilise legal skill and knowledge, there is a recognition of a loss of opportunity for the time spent travelling.
- (f) The Legal Costs Committee notes that, having regard to the above—
  - (1) it is the responsibility of a law practice to allocate the cost of time spent on travel fairly and reasonably where the travel is necessary to service more than one client on the day of travel; and
  - (2) whilst nothing contained in this Determination prevents a law practice from charging time spent on a client matter or client matters in the course of travel (air travel by way of example), the law practice is not entitled to charge a client or clients for both time spent on a client matter (regardless of whether that time relates to the client for whom the travel is being undertaken) and the amount allowed for travel under this determination.

### 9 Costs

- (a) Unless a law practice 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 relevant Court are payable by a party to that party's own law practice and must not exceed an amount calculated at the hourly rates in Table A.
- (b) In respect of any appeals to the Supreme Court from any decision of a lower Court or single Judge exercising the relevant Court's criminal jurisdiction, item 23 of the *Legal Profession (Supreme Court) (Contentious Business) Determination 2016* will apply to law practice/client costs on such appeals.

Made by the Legal Costs Committee on 15 June 2016.

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**LEGAL PROFESSION ACT 2008****LEGAL PROFESSION (DISTRICT COURT APPEALS)  
(CONTENTIOUS BUSINESS) REPORT 2016**

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

**PART 1—PRELIMINARY****1. Citation**

- (a) This Report may be cited as the *Legal Profession (District Court Appeals) (Contentious Business) Report 2016*.
- (b) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (District Court Appeals) (Contentious Business) Determination 2016*.

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

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

**3. Inquiries and submissions under section 277 of the Act**

Before making the *Legal Profession (District Court Appeals) (Contentious Business) Determination 2016*, 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) considered the impact of changes in relevant Australian Bureau of Statistics data for the period; and
- (c) consulted with a range of people and organisations within the legal profession in respect to the impact of structural changes in the profession.

**PART 3—REPORT OF LEGAL COSTS COMMITTEE'S CONCLUSIONS****4. Maximum hourly and daily rates changed—scale of costs amended**

- (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 Profession (District Court Appeals) (Contentious Business) Determination 2016*.
- (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 2014*<sup>1</sup> as the basis for the recommended scale of costs which have been generally rounded up or down to represent various increases of approximately 2%, inclusive of the Goods and Services Tax and for administrative convenience, are divisible by 11. Those rates are set out in Table A of the *Legal Profession (District Court Appeals) (Contentious Business) Determination 2016*.

- (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 Profession (District Court Appeals) (Contentious Business) Determination 2016* be adopted for appeals in the District Court.

<sup>1</sup> Published in Gazette 20 June 2014

- (d) It is the recommendation of the Legal Costs Committee, as a result of the consultations described in clause 3, that the new category of Restricted Practitioner should be introduced in the *Legal Profession (District Court Appeals) (Contentious Business) Determination 2016*.
- (e) The recommendations of the Legal Costs Committee are not intended to override any entitlement of a law practice to make a written agreement as to costs with a client under the Act or any successor legislation.

CLARE THOMPSON, Chair.  
ANGELA GAFFNEY, Member.  
MARCUS COCKER, Member.  
JANICE DUDLEY, Member.  
MATTHEW CURWOOD, Member.  
BRENDAN ASHDOWN, Member.

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*Schedule*

**LEGAL PROFESSION ACT 2008**

LEGAL PROFESSION (DISTRICT COURT APPEALS) (CONTENTIOUS BUSINESS)  
DETERMINATION 2016

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

**1. Citation**

This Determination may be cited as the Legal Profession (District Court Appeals) (Contentious Business) Determination 2016.

**2. Commencement**

This Determination comes into operation on 1 July 2016.

**3. Application**

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 appeals to a Judge of the District Court of Western Australia, whether from a Registrar of that Court or from another Court or Tribunal.

**4. New item 13—Travel**

- (a) This Determination introduces a new item 13 which makes an allowance for travel.
- (b) It is the Committee's view that minor travel, which means incidental travel associated with attendance at court for a hearing where that travel is of a minor duration (**minor travel**) is properly included in the costs recoverable for the appearance for which it is associated, and notes paragraph 4.7.1.1 of the Supreme Court's Consolidated Practice Directions, which provides standard allowances for chambers appearances for amounts which include preparation and attendance at the hearing. Item 13 is intended to apply to travel necessary to undertake work other than minor travel. Examples of minor travel include, but are not limited to—
  - (1) a practitioner walking from their usual place of business to a court; or
  - (2) a practitioner walking from a carpark to a court; or
  - (3) a practitioner walking or taking public transport from one centrally located court to another centrally located court.
- (c) Item 13, is intended to cover all travel other than minor travel including, but not limited to—
  - (1) travel by car or public transport within metropolitan Perth from a practitioner's usual place of business to a suburban court or a court in the City of Perth, for example, driving from Joondalup to the CBD, or taking the train to Armadale from the CBD;
  - (2) travel by car or public transport from a practitioner's usual place of business to visit a client or witness or to undertake any meeting or view necessary for the purposes of the proceedings, regardless of where the destination is;
  - (3) travel by any means from outside the metropolitan area to Perth, for example, flying from Port Hedland; or
  - (4) travel by any means from Perth to outside the metropolitan area, for example, taking the train to Mandurah.
- (d) Item 13(a) and (b) provide for the circumstances where travel is recoverable as part of the party—party costs in a proceeding. Item 34(b) is intended to cover circumstances where the Court convenes at a location other than its usual location for those proceedings. Examples of the situations covered by item 34(b) include, but are not limited to—
  - (1) travel required to attend at a court ordered mediation scheduled to take place in Geraldton when the proceedings are case managed by the Court in Perth;

- (2) travel required to attend a site visit or view, with the Court in attendance;
  - (3) travel required to attend a court ordered examination of a witness prior to trial in Esperance, when the proceedings are case managed by the Court in Perth; or
  - (4) travel required to attend the trial of proceedings in Perth when the proceedings were case managed by the Court in Kalgoorlie.
- (e) Travel to attend a location which does not include the Court and the parties attending together at that location falls within item 13(c).
- (f) Travel to attend at a directions hearing or similar in a centrally located court, from a non-centrally located business address of the legal practitioner, other than that component which falls within the definition of minor travel, falls within item 34(c). Examples of this include but are not limited to—
- (1) travel by car or public transport from Perth to Mandurah to attend any court hearing;
  - (2) travel by car or public transport from Joondalup to Fremantle to attend any court hearing; or
  - (3) travel from interstate to Perth to attend any court hearing.
- (g) In making its decision in this Determination, the Committee has taken note of the Law Society of Western Australia's Standard Costs Agreement, which contains a provision that a law practice will charge travel at 50% of the agreed hourly rates.
- (h) The Legal Costs Committee has also considered an informal policy of the Legal Profession Complaints Committee that travel should not ordinarily be charged at a rate of more than 50% of a law practice's normal hourly charge-out rate.
- (i) Whilst the Legal Costs Committee recognises that during a travel period a law practice may not necessarily utilise legal skill and knowledge, there is a recognition of a loss of opportunity for the time spent travelling.
- (j) The Legal Costs Committee notes that, having regard to the above—
- (1) it is the responsibility of a law practice to allocate the cost of time spent on travel fairly and reasonably where the travel is necessary to service more than one client on the day of travel; and
  - (2) whilst nothing contained in this Determination prevents a law practice from charging time spent on a client matter or client matters in the course of travel (air travel by way of example), the law practice is not entitled to charge a client or clients for both time spent on a client matter (regardless of whether that time relates to the client for whom the travel is being undertaken) and the amount allowed under item 13.

## 5. Introduction of new Restricted Practitioner category

- (a) This determination introduces the new category Restricted Practitioner. This category includes all Australian legal practitioners engaging in restricted legal practice pursuant to section 50 of the Act, during the period when that person is undertaking the "required experience", as defined in section 50 of the Act, and whilst an endorsement to that effect remains on their practising certificate.
- (b) A Restricted Practitioner is not intended to include an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practice under supervision for disciplinary, medical or other reasons.
- (c) The Legal Costs Committee consulted the profession regarding the necessity for amendments to the levels of practitioner set out in Table A, in light of the changing nature of legal practice in this State. In particular the Legal Costs Committee was conscious of the changes to admission requirements and pathways to admission, which have resulted in practitioners being admitted to practice without the close supervision of legal practice formerly afforded by articles of clerkship but with a longer period of restricted practice. The effect of this is that practitioners become senior practitioners with less experience than they previously have had, which has the effect of increasing the legal costs to consumers of their services.
- (d) It is the Legal Costs Committee's view, as expressed in this Determination, that the Determination should as far as possible reflect the regulated structure of the profession and thereby provide consumers of legal services with additional transparency as to the experience of the practitioner providing the legal services.
- (e) So as not to adversely affect clients of legal services provided by those practitioners who would, but for this change, have been Junior Practitioners or Senior Practitioners, transitional arrangements apply so that—
- (1) practitioners admitted after 1 July 2014, but before 1 July 2016, are entitled to recover their legal costs as if they were Junior Practitioners until 30 June 2018, or the date on which they would, but for this clause, become Junior Practitioners under this Determination; and
  - (2) practitioners admitted after 1 July 2011, but before 1 July 2014, are entitled to recover their legal costs as if they were either Junior Practitioners or Senior Practitioners, whichever category would have applied but for this change, until 30 June 2018, or the date on which they would, but for this clause, become Senior Practitioners under this Determination.

