



PERTH, FRIDAY, 24 JUNE 2022 No. 87 SPECIAL

PUBLISHED BY AUTHORITY GEOFF O. LAWN, GOVERNMENT PRINTER
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LEGAL PROFESSION ACT 2008

**LEGAL PROFESSION (SUPREME AND DISTRICT COURTS)
(CONTENTIOUS BUSINESS) REPORT AND DETERMINATION 2022**

**LEGAL PROFESSION (SUPREME AND DISTRICT COURTS)
(CRIMINAL) REPORT AND DETERMINATION 2022**

**LEGAL PROFESSION (FAMILY COURT OF WESTERN
AUSTRALIA) REPORT AND DETERMINATION 2022**

**LEGAL PROFESSION (MAGISTRATES COURT) (FAMILY LAW)
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**LEGAL PROFESSION (MAGISTRATES COURT) (CRIMINAL)
REPORT AND DETERMINATION 2022**

**LEGAL PROFESSION (OFFICIAL PROSECUTIONS) (ACCUSED'S
COSTS) REPORT AND DETERMINATION 2022**

**LEGAL PROFESSION (STATE ADMINISTRATIVE TRIBUNAL)
REPORT AND DETERMINATION 2022**

LEGAL PROFESSION ACT 2008

**LEGAL PROFESSION (SUPREME AND DISTRICT COURTS)
(CONTENTIOUS BUSINESS) REPORT 2022**

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 and District Courts) (Contentious Business) Report 2022*.
- (b) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (Supreme and District Courts) (Contentious Business) Costs Determination 2022*.

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 and District Courts) (Contentious Business) Determination 2022*, the Legal Costs Committee—

- (a) reviewed the 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 Australian Lawyers Alliance;
- (b) considered the comments and suggestions made at a seminar with members of the legal profession held on 2 February 2022; and
- (c) considered the impact of changes in relevant Australian Bureau of Statistics data for the period.

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 most of the rates used in the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2022*.
- (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; and
 - (3) 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 5(a) be varied from the hourly and daily rates used in the *Legal Practitioners (Supreme and District Courts) (Contentious Business) Determination 2020*¹. Those rates are set out in Table A of the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2022*.
- (c) It is the recommendation of the Legal Costs Committee, as a result of the inquiries and submissions described in clause 3, that the scale of costs be varied in the manner set out in Table B of the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2022*.
- (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 SC Chair

JANICE DUDLEY Member

MATTHEW CURWOOD SC Member

CRAIG MCKIE Member

ANNETTE MORGAN Member

GREG RICKIE Member

¹ Published in Gazette on 18 June 2020

Schedule

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (SUPREME AND DISTRICT COURTS) (CONTENTIOUS BUSINESS) DETERMINATION 2022

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 and District Courts) (Contentious Business) Determination 2022*.

2 Commencement

This Determination comes into operation on 1 July 2022.

3 Application

- (a) This Determination applies to the remuneration of legal practitioners, clerks and paralegals regarding advice given by legal practitioners in respect of contentious business carried out by legal practitioners in or for the purposes of proceedings before the Supreme Court of Western Australia and the District Court of Western Australia.
- (b) This Determination applies to all contentious business previously covered by the *Legal Profession (District Court Appeals) (Contentious Business) Determination 2018* and its predecessor Determinations.
- (c) 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, to the extent that a law practice is entitled to charge other than in accordance with this Determination.
- (d) This Determination does not apply to the remuneration of law practices for costs incurred before 1 July 2022.

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 Catastrophic personal injury claims

- (a) 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*.
- (b) Since the introduction of the provisions for catastrophic personal injuries claims in 2012, the District Court decision in *McGlinn as administrator for Jeffrey Craig McGlinn v Joondalup Hospital Pty Ltd [No 2]* [2014] WADC 3 has meant that the stated objective of an early determination that a claim was a catastrophic personal injury claim has been unable to be achieved.
- (c) In light of the decision in *McGlinn as administrator for Jeffrey Craig McGlinn v Joondalup Hospital Pty Ltd [No 2]* [2014] WADC 3 the Legal Costs Committee has decided that a determination as to whether a matter is a catastrophic personal injury claim for the purposes of items 19 and 22 will only require an assessment of the nature or extent of the injury or injuries sustained by the plaintiff that are at issue in the proceedings.
- (d) The Legal Costs Committee remains of the view that determination as to whether a matter involves a catastrophic personal injury should be made as early as possible in proceedings.