## 6. Maximum hourly and daily rates

- (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 Profession (District Court Appeals) (Contentious Business) Report 2016*.
- (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.
- (d) The items in Table B are not intended to be calculated on the basis of a minimum 6 minute unit.

**Table A**

| Fee Earner  | Maximum allowable<br>hourly and daily<br>rates |
|---|--|
| Senior Practitioner (permitted to practise on his or her own account for 5 years or more) (SP) <sup>°</sup>   |  |
| hourly rate   | \$484  |
| Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) <sup>°</sup> |  |
| hourly rate   | \$341  |
| Restricted Practitioner (RP) <sup>°</sup> , #   |  |
| hourly rate   | \$297  |
| Clerk/Paralegal (C/PL) ##   |  |
| hourly rate   | \$231  |
| Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel:                       |  |
| Counsel (C)*  |  |
| hourly rate   | \$396  |
| daily rate  | \$3,960  |
| Senior Counsel (SC)**   |  |
| hourly rate   | \$682  |
| daily rate  | \$6,820  |

<sup>°</sup> The reference to Restricted Practitioner, Junior Practitioner or 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 practising certificate, the length of unrestricted legal practice in that other jurisdiction is to be counted in assessing that practitioner's years of practice for the purposes of this Determination.

# The reference to Restricted Practitioner in this Determination includes practitioners undertaking restricted legal practice for the purposes of obtaining the required experience set out in section 50 of the Act and does not include a reference to an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practice under supervision for disciplinary, medical or other reasons.

## The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practice as an Australian lawyer.

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

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

## 7. Costs

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 2016

| Item   | Time    | Fee Earner | \$    |
|--|---------|------------|-------|
| 1.   |         |            |       |
| <b>Notice of appeal or Notice of Contention</b>                      |         |            |       |
| (a) Appeal notice (pursuant to Rule 15 of District Court Rules 2005) | 1 hour  | SP         | 484   |
| (b) Other appeals  | 5 hours | SP         | 2,420 |

| Item |   | Time                                 | Fee Earner | \$   |
|------|---|--------------------------------------|------------|--|
| 2.   | Interlocutory hearings—as required (including preparation)  | per hour                             | SP<br>C    |  |
| 3.   | Preparation of appeal for hearing (including preparation of appeal documents and submissions)   | 10 hours                             | SP         | 4,840  |
| 4.   | Counsel fee on hearing (including preparation)  | 2 days preparation;<br>1 day hearing | C<br>SC    | 11,880<br>20,460                                   |
| 5.   | Counsel fee for second and each successive day of hearing   |                                      | C<br>SC    | 3,960<br>6,820                                     |
| 6.   | Attendance at appeal by instructing legal practitioner  | per hour                             | SP         |  |
| 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         |  |
| 8.   | Settling and extracting order disposing of appeal—<br>(a) With appointment<br>(b) Without appointment   |                                      |            | 627<br>242   |
| 9.   | Other notices and certificates referred to or required by the Rules or procedures of the Court (including practice directions)  |                                      |            | 66   |
| 10.  | <b>Taxing including drawing</b><br>(a) Drawing bill of costs and service<br>(b) Taxation of costs (including time spent preparing for the taxation)   |                                      | SP         | An amount which is reasonable in the circumstances |
| 11.  | Copies where reasonably necessary, including of documents for which allowance is otherwise made in this Determination   | per page                             |            | 0.165  |
| 12.  | <b>Disbursements</b><br>In addition to the fees and charges allowed under this Determination—<br>(a) As between a law practice and client, a law practice may charge and be allowed disbursements necessarily or reasonably incurred; and<br>(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.  |                                      |            |  |
| 13   | <b>Travel</b><br>(a) As between party and party, minor travel as defined in this Determination, is to be allowed as part of the costs awarded for an attendance at chambers or court, without further order.<br>(b) As between party and party, time spent travelling by a law practice which is not minor travel and which is required by reason of an order of the Court requiring the parties to attend at a location other than the location at which the proceedings is case managed, is to be charged at no more than one half of the rates set out in Table A, with a maximum of 8 hours in any one day, without further order.<br>(c) As between a law practice and its own client, time spent travelling by a law practice, other than minor travel, is to be charged at no more than one half of the rates set out in Table A, with a maximum of 8 hours in any one day.<br><b>Note:</b> Allowances under item 13(c) are only to be awarded as between a law practice and its client, or if costs are awarded on an indemnity basis and <i>not</i> between party and party unless the Court otherwise orders. |                                      |            |  |

Made by the Legal Costs Committee on 15 June 2016.



## LEGAL PROFESSION ACT 2008

## LEGAL PROFESSION (FAMILY COURT OF WESTERN AUSTRALIA) REPORT 2016

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

## PART 1—PRELIMINARY

## 1 Citation

- (a) This Report may be cited as the *Legal Profession (Family Court of Western Australia) Report 2016*.
- (b) 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 2016*.

## PART 2—NOTICE AND INQUIRIES

## 2 Notice under section 278 of the Act

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

## 3 Inquiries and submissions under section 277 of the Act

- (a) Before making the *Legal Profession (Family Court of Western Australia) Determination 2016* 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;
  - (4) considered the impact of changes in relevant Australian Bureau of Statistics data for the period;
  - (5) consulted with a range of people and organisations within the legal profession in respect to the impact of structural changes in the profession; and
  - (6) 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.

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

**PART 3—REPORT OF COMMITTEE'S CONCLUSIONS****4 Maximum hourly and daily rates changed**

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 2016* 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 2016*.
- (d) It is the recommendation of the Legal Costs Committee, as a result of the consultations described in clause 3, that the new category of Restricted Practitioner should be introduced in the *Legal Profession (Family Court of Western Australia) Determination 2016*.
- (e) 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.

CLARE THOMPSON, Chair.

ANGELA GAFFNEY, Member.

MARCUS COCKER, Member.

JANICE DUDLEY, Member.

MATTHEW CURWOOD, Member.

BRENDAN ASHDOWN, Member.

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**Schedule****LEGAL PROFESSION ACT 2008****LEGAL PROFESSION (FAMILY COURT OF WESTERN AUSTRALIA)  
DETERMINATION 2016**

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

**1 Citation**

This Determination may be cited as the *Legal Profession (Family Court of Western Australia) Determination 2016*.

**2 Commencement**

This Determination comes into operation on 1 July 2016.

**3 Application**

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**).

**4 No minimum charge**

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

**5 Introduction of new Restricted Practitioner category**

- (a) This determination introduces the new category Restricted Practitioner. This category includes all Australian legal practitioners engaging in restricted legal practice pursuant to section 50 of the Act, during the period when that person is undertaking the “required experience”, as defined in section 50 of the Act, and whilst an endorsement to that effect remains on their practising certificate.
- (b) A Restricted Practitioner is not intended to include an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practise under supervision for disciplinary, medical or other reasons.
- (c) The Legal Costs Committee consulted the profession regarding the necessity for amendments to the levels of practitioner set out in Table A, in light of the changing nature of legal practice in this State. In particular the Legal Costs Committee was conscious of the changes to admission requirements and pathways to admission, which have resulted in practitioners being admitted to practise without the close supervision of legal practice formerly afforded by articles of clerkship but with a longer period of restricted practice. The effect of this is that

practitioners become senior practitioners with less experience than they previously have had, which has the effect of increasing the legal costs to consumers of their services.

- (d) It is the Legal Costs Committee's view, as expressed in this Determination, that the Determination should as far as possible reflect the regulated structure of the profession and thereby provide consumers of legal services with additional transparency as to the experience of the practitioner providing the legal services.
- (e) So as not to adversely affect clients of legal services provided by those practitioners who would, but for this change, have been Junior Practitioners or Senior Practitioners, transitional arrangements apply so that—
- (1) practitioners admitted after 1 July 2014, but before 1 July 2016, are entitled to recover their legal costs as if they were Junior Practitioners until 30 June 2018, or the date on which they would, but for this clause, become Junior Practitioners under this Determination; and
  - (2) practitioners admitted after 1 July 2011, but before 1 July 2014, are entitled to recover their legal costs as if they were either Junior Practitioners or Senior Practitioners, whichever category would have applied but for this change, until 30 June 2018, or the date on which they would, but for this clause, become Senior Practitioners under this Determination.