6 Historical child sexual abuse claims

The limits have been removed in items 18, 19 and 22 in matters brought as a result of the 2018 amendments to Part 2A of the *Civil Liability Act*, which removed the limitation period for the bringing of personal injuries claims for historical child sexual abuse claims. These amendments reflect the fact that historical child sexual abuse claims typically involve considerably more practitioner time for their preparation than is usual for other personal injury claims, given the subject matter of the claims, the time elapsed since the alleged events, the multifaceted nature of the damage suffered, the complexities of proving causation, and other issues particular to these types of claims.

7 Items 1 and 3—pleadings

- (a) Items 1 and 3 have been amended to include an additional 2 hours for the drafting of a statement of claim, defence or counterclaim. A new item 1(d) of an additional 1 hour is also now claimable for the statement of claim for each additional defendant, as explained in (b) and (c) below. The increasing complexity of pleadings has led the Committee to the view that these increased maximum allowances are appropriate.
- (b) An allowance under item 1(d) is only claimable if a separate claim is made, and separate relief is claimed, against any additional defendant.

- (c) An allowance under item 1(d) is not claimable if the case against multiple defendants is the same, for example if the defendants are co-owners of land in an action brought under section 126 *Transfer of Land Act* or co-mortgagors in an action for possession of land. Whether the additional allowance is claimable in any particular circumstance is a matter for the determination of the Court or the Taxing Officer.

8 Items 7 and 8—Discovery and Inspection

- (a) The Committee recognises that there have been substantial changes in the manner in which discovery and inspection takes place as a result of, amongst other things, electronic document management and a large increase in the volume of discoverable documents brought about by electronic documentation.
- (b) In light of this, the Committee has decided to remove the limits on items 7 and 8, so that the Taxing Officer may take a more flexible approach to discovery and inspection, and to reduce the need for special costs orders in larger, more document heavy, litigation.
- (c) In doing so, the Committee recognises that the vast bulk of document management tasks, including discovery and inspection, is done by more junior lawyers, graduates, and para legal staff. It has therefore reduced the practitioner level for items 7 and 8 to a maximum of junior practitioner, being, a lawyer with up to 7 years post admission experience.
- (d) The Committee notes that proportionality of costs remains a key aspect of consideration of the reasonable costs recoverable on a taxation, so that despite the removal of the limits in these items a law practice should not recover disproportionate or unreasonable costs, irrespective of the amount of work done.

9 Item 12—*Family Provision Act* claims

- (a) Item 12 was introduced for claims brought under the *Family Provision Act 1972* by the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2018*.
- (b) Item 12(a) provides a capped maximum allowance for each of the parties. These allowances have been determined without reference to hourly rates and are intended to provide reasonable remuneration for the entirety of the work performed prior to mediation.
- (c) Appropriate reductions in the allowances in item 12(a) should be made for affidavits which include material that goes beyond the requirements of Supreme Court Practice Direction 9.2.2, or any other relevant Practice Direction.
- (d) The maximum allowance provided for the executor or personal representative reflects the limited role executors or personal representatives play in these claims and is based on the premise that the executor or personal representative will only be attending a mediation conference for a limited time at the commencement of the conference and will otherwise be available by telephone. If the executor or personal representative is required, either by the parties or the Court, to attend an entire mediation conference, a separate allowance may be made under item 25 for that purpose.
- (e) Item 12(c) applies to proceedings which do not conclude at mediation.
- (f) The amounts provided for in items 12(a) and 12(b) are the maximum claimable by each party, unless a special costs order is obtained.
- (g) An additional allowance may be made under item 12(a) if a second or subsequent mediation conference is held and the parties have been required to undertake additional work for that second or further mediation. Examples of that additional work include obtaining a valuation or obtaining necessary records relating to the deceased or the administration of the estate.
- (h) Items 12(a)(2) and (3) and 12(b)(2) and (3) are not to both be claimed if the executor and beneficiary defendant are represented by the same legal practitioner.
- (i) A legal practitioner acting for more than one executor or beneficiary defendant may only claim the amounts set out in items 12(a)(2) and (3) and 12(b)(2) and (3) once, and may not claim an amount for each individual executor or beneficiary defendant who they represent.
- (j) A legal practitioner acting for a beneficiary defendant who is also a claimant under the *Family Provision Act* may claim their costs as if they were acting as a plaintiff, from the time the relevant beneficiary defendant commences his or her claim.
- (k) Subject to (d) above, and any appropriate or necessary other orders as to costs, or when a special costs order is made, parties to *Family Provision Act* claims are not able to recover costs under any items of the Determination other than items 3(a), 7 (where ordered), 16, 20, 27 (where ordered in accordance with clause 9(d) above), 32, 33, 34 and 35 (where ordered as between party and party), 36 and 37 (where ordered as between party and party).
- (l) The allowances in Item 12 have been increased in this Determination by an average 5% and have included a rounding so that each amount is divisible by 11 in accordance with the long-standing policy of the Committee.
- (m) Nothing in item 12 is intended to derogate from the trial Judge's discretion as to the awarding of costs.

10 Item 17—Compromises under RSC Order 70

Clause 9 of the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2020* continues to apply to this Determination.

11 Item 19—Preparation of case

- (a) In recognition of the increased complexity of litigation, the maximum allowance for preparation of case, previously known as getting up, under item 19 has been increased from 120 to 130 hours. The increase is intended to reduce the need for successful parties to make an application for special costs orders.
- (b) Item 19 was last increased, from 100 to 120 hours, in the 2010 review and reflects changes in litigation practice in the past decade or so, including the introduction of the Commercial and Managed Cases List, e-trials and other similar initiatives.

12 Item 26—District Court Appeals

- (a) The costs which were claimable under items 1, 2, 3, 4, 5, 6, 7 and 9 of the *Legal Profession (District Court Appeals) (Contentious Business) Determination 2018* and its predecessor determinations have been included in item 26.
- (b) Subject to any appropriate or necessary other orders as to costs, or when a special costs order is made, parties to a District Court Appeal are not entitled to recover costs under any items of the Determination other than items 32, 33, 36 and 37.

13 Item 38—negotiated motor vehicle personal injury claims

- (a) The introduction of item 38 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 38.
- (b) The allowance set out in item 38 is intended to apply to claims for personal injury under the *Motor Vehicle (Third Party Insurance) Act 1943* which follow a standard procedural pathway.

14 Increase generally

- (a) The Committee is of the view that increases in the cost of practice over the past several years have justified an increase in the rates in Table A and Table B.
- (b) The Committee made no general increase in the 2020 review as a result of the uncertain economic climate at that time due to the COVID-19 pandemic. Given the economic picture in 2022 is more positive, and the fact that rate rises have been modest for the past decade, the Committee determined it was appropriate to include a general increase.
- (c) In making its decision, the Committee is particularly cognisant of the increased costs to law practices occasioned by the purchase of technology and training to enable legal practitioners and staff to work remotely, and investments made by law practices in staff well-being initiatives.
- (d) Other costs incurred by law practices as a result of the COVID-19 pandemic, for example the purchase of sanitiser, masks, rapid antigen tests and other similar measures, are intended to be covered by the rates in this Determination and are not properly chargeable to clients as disbursements.
- (e) The increase in the rates in this Determination are not uniform but have been calculated, generally, on the basis of a 5% increase, with a rounding so that each amount is divisible by 11 in accordance with the long-standing policy of the Committee.