### 6 Hourly rates

- (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 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.
- (b) 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<br>hourly and daily<br>rates |
|---|--|
| Senior Practitioner (permitted to practise on his or her own account for 5 years or more) (SP) <sup>°</sup>   |  |
| hourly rate   | \$484  |
| Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) <sup>°</sup> |  |
| hourly rate   | \$341  |
| Restricted Practitioner (RP) <sup>°</sup> , #   |  |
| hourly rate   | \$297  |
| Clerk/Paralegal (C/PL) ##   |  |
| hourly rate   | \$231  |
| Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel:                       |  |
| Counsel (C)*  |  |
| hourly rate   | \$396  |
| daily rate  | \$3,960  |
| Senior Counsel (SC)**   |  |
| hourly rate   | \$682  |
| daily rate  | \$6,820  |

<sup>°</sup> The reference to Restricted Practitioner, Junior Practitioner or 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 practising certificate, the length of unrestricted legal practice in that other jurisdiction is to be counted in assessing that practitioner's years of practice for the purposes of this Determination.

# The reference to Restricted Practitioner in this Determination includes practitioners undertaking restricted legal practice for the purposes of obtaining the required experience set out in section 50 of the Act and does not include a reference to an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practise under supervision for disciplinary, medical or other reasons.

## The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.

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

## 7 Disbursements

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.

## 8 Travel

- (a) For the purposes of this Determination, minor travel means incidental travel associated with attendance at court for a hearing where that travel is of a minor duration. Examples of minor travel include, but are not limited to—
  - (1) a practitioner walking from their usual place of business to a court;
  - (2) a practitioner walking from a carpark to a court; or
  - (3) a practitioner walking or taking public transport from one centrally located court to another centrally located court.
- (b) As between a law practice and its own client, time spent travelling by a law practice, other than minor travel, is to be charged at no more than one half of the rates set out in Table A, with a maximum of 8 hours in any one day.
- (c) In making its decision in this Determination, the Committee has taken note of the Law Society of Western Australia's Standard Costs Agreement, which contains a provision that a law practice will charge travel at 50% of the agreed hourly rates.
- (d) The Legal Costs Committee has also considered an informal policy of the Legal Profession Complaints Committee that travel should not ordinarily be charged at a rate of more than 50% of a law practice's normal hourly charge-out rate.
- (e) Whilst the Legal Costs Committee recognises that during a travel period a law practice may not necessarily utilise legal skill and knowledge, there is a recognition of a loss of opportunity for the time spent travelling.
- (f) The Legal Costs Committee notes that, having regard to the above—
  - (1) it is the responsibility of a law practice to allocate the cost of time spent on travel fairly and reasonably where the travel is necessary to service more than one client on the day of travel; and
  - (2) whilst nothing contained in this Determination prevents a law practice from charging time spent on a client matter or client matters in the course of travel (air travel by way of example), the law practice is not entitled to charge a client or clients for both time spent on a client matter (regardless of whether that time relates to the client for whom the travel is being undertaken) and the amount allowed for travel under this determination.

## 9 Costs

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 15 June 2016.

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**LEGAL PROFESSION ACT 2008****LEGAL PROFESSION (MAGISTRATES COURT) (CIVIL)  
REPORT 2016**

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

**PART 1—PRELIMINARY****1. Citation**

- (a) This Report may be cited as the *Legal Profession (Magistrates Court) (Civil) Report 2016*.
- (b) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (Magistrates Court) (Civil) Determination 2016*.

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

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

**3. Inquiries and submissions under section 277 of the Act**

Before making the *Legal Profession (Magistrates Court) (Civil) Determination 2016* the Legal Costs Committee—

- (a) reviewed all submissions received as a result of the notice given under section 278 of the Act;
- (b) considered the impact of changes in relevant Australian Bureau of Statistics data for the period;
- (c) consulted with the Magistrates Court and the Chief Magistrate, The Law Society of Western Australia Inc. and the Western Australian Bar Association Inc;
- (d) consulted with a range of people and organisations within the legal profession in respect to the impact of structural changes in the profession;
- (e) reviewed the *Legal Practitioners (Magistrates Court) (Civil) Determination 2014*<sup>1</sup>; and
- (f) had regard to relevant provisions of the *Magistrates Court Act 2004* and the *Magistrates Court (Civil Proceedings) Act 2004*, and in particular notes section 13(1) of that Act, which sets out the guiding principles for the conduct of civil proceedings in the Court.

**PART 3—REPORT OF LEGAL COSTS COMMITTEE'S CONCLUSIONS****4. Maximum hourly and daily rates changed—scale of costs amended**

- (a) The information gained as a result of the inquiries and submissions described in clause 3 satisfied the Legal Costs Committee that having regard to the provisions of the *Magistrates Court Act 2004* and the *Magistrates Court (Civil Proceedings) Act 2004*, it remains appropriate to determine hourly and daily rates and a scale of costs for legal work applicable to civil proceedings in the Magistrates Court.
- (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
  - (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 subclause 4(a) be varied from the hourly and daily rates used in the *Legal Practitioners (Magistrates Court) (Civil) Determination 2014* as the basis for the recommended scale of costs which have generally been rounded up or down to represent various increases of approximately 2% 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 Profession (Magistrates Court) (Civil) Determination 2016*.

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<sup>1</sup> Published in Gazette 20 June 2014

- (c) The Legal Costs Committee has concluded that the matters set out in section 13(1) of the *Magistrates Court (Civil Proceedings) Act 2004* properly informs the approach to the recovery of costs recommended in *Legal Profession (Magistrates Court) (Civil) Determination 2016*. In particular the Legal Costs Committee notes—
- (1) the Magistrates Court is not a court of pleadings;
  - (2) there are substantial differences in practice and procedure between the Magistrates Court and other civil courts in this State;
  - (3) it is intended that the Magistrates Court be a low cost jurisdiction;
  - (4) actions where the quantum is less than \$10,000 do not attract an entitlement to party/party costs, without a special costs order; and
  - (5) the monetary jurisdiction of the Magistrates Court is presently \$75,000.
- (d) Having regard to the information gained as a result of the inquiries and submissions described in clause 3, the Legal Costs Committee has concluded it remains appropriate to—
- (1) order the scale to reflect the procedures utilised in the Magistrates Court and the flow of litigation;
  - (2) maintain consistency where practicable with the format of the *Legal Profession (Supreme Court) (Contentious Business) Determination 2016*; and
  - (3) provide for hourly and daily rates applicable to Counsel and Senior Counsel.
- (e) It is the recommendation of the Legal Costs Committee as a result of the inquiries and submissions described in clause 3, the scale of costs be varied in the manner set out in Table B of the *Legal Profession (Magistrates Court) (Civil) Determination 2016*.
- (f) The Legal Costs Committee intends, because the scale sets maximum hourly and daily rates and amounts and allowances that must not be exceeded, that the hourly and daily rates and scale of costs will apply in circumstances requiring the determination of allowable and other costs in the minor cases procedure of the Magistrates Court.
- (g) The Legal Costs Committee intends that the Determination shall apply to all civil proceedings dealt with in the Magistrates Court, including civil jurisdiction conferred on the Court by a written law, including, for example, the *Dividing Fences Act 1961* and the *Restraining Orders Act 1997*.
- (h) It is the recommendation of the Legal Costs Committee, as a result of the consultations described in clause 3, that the new category of Restricted Practitioner should be introduced in the *Legal Profession (Magistrates Court) (Civil) Determination 2016*.
- (i) The recommendations of the Legal Costs Committee are not intended to override any entitlement of a law practice to make a written agreement as to costs with a client under the Act or any similar legislation.

CLARE THOMPSON, Chair.

ANGELA GAFFNEY, Member.

MARCUS COCKER, Member.

JANICE DUDLEY, Member.

MATTHEW CURWOOD, Member.

BRENDAN ASHDOWN, Member.

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### *Schedule*

#### **LEGAL PROFESSION ACT 2008**

##### **LEGAL PROFESSION (MAGISTRATES COURT) (CIVIL) DETERMINATION 2016**

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

#### **1. Citation**

This Determination may be cited as the *Legal Profession (Magistrates Court) (Civil) Determination 2016*.

#### **2. Commencement**

This Determination comes into operation on 1 July 2016.

#### **3. Application**

- (a) 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 civil proceedings before the Magistrates Court.
- (b) This Determination does not apply to the remuneration of legal practitioners based on costs incurred in respect of business carried out before the commencement of this Determination.

#### 4. No minimum charge

In no respect is this Determination to be seen as providing a minimum charge for any work other than the items referred to in clause 5. For example, item 2(b) provides for \$3,256 for the work involved. The figure of \$3,256 is a maximum, but on taxation less than \$3,256 might be allowed. Where there is a set cost or time or level of fee earner indicated, the purpose is to indicate to the Assessing Officer what reasonably may be expected in most cases.

#### 5. Fixed items

Some items in this Determination have been fixed without any indication of how these items have been calculated. These items are 1, 2(a), 4(a), 11, 12(c), 17(a)(ii), 17(b), 18(a), 20 and 21(a). These have been fixed because, based on past practices, the Court staff require a fixed figure when completing the form of Entry of Judgment by Default and the like.