15 Counsel fees

- (a) All appearances allowed for in items 10, 11, 17, 22, 25, 26 and 27 of Table B are intended to be charged at the applicable counsel rate, and not at any higher rate that may be applicable to the actual practitioner by reason of the person undertaking the appearance otherwise being entitled to charge as a Senior Practitioner.
- (b) Fees charged by practitioners who practise solely as barristers in accordance with Supreme Court Practice Direction 10.5 are only to be charged at the rates provided for counsel of their seniority in Table A and are not to be charged at rates applicable to a Senior Practitioner.
- (c) Whilst all rates for Counsel have been increased, the Committee has continued to increase Counsel rates disproportionately to Senior Counsel and Senior Practitioner rates, in line with its practice of narrowing the gap between those levels of seniority of legal practitioner, and to more accurately reflect the market for legal services.
- (d) Recovery of daily fees for counsel on the taxation or assessment of a Bill of Costs is intended to apply only when a full day has been worked, either in Court or in Court and in preparation for a subsequent hearing day.

16 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 5 of the *Legal Profession (Supreme and District Courts) (Contentious Business) Report 2022*.
- (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 hourly and daily rates
Senior Practitioner (permitted to practise on his or her own account for 5 years or more) (SP) ¹	
hourly rate	\$506
Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) ¹	
hourly rate	\$374
Restricted Practitioner (RP) ^{1, 2}	
hourly rate	\$319
Clerk/Paralegal (C/PL) ³	
hourly rate	\$242
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel:	
Counsel (C) ⁴	
hourly rate	\$473
daily rate	\$4,730
Senior Counsel (SC) ⁵	
hourly rate	\$693
daily rate	\$6,930

Notes—

- 1 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.
- 2 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.
- 3 The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.
- 4 The reference to Counsel in this Determination means a practitioner acting as a barrister other than a Senior Counsel, including, for the purposes of items 10, 11, 17, 22, 25 and 26, a practitioner appearing in court who does not practise in accordance with Supreme Court Practice Direction 10.5.
- 5 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).

17 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 35 of Table B.
- (b) Allowances made under item 35 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 37(c) 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.

18 Fixed amounts

Based upon the Legal Costs Committee's enquiries it has determined that items 1(b), 3(a), 7(a), 15, 16(c), 16(f), 25(a), 26(i), 28(b), 31(a) and 38 in Table B should be fixed amounts.

Table B
Supreme Court Scale of Costs 2022

Item		Time	Fee earner	\$
1.	Writ (a) Writ of summons, whether specially or generally endorsed, including instructions, but excluding Statement of Claim (b) For each additional defendant named in the Writ (c) Statement of Claim (d) For each additional defendant against whom a separate case is pleaded and relief claimed in the Statement of Claim	1.5 hours 12 hours 1 hour	SP SP SP	759 77 6,072 506
2.	Next friend or guardian <i>ad litem</i>	3 hours	RP	957
3.	Defence (a) Memorandum of appearance (b) Defence (c) Counterclaim	12 hours 12 hours	SP SP	99 6,072 6,072
4.	Reply and other pleadings Reply (if necessary), defence to counterclaim, or any other pleading	10 hours	SP	5,060
5.	(a) Third party notice (b) Pleadings in third party proceedings	2 hours 6 hours	SP SP	1,012 3,036
6.	(a) Requesting particulars of a pleading (where and to the extent necessary) (b) Giving particulars of a pleading	3 hours 5 hours	JP JP	1,122 1,870
7.	Discovery (a) Notice requiring discovery (b) Giving discovery of documents		JP	66 an amount which is reasonable in the circumstances
8.	Inspection Inspection and giving inspection of discovered documents whether by personal attendance or otherwise		JP	an amount which is reasonable in the circumstances
9.	Interrogatories (a) Delivery of interrogatories (b) Answers to interrogatories	5 hours 10 hours	SP SP	2,530 5,060
10.	Chambers (a) Proceedings in Chambers other than proceedings to which item 11 applies (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) (c) Consent Orders including conferral but excluding extraction	2 days preparation, 1 day hearing per hour 1.5 hours	SC C SP JP	20,790 14,190 506 561