#### 6. Time estimates

The reason for stating the number of hours estimated to be necessary to perform each of the items of work described in this Determination is to provide guidance to the Court when dealing with the question of costs so that the Court has some idea how much time is reasonably necessary to perform work in most cases. For example, in item 15(a), which relates to preparation for trial or getting up a case for trial, the time indicated is that which can be expected in most cases. Some items reflect a number of hours that have been estimated so as to include work done with respect to the process of obtaining and considering evidence, interrogatories, documents, disclosures and the like, for example items 2(b), 4(b), 5, 10 and 19. The hours referred to in this Determination will guide the Assessing Officer about the amount which should be allowed in a particular case.

#### 7. Items 14 and 16—Solicitor as counsel

If independent counsel is not retained for the trial, this will be a factor to be considered by the Assessing Officer who might not then permit the full amount in the determination for fee on brief under item 16(b), as well as a full getting up allowance under item 14. This is in line with the decisions of *Commonwealth v Magriplis* (1962) 3 FLR 47 and *Washbourne v SEC* (1992) 8 WAR 188.

#### 8. Settled proceedings

It is intended that item 13 should apply even if there is no trial. Thus, if the case is settled before trial and the law practice can demonstrate that preparation for trial was carried out, costs may be recovered for that work and allowed on an assessment of costs.

#### 9. New item 28—Travel

- (a) This Determination introduces a new item 28 which makes an allowance for travel.
- (b) It is the Committee's view that minor travel, which means incidental travel associated with attendance at court for a hearing where that travel is of a minor duration (minor travel) is properly included in the costs recoverable for the appearance for which it is associated. Item 28 is intended to apply to travel necessary to undertake work other than minor travel) Examples of minor travel include, but are not limited to—
  - (1) a practitioner walking from their usual place of business to a court;
  - (2) a practitioner walking from a carpark to a court; or
  - (3) a practitioner walking or taking public transport from one centrally located court to another centrally located court.
- (c) Item 28, is intended to cover all travel other than minor travel including, but not limited to—
  - (1) travel by car or public transport within metropolitan Perth from a practitioner's usual place of business to a suburban court or a court in the City of Perth, for example, driving from Joondalup to the CBD, or taking the train to Armadale from the CBD;
  - (2) travel by car or public transport from a practitioner's usual place of business to visit a client or witness or to undertake any meeting or view necessary for the purposes of the proceedings, regardless of where the destination is;
  - (3) travel by any means from outside the metropolitan area to Perth, for example, flying from Port Hedland; or
  - (4) travel by any means from Perth to outside the metropolitan area, for example, taking the train to Mandurah.
- (d) Items 28(a) and (b) provide for the circumstances where travel is recoverable as part of the party—party costs in a proceeding. Item 28(b) is intended to cover circumstances where the Court convenes at a location other than its usual location for those proceedings. Examples of the situations covered by item 28(b) include, but are not limited to—
  - (1) travel required to attend at a court ordered mediation scheduled to take place in Geraldton when the proceedings are case managed by the Court in Perth;
  - (2) travel required to attend a site visit or view, with the Court in attendance;
  - (3) travel required to attend a court ordered examination of a witness prior to trial in Esperance, when the proceedings are case managed by the Court in Perth; or
  - (4) travel required to attend the trial of proceedings in Perth when the proceedings were case managed by the Court in Kalgoorlie.
- (e) Travel to attend a location which does not include the Court and the parties attending together at that location falls within item 28(c).

- (f) Travel to attend at a directions hearing or similar in a centrally located court, from a non-centrally located business address of the legal practitioner, other than that component which falls within the definition of minor travel, falls within item 28(c). Examples of this include but are not limited to—
- (1) travel by car or public transport from Perth to Mandurah to attend any court hearing;
  - (2) travel by car or public transport from Joondalup to Fremantle to attend any court hearing; or
  - (3) travel from interstate to Perth to attend any court hearing.
- (g) In making its decision in this Determination, the Legal Costs Committee has taken note of the Law Society of Western Australia's Standard Costs Agreement, which contains a provision that a law practice will charge travel at 50% of the agreed hourly rates.
- (h) The Legal Costs Committee has also considered an informal policy of the Legal Profession Complaints Committee that travel should not ordinarily be charged at a rate of more than 50% of a law practice's normal hourly charge-out rate.
- (i) Whilst the Legal Costs Committee recognises that during a travel period a law practice may not necessarily utilise legal skill and knowledge, there is a recognition of a loss of opportunity for the time spent travelling.
- (j) The Legal Costs Committee notes that, having regard to the above—
- (1) it is the responsibility of a law practice to allocate the cost of time spent on travel fairly and reasonably where the travel is necessary to service more than one client on the day of travel; and
  - (2) whilst nothing contained in this Determination prevents a law practice from charging time spent on a client matter or client matters in the course of travel (air travel by way of example), the law practice is not entitled to charge a client or clients for both time spent on a client matter (regardless of whether that time relates to the client for whom the travel is being undertaken) and the amount allowed under item 28.

#### 10. Introduction of new Restricted Practitioner category

- (a) This determination introduces the new category Restricted Practitioner. This category includes all Australian legal practitioners engaging in restricted legal practice pursuant to section 50 of the Act, during the period when that person is undertaking the "required experience", as defined in section 50 of the Act, and whilst an endorsement to that effect remains on their practising certificate.
- (b) A Restricted Practitioner is not intended to include an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practise under supervision for disciplinary, medical or other reasons.
- (c) The Legal Costs Committee consulted the profession regarding the necessity for amendments to the levels of practitioner set out in Table A, in light of the changing nature of legal practice in this State. In particular the Legal Costs Committee was conscious of the changes to admission requirements and pathways to admission, which have resulted in practitioners being admitted to practise without the close supervision of legal practice formerly afforded by articles of clerkship but with a longer period of restricted practice. The effect of this is that practitioners become senior practitioners with less experience than they previously have had, which has the effect of increasing the legal costs to consumers of their services.
- (d) It is the Legal Costs Committee's view, as expressed in this Determination, that the Determination should as far as possible reflect the regulated structure of the profession and thereby provide consumers of legal services with additional transparency as to the experience of the practitioner providing the legal services.
- (e) So as not to adversely affect clients of legal services provided by those practitioners who would, but for this change, have been Junior Practitioners or Senior Practitioners, transitional arrangements apply so that—
- (1) practitioners admitted after 1 July 2014, but before 1 July 2016, are entitled to recover their legal costs as if they were Junior Practitioners until 30 June 2018, or the date on which they would, but for this clause, become Junior Practitioners under this Determination; and
  - (2) practitioners admitted after 1 July 2011, but before 1 July 2014, are entitled to recover their legal costs as if they were either Junior Practitioners or Senior Practitioners, whichever category would have applied but for this change, until 30 June 2018, or the date on which they would, but for this clause, become Senior Practitioners under this Determination.

#### 11. Maximum hourly and daily rates

- (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 set out in Table B. Except for certain items, each item in this Determination specifies a dollar amount with reference to the fee earner.
- (b) The rates referred to in paragraph (a) were ascertained in the manner set out in clause 4 of the *Legal Profession (Magistrates Court) (Civil) Report 2016*.

- (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.
- (d) The items in Table B are not intended to be calculated on the basis of a minimum 6 minute unit.

**Table A**

| Fee Earner   | Maximum allowed<br>hourly rates |
|--|---------------------------------|
| Senior Practitioner ° (permitted to practise on his or her own account for 5 years or more) (SP) α | \$407                           |
| Junior Practitioner ° (permitted to practise on his or her own account for less than 5 years) (JP) | \$308                           |
| Restricted Practitioner (RP) #, °  | \$231                           |
| Clerk/Paralegal (C/PL) ##  | \$154                           |
| Counsel fees charged as a disbursement to law practices or charged by in-house Counsel             |                                 |
| Counsel*   |                                 |
| hourly rate  | \$330                           |
| daily rate   | \$3,300                         |
| Senior Counsel**   |                                 |
| hourly rate  | \$539                           |
| daily rate   | \$5,390                         |

° The reference to Restricted Practitioner, Junior Practitioner or 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 practising certificate, the length of unrestricted legal practice in that other jurisdiction is to be counted in assessing that practitioner's years of practice for the purposes of this Determination.

# The reference to Restricted Practitioner in this Determination includes practitioners undertaking restricted legal practice for the purposes of obtaining the required experience set out in section 50 of the Act and does not include a reference to an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practise under supervision for disciplinary, medical or other reasons.

## The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.

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

**12. Costs**

- (a) 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)—
- (1) recoverable by one party from another party; or
  - (2) payable by a party to that party's own law practice,
- shall not exceed the amounts set out in Table B (except as otherwise provided in item 25 of Table B).
- (b) Allowances made under item 25 of Table B are only to be awarded as between a law practice and its client, and not between party and party unless the Court otherwise orders. The item is not intended to be used to claim increased allowances for items which should properly fit into another item in the Determination, for example item 10,
- (c) The Legal Costs Committee notes the impact of the decision in *Rodwell v Hutchinson* [2010] WASCA 197, and so no allowance is made in this determination for an award of indemnity costs.
- (d) The Legal Costs Committee notes the comments of the court in *Defendi v Eden Hill Plasterers* [2008] WASCA 269 at [7] as to the importance of the proportionality principle in litigation in this Court, which arises in respect to all costs incurred in the Court.