Item		Time	Fee earner	\$
11.	Motions and originating process (a) Originating motion, originating summons or originating application and applications for Judicial Review under Order 56 (1) if Senior Counsel is briefed without second counsel (2) if Senior Counsel is briefed with second counsel (3) if Counsel alone is briefed (b) For 2nd and each successive day of hearing (c) Attendance at hearing by instructing legal practitioner (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 Note: 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; 1 day hearing and preparation of case—50 hours per hour per hour	SC C SP SC C SP SP	46,090 60,280 39,490 6,930 5,060
12.	Proceedings under the <i>Family Provision Act 1972</i> Note: refer to clause 9 of the Determination above (a) All work done by legal practitioners prior to mediation including— <ul style="list-style-type: none"> • originating summons and supporting affidavit, provided it complies with any relevant practice directions; • attendance at directions hearings; • compliance with Order 75 rule 3; • advising on merits of the application; (1) plaintiff (2) executor or personal representative (3) beneficiary defendants (b) Attendance at mediation and informal conferences where necessary and reasonably held prior to or after the commencement of proceedings; <ul style="list-style-type: none"> (1) plaintiff (2) executor or personal representative (3) beneficiary defendants (c) All work done following mediation, up to and including judgment, and which is not included in items 12(a) & (b)			7,612 2,310 4,730 4,202 1,045 4,202 An amount calculated in accordance with item 11(a), modified so that the reference to 50 hours should read 40 hours
	PROVIDED THAT— Unless the Court otherwise orders, the amount of the costs awarded to a successful claimant shall not exceed an amount equal to the award that the claimant receives.			
13.	Proceedings in Court not otherwise provided for, including appeals from a Registrar	2 days preparation; $\frac{1}{2}$ day hearing	C	11,825

Item		Time	Fee earner	\$
14.	Listing Conference 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	
15.	Entry of judgment without trial			319
16.	Offers of compromise, notices, practice directions, etc (a) Payment into or out of Court (b) Offer of compromise under O.24A (c) Acknowledgment of offer under O.24A (d) Acceptance of offer of compromise under O.24A (e) Notice of offer to consent to judgment (f) Other notices and certificates referred to or required by the Rules or procedures of the court (including practice directions)	2 hours 4 hours 4 hours 2 hours	JP SP SP SP	748 2,024 77 2,024 1,012 88
17.	Application for compromise under O. 70 (a) Application for compromise including chamber summons, affidavit in support and all necessary preparation (b) If Counsel's opinion is required, preparation of the brief to Counsel, if not otherwise briefed as Counsel in the proceedings (c) Counsel's opinion Note: an allowance under item 17(c) for Senior Counsel should only be made where in the opinion of the Court it was reasonable to brief Senior Counsel to provide the opinion. (d) Counsel fee on hearing, including preparation and submissions, if any (e) Attendance at hearing by instructing legal practitioner	5 10 ½ day per hour	JP JP C/SC C JP	1,870 3,740 An amount which is reasonable in the circumstances 2,365
18.	Entry for trial/Entry for hearing (a) Advising on, and preparing, documents required to be filed by the Rules of the Supreme Court or the Rules of the District Court (b) Preparation of Schedules (if any) required by District Court Rules 45C and 45D (c) Advice on evidence Note: 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 12 hours but shall be an amount which is reasonable in the circumstances.	2 hours 12 hours per hour	SP SP C/SC	1,012 6,072