**Table B****Magistrates Court Civil Scale of Costs 2016**

| Item | Time   | Fee<br>Earner | \$ |
|------|--|---------------|----|
| 1.   | Letter of demand issued prior to proceedings |               | 77 |

| Item |   | Time  | Fee Earning        | \$   |
|------|---|---|--------------------|--|
| 2.   | <b>Claim—</b><br>(a) Claim, including instructions, but excluding Statement of Claim<br>(b) For each additional defendant<br>(c) Statement of Claim (including preparation and lodgement of a particulars of claim, where necessary or by order, and statutory declaration and list of documents)   | 8 hours   | SP                 | 407<br>55<br>3,256                             |
| 3.   | Appointment of litigation guardian  | 2 hours   | JP                 | 616  |
| 4.   | <b>Response—</b><br>(a) Lodgement of a response to a claim<br>(b) Statement of defence (including preparation and lodgement of a statutory declaration)<br>(c) Counterclaim, including instructions and statement of claim in the counterclaim, statutory declaration in support of counterclaim (where required), and all other documents necessary  | 8 hours<br>8 hours                                  | SP<br>SP           | 209<br>3,256<br>3,256                          |
| 5.   | Third party claim, including instructions and list of documents   | 8 hours   | SP                 | 3,256  |
| 6.   | <b>Disclosure—</b><br>Giving additional disclosure where ordered by the Court or a Registrar  | 5 hours   | RP                 | 1,155  |
| 7.   | <b>Inspection—</b><br>Inspection and giving inspection whether by personal attendance or otherwise  | per hour  | RP                 |  |
| 8.   | <b>Interrogatories—</b><br>(a) Delivery of interrogatories<br>(b) Answers to interrogatories including affidavit  | 5 hours<br>5 hours                                  | SP<br>SP           | 2,035<br>2,035                                 |
| 9.   | <b>Interpleaders—</b><br>Interpleader proceedings—<br>(a) where uncontested<br>(b) where contested  | 1 hour  | JP                 | 308<br>An allowance in accordance with item 10 |
| 10.  | <b>Application to the Court—</b><br>(a) Applications and responses to applications including under Part 21 of the <i>Magistrates Court Civil Proceedings Rules 2005</i> , including all documentation in preparation for hearing<br>(b) Second or subsequent half day<br>(c) <i>Ex parte</i> applications, including preparation<br>(d) If the hearing on any one day comprises a directions hearing or similar only<br><b>Note:</b> If the proceedings do not commence and settle or adjourn on the day of the hearing, then the Assessing Officer shall allow such amount as is reasonable in the circumstances | 1 day preparation<br>½ day hearing<br>per hour<br>1 | C<br>C<br>SP<br>SP | 4,950<br>1,650<br>407                          |
| 11.  | Application for entry of judgment by default ( <i>without trial</i> )   |   |                    | 154  |

| Item |   | Time   | Fee Earner  | \$  |
|------|---|--|---|---|
| 12.  | <b>Offers of settlement, notices, practice directions, applications, declarations, memoranda, affidavits—</b><br>(a) Offers of settlement<br>(b) Acceptance of offer of settlement<br>(c) Other notices and certificates referred to or required by the Act, Rules or procedures of the Court (including practice directions) not otherwise specified in this Scale<br>(d) Preparation, lodgement and service of affidavits and statutory declarations not otherwise provided for<br>(f) Preparation, lodgement and service of a listing conference memorandum  | 2 hours<br>2 hours<br><br>per hour<br>6 hours  | SP<br>SP<br><br>SP<br>SP                                | 814<br>814<br>154<br>407<br>2,442                                 |
| 13.  | <b>Preparation of case—</b><br>Preparation for trial (includes work reasonably and necessarily undertaken prior to commencement of proceedings)   | 50 hours   | SP  | 20,350  |
| 14.  | Examination of witness before trial by a legal practitioner, pursuant to an order   |  |   | An allowance in accordance with item 15(e) or (f)                 |
| 15.  | <b>Trial—</b><br>(a) Fee on brief for Counsel; i.e. half day trial and preparation<br>(b) Allowance for second half day of trial<br>(c) Fee on brief for Senior Counsel ie half day trial and preparation (where two or more Counsel are certified for)<br>(d) Allowance for second half day of trial for Senior Counsel<br>(e) Counsel fee for the second and each successive day of hearing<br>(f) Counsel fee for Senior Counsel for second and each successive day of hearing<br>(g) Instructing legal practitioner attending trial<br>(h) Clerk attending trial<br><b>Note:</b> Subject to paragraphs (a)—(h) if—<br>(1) The trial lasts less than 2 hours; or<br>(2) The trial does not commence and settles or adjourns on the day of the trial, then the Assessing Officer shall allow such amount as is reasonable in the circumstances<br>(i) Attending on reserved judgment (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders) | 2 days preparation ½ day of trial<br><br>2 days preparation ½ day of trial<br>per hour<br><br>per hour<br><br>per hour | C<br>C<br>SC<br>SC<br>C<br>SC<br>JP/RP<br>CPL<br><br>SP | 8,250<br>1,650<br>13,475<br>2,695<br>3,300<br>5,390<br><br><br>SP |
| 16.  | <b>Pre-trial, mediation, conferrals, or other conferences</b><br>(a) where required by the applicable <i>Rules</i> of the Court, practice direction, order of the Court or legislation;<br>(b) including informal conferences where reasonably held after commencement of proceedings; and<br>(c) preparation reasonably undertaken for the conferences described in paragraphs (a) and (b) of this item.   | per hour   | SP  |   |

| Item |   | Time                     | Fee Earner                        | \$   |
|------|---|--------------------------|-----------------------------------|--|
| 17.  | <b>Judgments and orders—</b><br>(a) Settling and extracting judgment or order<br>(i) with appointment<br>(ii) without appointment<br>(b) Request for certified copy of judgment or order  | 1 hour                   | RP                                | 231<br>209<br>154                                  |
| 18.  | <b>Enforcement—</b><br>(a) Execution<br>(b) If against land, an additional  | 3 hours                  | RP                                | 198<br>693   |
| 19.  | <b>Proceedings in court pursuant to <i>Civil Judgments Enforcement Act 2004</i> for the following, including preparation—</b><br>(a) Means Inquiry<br>(b) Default Inquiry<br>(c) Suspension of enforcement order application<br>(d) Application to cancel or amend an order   | 1.5 hours                | JP<br>RP<br>C/PL                  | 462<br>352<br>231                                  |
| 20.  | <b>Registration of judgments—</b><br>Registration of judgments including those under <i>Service and Execution of Process Act 1992 (Cwlth)</i>   |                          |                                   | 209  |
| 21.  | <b>Assessment of costs including drawing bill—</b><br>(a) Lodgement of bill of costs<br>(b) Drawing bill of costs, copies and service<br>(c) Making an objection to a bill<br>(d) Assessment of costs (including the time spent in preparing for the assessment)  | per hour                 | JP<br>JP<br>JP                    | 55   |
| 22.  | <b>Appeals—</b><br>An appeal to a Magistrate from a decision of a Registrar   |                          |                                   | Allowances calculated in accordance with item 10   |
| 23.  | <b>Copies—</b><br>Copies where necessary, including of documents for which allowance is otherwise made in this Determination  | per page                 |                                   | 0.165  |
| 24.  | <b>Accounts and inquiries—</b><br>Attending on taking accounts, inquiries   |                          | SP                                | An amount which is reasonable in the circumstances |
| 25.  | <b>Other work—</b><br>(a) Time reasonably spent by a legal practitioner on work requiring the skill of a legal practitioner (of the standing indicated) but not covered by any other item<br>or<br>(b) Time reasonably spent by a legal practitioner, or by a clerk or paralegal of a legal practitioner, on work not covered by any other item or by paragraph (a)<br><b>Note:</b> Allowances under item 25 are only to be awarded as between a law practice and its client, and <i>not</i> between party and party unless the Court otherwise orders. | per hour<br><br>per hour | SC<br>C<br>SP<br>JP<br>RP<br>C/PL |  |
| 26.  | <b>Disbursements—</b><br>In addition to the fees and charges allowed under this Determination—<br>(a) As between a law practice and client, a law practice may charge and be allowed disbursements necessarily or reasonably incurred; and<br>(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                        |                          |                                   |  |

| Item |   | Time | Fee<br>Earner | \$ |
|------|---|------|---------------|----|
| 27.  | <p><b>Allowances for witnesses—</b><br/>           The amount of any costs to be paid in respect of work done by a legal practitioner in conducting any proceedings in a case may include a reasonable allowance for—</p> <p>(a) witnesses necessary to the case because of their professional, scientific or other special skill or knowledge; and</p> <p>(b) witnesses necessary to the case other than those covered in paragraph (a).</p> <p>In fixing an allowance for witnesses under paragraph (b), including the Claimant and Defendant, the Assessing Officer may have regard to the amount of salary, wages, or income (if any) actually lost by the witness;</p> <p>In fixing an allowance for witnesses under either paragraph (a) or paragraph (b), regard should be given to whether it was reasonable in all the circumstances to call a witness in person when the witness was able to give evidence by use of audio-link, video-link or similar technology.</p>  |      |               |    |
| 28.  | <p><b>Travel—</b></p> <p>(a) As between party and party, minor travel as defined in this Determination, is to be allowed as part of the costs awarded for an attendance at chambers or Court, without further order.</p> <p>(b) As between party and party, time spent travelling by a law practice which is not minor travel and which is required by reason of an order of the Court requiring the parties to attend at a location other than the location at which the proceedings is case managed, is to be charged at no more than one half of the rates set out in Table A, with a maximum of 8 hours in any one day, without further order.</p> <p>(c) As between a law practice and its own client, time spent travelling by a law practice, other than minor travel, is to be charged at no more than one half of the rates set out in Table A, with a maximum of 8 hours in any one day.</p> <p><b>Note:</b> Allowances under item 28(c) are only to be awarded as between a law practice and its client, and <i>not</i> between party and party unless the Court otherwise orders.</p> |      |               |    |

Made by the Legal Costs Committee on 15 June 2016.



**LEGAL PROFESSION ACT 2008****LEGAL PROFESSION (MAGISTRATES COURT) (CRIMINAL)  
REPORT 2016**

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

**PART 1—PRELIMINARY****1. Citation**

- (a) This Report may be cited as the *Legal Profession (Magistrates Court) (Criminal) Report 2016*.
- (b) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (Magistrates Court) (Criminal) Determination 2016*.

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

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

**3. Inquiries and submissions under section 277 of the Act**

Before making the *Legal Profession (Magistrates Court) (Criminal) Determination 2016* the Legal Costs Committee—

- (a) reviewed all submissions received as a result of the notice given under section 278 of the Act;
- (b) considered the impact of changes in relevant Australian Bureau of Statistics data for the period;
- (c) consulted with the Magistrates Court, The Law Society of Western Australia Inc., the Western Australian Bar Association Inc and the Criminal Lawyers Association of Western Australia;
- (d) consulted with a range of people and organisations within the legal profession in respect to the impact of structural changes in the profession;
- (e) reviewed the *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Determination 2014*<sup>1</sup>; and
- (f) had regard to relevant provisions of the *Magistrates Court Act 2004*.

**PART 3—REPORT OF LEGAL COSTS COMMITTEE'S CONCLUSIONS****4. Maximum hourly and daily rates changed—scale of costs amended**

- (a) The Legal Costs Committee notes that the criminal jurisdiction of the Magistrates Court covers a wide range of summary criminal matters.
- (b) The Legal Costs Committee considers that as a consequence of the position stated in subclause 4(a), it is appropriate for a general scale of fees based on hourly rates to continue to apply to the time reasonably taken to perform the services provided by a law practice in, or for the purposes of contentious business in the criminal jurisdiction of the Magistrates Court.
- (c) 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
  - (4) taking into account the incidental administrative implications of the calculation of the Goods and Services Tax,

the appropriate hourly rates referred to in subclause 4(b) be varied from the hourly and daily rates used in the *Legal Practitioners (Magistrates Court) (Criminal) Determination 2014* as the basis for the recommended scale of costs which have generally been rounded up or down to represent increases of approximately 2% 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 Profession (Magistrates Court) (Criminal) Determination 2016*.

<sup>1</sup> Published in Gazette 20 June 2014.

- (d) It is the recommendation of the Legal Costs Committee that the hourly rates charged by law practices under the *Legal Profession (Magistrates Court) (Civil) Determination 2016* should be adopted as the basis for costs for the supply of legal services covered under the *Legal Profession (Magistrates Court) (Criminal) Determination 2016*.
- (e) It is further the recommendation of the Legal Costs Committee that Table B of the *Legal Profession (Magistrates Court) (Criminal) Determination 2016* should be adopted as the basis for costs for the supply of those legal services itemised in that Table. These costs have generally been rounded up or down to represent increases of approximately 2% inclusive of the Goods and Services Tax, and for administrative convenience, divisible by 11.
- (f) It is the recommendation of the Legal Costs Committee, as a result of the consultations described in clause 3, that the new category of Restricted Practitioner should be introduced in the *Legal Profession (Magistrates Court) (Criminal) Determination 2016*.
- (g) The recommendations of the Legal Costs Committee are not intended to override any entitlement of a law practice to make a written agreement as to costs with a client under the Act or any successor legislation.

CLARE THOMPSON, Chair.  
ANGELA GAFFNEY, Member.  
MARCUS COCKER, Member.  
JANICE DUDLEY, Member.  
MATTHEW CURWOOD, Member.  
BRENDAN ASHDOWN, Member.

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### Schedule

#### LEGAL PROFESSION ACT 2008

##### LEGAL PROFESSION (MAGISTRATES COURT) (CRIMINAL) DETERMINATION 2016

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

#### 1. Citation

This Determination may be cited as the *Legal Profession (Magistrates Court) (Criminal) Determination 2016*.

#### 2. Commencement

This Determination comes into operation on 1 July 2016.

#### 3. Application

- (a) 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 criminal proceedings in the Magistrates Court.
- (b) This Determination does not apply to the remuneration of legal practitioners based on costs incurred in respect of work carried out before the commencement of this Determination.

#### 4. Travel

- (a) For the purposes of this Determination, minor travel means incidental travel associated with attendance at court for a hearing where that travel is of a minor duration. Examples of minor travel include, but are not limited to—
  - (1) a practitioner walking from their usual place of business to a court;
  - (2) a practitioner walking from a carpark to a court; or
  - (3) a practitioner walking or taking public transport from one centrally located court to another centrally located court.
- (b) As between a law practice and its own client, time spent travelling other than minor travel, is to be charged at no more than one half of the rates set out in Table A, with a maximum of 8 hours in any one day.
- (c) In making its decision in this Determination, the Legal Costs Committee has taken note of the Law Society of Western Australia's Standard Costs Agreement, which contains a provision that a law practice will charge travel at 50% of the agreed hourly rates.
- (d) The Legal Costs Committee has also considered an informal policy of the Legal Profession Complaints Committee that travel should not ordinarily be charged at a rate of more than 50% of a law practice's normal hourly charge-out rate.
- (e) Whilst the Legal Costs Committee recognises that during a travel period a law practice may not necessarily utilise legal skill and knowledge, there is a recognition of a loss of opportunity for the time spent travelling.
- (f) The Legal Costs Committee notes that, having regard to the above—
  - (1) it is the responsibility of a law practice to allocate the cost of time spent on travel fairly and reasonably where the travel is necessary to service more than one client on the day of travel; and

- (2) whilst nothing contained in this Determination prevents a law practice from charging time spent on a client matter or client matters in the course of travel (air travel by way of example), the law practice is not entitled to charge a client or clients for both time spent on a client matter (regardless of whether that time relates to the client for whom the travel is being undertaken) and the amount for travel allowed in this Determination.

#### 5. Introduction of new Restricted Practitioner category

- (a) This Determination introduces the new category Restricted Practitioner. This category includes all Australian legal practitioners engaging in restricted legal practice pursuant to section 50 of the Act, during the period when that person is undertaking the “required experience”, as defined in section 50 of the Act, and whilst an endorsement to that effect remains on their practising certificate.
- (b) A Restricted Practitioner is not intended to include an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practice under supervision for disciplinary, medical or other reasons.
- (c) The Legal Costs Committee consulted the profession regarding the necessity for amendments to the levels of practitioner set out in Table A, in light of the changing nature of legal practice in this State. In particular the Legal Costs Committee was conscious of the changes to admission requirements and pathways to admission, which have resulted in practitioners being admitted to practise without the close supervision of legal practice formerly afforded by articles of clerkship but with a longer period of restricted practice. The effect of this is that practitioners become senior practitioners with less experience than they previously have had, which has the effect of increasing the legal costs to consumers of their services.
- (d) It is the Legal Costs Committee’s view, as expressed in this Determination, that the Determination should as far as possible reflect the regulated structure of the profession and thereby provide consumers of legal services with additional transparency as to the experience of the practitioner providing the legal services.
- (e) So as not to adversely affect clients of legal services provided by those practitioners who would, but for this change, have been Junior Practitioners or Senior Practitioners, transitional arrangements apply so that—
- (1) practitioners admitted after 1 July 2014, but before 1 July 2016, are entitled to recover their legal costs as if they were Junior Practitioners until 30 June 2018, or the date on which they would, but for this clause, become Junior Practitioners under this Determination; and
  - (2) practitioners admitted after 1 July 2011, but before 1 July 2014, are entitled to recover their legal costs as if they were either Junior Practitioners or Senior Practitioners, whichever category would have applied but for this change, until 30 June 2018, or the date on which they would, but for this clause, become Senior Practitioners under this Determination.

#### 6. Maximum hourly and daily rates

- (a) The hourly rates set out in Table A below are the maximum hourly rates, inclusive of GST, which the Legal Costs Committee determines shall be used to calculate the remuneration of law practices in respect of time reasonably taken to perform services in or for the purposes of work undertaken by law practices in respect of criminal proceedings before the Magistrates Court.
- (b) The Rates referred to in paragraph (a) were ascertained in the manner set out in clause 4 of the *Legal Profession (Magistrates Court) (Criminal) Report 2016*.
- (c) The daily rates set out in Table B below 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.
- (d) The items in Table B are not intended to be calculated on the basis of a minimum 6 minute unit.

**Table A**

| Fee Earner   | Maximum allowed<br>hourly rates |
|--|---------------------------------|
| Senior Practitioner ° (permitted to practise on his or her own account for 5 years or more) (SP) α | \$407                           |
| Junior Practitioner ° (permitted to practise on his or her own account for less than 5 years) (JP) | \$308                           |
| Restricted Practitioner (RP) #, °  | \$231                           |
| Clerk/Paralegal (C/PL) ##  | \$154                           |

| Counsel fees charged as a disbursement to law practices or charged by in-house Counsel | Maximum allowed hourly rates |         |
|--|------------------------------|---------|
| Counsel*   | hourly rate                  | \$330   |
|  | daily rate                   | \$3,300 |
| Senior Counsel**   | hourly rate                  | \$539   |
|  | daily rate                   | \$5,390 |

° The reference to Restricted Practitioner, Junior Practitioner or 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 practising certificate, the length of unrestricted legal practice in that other jurisdiction is to be counted in assessing that practitioner's years of practice for the purposes of this Determination.

# The reference to Restricted Practitioner in this Determination includes practitioners undertaking restricted legal practice for the purposes of obtaining the required experience set out in section 50 of the Act and does not include a reference to an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practise under supervision for disciplinary, medical or other reasons.

## The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.

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

## 7. Costs

- (a) 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 prosecution of an accused (inclusive of GST and counsel fees, but exclusive of other disbursements)—
- (1) recoverable by one party from another party; or
  - (2) payable by a party to that party's own law practice,
- shall not exceed the amounts set out in Table B.
- (b) Each item of the Scale of Costs specifies a dollar amount. The purpose is to indicate the maximum amount for the work indicated in the item, but on assessment, less might be allowed. In no respect is the Scale to be seen as providing a minimum charge for any work. The reason for stating the number of hours estimated to be necessary to perform each of the items of work described in the Scale is to provide guidance to the Assessing Officer when dealing with the question of costs so that the Assessing Officer has some idea how much time is reasonably necessary to perform the work in most cases.
- (c) Work undertaken by Senior Counsel shall be allowable in accordance with the rates in the Table A of this Determination.

**Table B**  
**Magistrates Court Criminal Scale of Costs 2016**

| Item |  | Time      | \$   |
|------|--|-----------|--|
| 1.   | (a) Subject to paragraphs (b) and (c), allow for one adjournment only  | 1 hour    | 407  |
|      | (b) Costs for additional adjournments to be awarded on application to, and at the discretion of, the presiding Magistrate                                      |           |  |
|      | (c) Each Court ordered adjournment   | 1 hour    | 407  |
| 2.   | (a) Preparation 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</i> (WA) | 3.5 hours | 1,430  |
|      | (b) Preparation for, and appearance at, application to vary bail conditions  | 1.5 hours | 616  |
| 3.   | Directions hearing, including preparation  | 4 hours   | 1,628  |
| 4.   | (a) Preparation of case and half day trial, including counsel fee  |           | 7,491  |
|      | (b) Second half day  |           | 836  |
| 5.   | Second and each successive day of trial  |           | 3,300  |
| 6.   | Allowance for preparation where the trial does not proceed or the prosecution offers no evidence   |           | An amount which is reasonable in the circumstances |

| <b>Item</b> |  | <b>Time</b> | <b>\$</b> |
|-------------|--|-------------|-----------|
| 7.          | Counsel fee for attending court for remand appearance, directions hearing, status conference, mention, callover, reserved decision or other appearance not otherwise accounted for | 3 hours     | 990       |
| 8.          | (a) Short Plea in mitigation, including preparation (plea of up to 30 minutes)   |             | 627       |
|             | (b) Long Plea in mitigation, including preparation (plea in excess of 30 minutes)  |             | 1,925     |
| 9.          | Copies where reasonably necessary, including documents for which allowance is otherwise made in this Determination   | per page    | 0.165     |

Made by the Legal Costs Committee on 15 June 2016.

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**LEGAL PROFESSION ACT 2008****LEGAL PROFESSION (OFFICIAL PROSECUTIONS) (ACCUSED'S COSTS) REPORT 2016**

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

**PART 1—PRELIMINARY****1. Citation**

- (a) This Report may be cited as the *Legal Profession (Official Prosecutions) (Accused's Costs) Report 2016*.
- (b) 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 2016*.

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

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

**3. Inquiries and submissions under section 277 of the Act**

Before making the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2016*, 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;
- (b) consulted with a range of people and organisations within the legal profession in respect to the impact of structural changes in the profession;
- (c) considered the impact of changes in relevant Australian Bureau of Statistics data for the period; and
- (d) reviewed a submission from the Law Society of Western Australia.

**PART 3—REPORT OF THE COMMITTEE'S CONCLUSIONS****4. Maximum hourly and daily rates changed**

- (a) 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 2016* 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*.
- (b) The hourly rates referred to in sub clause (a) are set out in Table A of the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2016*.
- (c) The daily rates referred to in sub clause (a) are set out in Table B of the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2016*.
- (d) 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 2016* be adopted.
- (e) 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.
- (f) 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.

- (g) The recommendation of the Legal Costs Committee in sub clause (f) 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 2016*.
- (h) It is the recommendation of the Legal Costs Committee, as a result of the consultations described in clause 3, that the new category of Restricted Practitioner should be introduced in the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2016*.

CLARE THOMPSON, Chair.  
ANGELA GAFFNEY, Member.  
MARCUS COCKER, Member.  
JANICE DUDLEY, Member.  
MATTHEW CURWOOD, Member.  
BRENDAN ASHDOWN, Member.

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**Schedule**

**LEGAL PROFESSION ACT 2008**

LEGAL PROFESSION (OFFICIAL PROSECUTIONS) (ACCUSED'S COSTS)  
DETERMINATION 2016

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

**1. Citation**

This Determination may be cited as the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2016*.

**2. Commencement**

This Determination comes into operation on 1 July 2016.

**3. Interpretation**

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

**4. Application**

- (a) This Determination applies to the remuneration of legal practitioners, clerks and paralegals 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*.
- (b) 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.

**5. Introduction of new Restricted Practitioner category**

- (a) This determination introduces the new category Restricted Practitioner. This category includes all Australian legal practitioners engaging in restricted legal practice pursuant to section 50 of the Act, during the period when that person is undertaking the "required experience", as defined in section 50 of the Act, and whilst an endorsement to that effect remains on their practising certificate.
- (b) A Restricted Practitioner is not intended to include an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practise under supervision for disciplinary, medical or other reasons.
- (c) The Legal Costs Committee consulted the profession regarding the necessity for amendments to the levels of practitioner set out in Table A, in light of the changing nature of legal practice in this State. In particular the Legal Costs Committee was conscious of the changes to admission requirements and pathways to admission, which have resulted in practitioners being admitted to practise without the close supervision of legal practice formerly afforded by articles of clerkship but with a longer period of restricted practice. The effect of this is that practitioners become senior practitioners with less experience than they previously have had, which has the effect of increasing the legal costs to consumers of their services.
- (d) It is the Legal Costs Committee's view, as expressed in this Determination, that the Determination should as far as possible reflect the regulated structure of the profession and thereby provide consumers of legal services with additional transparency as to the experience of the practitioner providing the legal services.
- (e) So as not to adversely affect clients of legal services provided by those practitioners who would, but for this change, have been Junior Practitioners or Senior Practitioners, transitional arrangements apply so that—
  - (1) practitioners admitted after 1 July 2014, but before 1 July 2016, are entitled to recover their legal costs as if they were Junior Practitioners until 30 June 2018, or the date on

which they would, but for this clause, become Junior Practitioners under this Determination; and

- (2) practitioners admitted after 1 July 2011, but before 1 July 2014, are entitled to recover their legal costs as if they were either Junior Practitioners or Senior Practitioners, whichever category would have applied but for this change, until 30 June 2018, or the date on which they would, but for this clause, become Senior Practitioners under this Determination.

## 6. Rates

- (a) 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**

| Fee Earner   | Maximum allowed hourly rates |
|--|------------------------------|
| Senior Practitioner $\alpha$ (permitted to practise on his or her own account for 5 years or more) (SP) $^{\circ}$ | \$407                        |
| Junior Practitioner $\alpha$ (permitted to practise on his or her own account for less than 5 years) (JP)          | \$308                        |
| Restricted Practitioner (RP) #, $^{\circ}$   | \$231                        |
| Clerk/Paralegal (C/PL) ##  | \$154                        |

$^{\circ}$  The reference to Restricted Practitioner, Junior Practitioner or 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 practising certificate, the length of unrestricted legal practice in that other jurisdiction is to be counted in assessing that practitioner's years of practice for the purposes of this Determination.

# The reference to Restricted Practitioner in this Determination includes practitioners undertaking restricted legal practice for the purposes of obtaining the required experience set out in section 50 of the Act and does not include a reference to an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practise under supervision for disciplinary, medical or other reasons.

## The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.

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

- (b) 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**

| Fee Earner      | Maximum allowed daily rates |
|-----------------|-----------------------------|
| Counsel $\S$    | \$3,300                     |
| Senior Counsel* | \$5,390                     |

$\S$  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).

- (c) 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 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.

## 7. Scale of costs

Subject to clause 8, 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.

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

- (a) 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.

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

### 9. Appeals

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 2016*.

**Table C**  
**Official Prosecutions (Accused's Costs) Scale of Costs 2016**

| Item  | Maximum<br>time | Maximum<br>amount                                  |
|---|-----------------|--|
| <b>1 Adjourments</b>  |                 |  |
| (a) Subject to paragraphs (b) and (c), allow for one adjournment only   | 1 hour          | \$407  |
| (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          | \$407  |
| <b>2 Bail application</b>   |                 |  |
| (a) Preparation 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       | \$1,430  |
| (b) Preparation for, and appearance at, application to vary bail conditions   | 1.5 hours       | \$616  |
| <b>3 Directions hearing, including preparation</b>  | 4 hours         | \$1,628  |
| <b>4 Trial</b>  |                 |  |
| (a) Preparation of case and half day trial, including counsel fee   |                 | \$7,491  |
| (b) Second half day   |                 | \$836  |
| <b>5 Second or each successive day of trial</b>   |                 | \$3,300  |
| <b>6 An allowance for preparation where the trial does not proceed or the prosecution offers no evidence</b>  |                 | An amount which is reasonable in the circumstances |
| <b>7 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         | \$990  |
| <b>8 Disbursements</b>  |                 |  |
| (a) Copies  | per page        | 0.165  |
| (b) 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 15 June 2016.

**LEGAL PROFESSION ACT 2008****LEGAL PROFESSION (STATE ADMINISTRATIVE TRIBUNAL)  
REPORT 2016**

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

**PART 1—PRELIMINARY****1 Citation**

- (a) This Report may be cited as the Legal Profession (State Administrative Tribunal) Report 2016.
- (b) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (State Administrative Tribunal) Determination 2016*.

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

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

**3 Inquiries and submissions under section 277 of the Act**

- (a) Before making the *Legal Profession (State Administrative Tribunal) Determination 2016* 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 a range of people and organisations within the legal profession in respect to the impact of structural changes in the profession;
  - (4) considered the impact of changes in relevant Australian Bureau of Statistics data for the period; and
  - (5) 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>1</sup>.

**PART 3—REPORT OF COMMITTEE'S CONCLUSIONS****4 Maximum hourly and daily rates changed**

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 adopt the hourly and daily rates (inclusive of GST) set out in Table A in the *Legal Profession (Magistrates Court) (Civil) Determination 2016* as the hourly and daily rates applicable to legal practitioners and clerks/paralegals in the State Administrative

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<sup>1</sup> Published in *Government Gazette* dated 16 December 2008

Tribunal of Western Australia as set out in Table A in *the Legal Profession (State Administrative Tribunal) Determination 2016*.

- (d) It is the recommendation of the Legal Costs Committee, as a result of the consultations described in clause 3, that the new category of Restricted Practitioner should be introduced in the *Legal Profession (State Administrative Tribunal) Determination 2016*.
- (e) 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.

CLARE THOMPSON, Chair.

ANGELA GAFFNEY, Member

MARCUS COCKER, Member.

JANICE DUDLEY, Member.

MATTHEW CURWOOD, Member.

BRENDAN ASHDOWN, Member.

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### Schedule

#### LEGAL PROFESSION ACT 2008

#### LEGAL PROFESSION (STATE ADMINISTRATIVE TRIBUNAL) DETERMINATION 2016

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

#### 1 Citation

This Determination may be cited as the *Legal Profession (State Administrative Tribunal) Determination 2016*.

#### 2 Commencement

This Determination comes into operation on 1 July 2016.

#### 3 Application

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.

#### 4 No minimum charge

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

#### 5 Introduction of new Restricted Practitioner category

- (a) This determination introduces the new category Restricted Practitioner. This category includes all Australian legal practitioners engaging in restricted legal practice pursuant to section 50 of the Act, during the period when that person is undertaking the “required experience”, as defined in section 50 of the Act, and whilst an endorsement to that effect remains on their practising certificate.
- (b) A Restricted Practitioner is not intended to include an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practise under supervision for disciplinary, medical or other reasons.
- (c) The Legal Costs Committee consulted the profession regarding the necessity for amendments to the levels of practitioner set out in Table A, in light of the changing nature of legal practice in this State. In particular the Legal Costs Committee was conscious of the changes to admission requirements and pathways to admission, which have resulted in practitioners being admitted to practise without the close supervision of legal practice formerly afforded by articles of clerkship but with a longer period of restricted practice. The effect of this is that practitioners become senior practitioners with less experience than they previously have had, which has the effect of increasing the legal costs to consumers of their services.
- (d) It is the Legal Costs Committee’s view, as expressed in this Determination, that the Determination should as far as possible reflect the regulated structure of the profession and thereby provide consumers of legal services with additional transparency as to the experience of the practitioner providing the legal services.
- (e) So as not to adversely affect clients of legal services provided by those practitioners who would, but for this change, have been Junior Practitioners or Senior Practitioners, transitional arrangements apply so that—
  - (1) practitioners admitted after 1 July 2014, but before 1 July 2016, are entitled to recover their legal costs as if they were Junior Practitioners until 30 June 2018, or the date on which they would, but for this clause, become Junior Practitioners under this Determination; and

- (2) practitioners admitted after 1 July 2011, but before 1 July 2014, are entitled to recover their legal costs as if they were either Junior Practitioners or Senior Practitioners, whichever category would have applied but for this change, until 30 June 2018, or the date on which they would, but for this clause, become Senior Practitioners under this Determination.

### 6 Hourly rates

- (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 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*.
- (b) 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<br>hourly and daily rates |
|---|---|
| Senior Practitioner (permitted to practise on his or her own account for 5 years or more) (SP) <sup>o</sup>   |   |
| hourly rate   | \$407                                       |
| Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) <sup>o</sup> |   |
| hourly rate   | \$308                                       |
| Restricted Practitioner (RP) <sup>o</sup> , #   |   |
| hourly rate   | \$231                                       |
| Clerk/Paralegal (C/PL) ##   |   |
| hourly rate   | \$154                                       |
| Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel:                       |   |
| Counsel (C)*  |   |
| hourly rate   | \$330                                       |
| daily rate  | \$3,300                                     |
| Senior Counsel (SC)**   |   |
| hourly rate   | \$539                                       |
| daily rate  | \$5,390                                     |

<sup>o</sup> The reference to Restricted Practitioner, Junior Practitioner or 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 practising certificate, the length of unrestricted legal practice in that other jurisdiction is to be counted in assessing that practitioner's years of practice for the purposes of this Determination.

# The reference to Restricted Practitioner in this Determination includes practitioners undertaking restricted legal practice for the purposes of obtaining the required experience set out in section 50 of the Act and does not include a reference to an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practise under supervision for disciplinary, medical or other reasons.

## The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.

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

### 7 Disbursements

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.

### 8 Travel

- (a) For the purposes of this Determination, minor travel means incidental travel associated with attendance at court for a hearing where that travel is of a minor duration. Examples of minor travel include, but are not limited to—
- (1) a practitioner walking from their usual place of business to a court;
  - (2) a practitioner walking from a carpark to a court; or
  - (3) a practitioner walking or taking public transport from one centrally located court to another centrally located court.

- (b) As between a law practice and its own client, time spent travelling by a law practice, other than minor travel, is to be charged at no more than one half of the rates set out in Table A, with a maximum of 8 hours in any one day.
- (c) In making its decision in this Determination, the Committee has taken note of the Law Society of Western Australia's Standard Costs Agreement, which contains a provision that a law practice will charge travel at 50% of the agreed hourly rates.
- (d) The Legal Costs Committee has also considered an informal policy of the Legal Profession Complaints Committee that travel should not ordinarily be charged at a rate of more than 50% of a law practice's normal hourly charge-out rate.
- (e) Whilst the Legal Costs Committee recognises that during a travel period a law practice may not necessarily utilise legal skill and knowledge, there is a recognition of a loss of opportunity for the time spent travelling.
- (f) The Legal Costs Committee notes that, having regard to the above—
  - (1) it is the responsibility of a law practice to allocate the cost of time spent on travel fairly and reasonably where the travel is necessary to service more than one client on the day of travel; and
  - (2) whilst nothing contained in this Determination prevents a law practice from charging time spent on a client matter or client matters in the course of travel (air travel by way of example), the law practice is not entitled to charge a client or clients for both time spent on a client matter (regardless of whether that time relates to the client for whom the travel is being undertaken) and the amount allowed for travel under this determination.

### 9 Costs

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 15 June 2016.

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