Item		Time	Fee earner	\$
	Note: In relation to particulars of damages under District Court Rule 45C, if the claim is for damages as a result of an allegation of historical child sexual abuse brought under the amendments to Part 2A of the <i>Civil Liability Act</i> which came into effect on 1 July 2018, 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 12 hours but shall be an amount which is reasonable in the circumstances.			
19.	<p>Preparation of case Preparation of case for trial, includes work reasonably and necessarily undertaken prior to commencement of proceedings</p> <p>Note: 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 130 hours but shall be an amount which is reasonable in the circumstances.</p> <p>Note: If the claim is for damages as a result of an allegation of historical child sexual abuse brought under the amendments to Part 2A of the <i>Civil Liability Act</i> which came into effect on 1 July 2018, 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 130 hours but shall be an amount which is reasonable in the circumstances.</p>	130 hours	SP	65,780
20.	Examination of witness before trial, pursuant to an order			An allowance in accordance with item 22(c) or (d)
21.	Application for and striking jury	1 hour	JP	374
22.	<p>Trial</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 required for trial; and</p>	3.5 days preparation; 1st day of trial 3.5 days preparation; 1st day of trial per hour per hour (1) when required for trial; and	C SC C SC SP C/PL RP SC/C	21,285 31,185 4,730 6,930 An amount which is reasonable in the circumstances

Item		Time	Fee earner	\$
	<p>(2) for provision to the Court and the opposing party prior to any oral addresses; and</p> <p>(3) when the work was undertaken on a day on which the trial was not otherwise sitting;</p> <p>or</p> <p>(4) when required to be filed and served following the Court having reserved its decision.</p> <p>(h) Refresher fee for Counsel—</p> <p>(1) where a matter is part heard, with 20 business days or more between the conclusion of one part of the hearing and the commencement of a subsequent part; and</p> <p>(2) the Court is of the view that a refresher fee is reasonable in all the circumstances</p> <p>Note: a refresher fee is not payable in circumstances covered by item 22(g)</p> <p>(i) Attending on reserved judgment, including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders</p> <p>(ii) For each five hearing days after the first five, an additional fee on brief</p> <p>Note: 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>Note: If the claim is for damages as a result of an allegation of historical child sexual abuse brought under the amendments to Part 2A of the <i>Civil Liability Act</i> which came into effect on 1 July 2018, 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>	1 day per hour	C/SC SP	
23.	<p>Re-trial or Re-hearing</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
24.	<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	\$
25.	Appeals to the Court of Appeal and Single Judge appeals (including appeals by way of case stated) and applications for leave to appeal			506
	(a) Appeal Notice, Service Certificate, Notice of Respondent's Intention			
	(b) Appellant's Case, Respondent's Answer including relevant forms and all annexes	40 hours	SC	27,720
	(c) Appellant's Reply to Notice of Contention, when required	10 hours	SC	6,930
	(d) Settling appeal book indexes, including drafting and settling appeal book index	8 hours	SP	4,048
	(e) An application in an appeal, an interlocutory or directions hearing before a single Judge or Registrar	10 hours	C	4,730
	(f) Preparation of appeal for hearing	10 hours	SP	5,060
	(g) Counsel fee on hearing, including preparation	2 days preparation; 1 day hearing	C	14,190
	(h) Senior Counsel fee on hearing, including preparation	2 days preparation; 1 day hearing	SC	20,790
	(i) Counsel fee for the second and each successive day of hearing		C	4,730
	(j) Senior Counsel fee for the second and each successive day of hearing		SC	6,930
	(k) Instructing legal practitioner attending appeal	per hour	SP/JP	
	(l) Attending on reserved decision, including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders	per hour	SP	
26.	District Court Appeals			
	(a) Notice of Appeal or Notice of Contention pursuant to Rule 15 of the District Court Rules 2005	1 hour	SP	506
	(b) Notice of Appeal or Notice of Contention in other appeals	5 hours	SP	2,530
	(c) Interlocutory hearings—as required, including preparation	per hour	C	
	(d) Preparation of appeal for hearing, including preparation of appeal documents and submissions	10 hours	SP	5,060
	(e) Counsel fee on hearing, including preparation	2 days preparation/1 day hearing	C SC	14,190 20,790
	(f) Counsel fee for second and each successive day of hearing		C SC	4,730 6,930
	(g) Attendance at appeal by instructing legal practitioner	per hour	SP	

Item		Time	Fee earner	\$
	(h) Attending on reserved decision, including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders (i) Other notices and certificates referred to or required by the Rules or procedures of the Court, including the practice directions	per hour	SP	77
27.	Pretrial, mediation, conferrals, or other conferences (a) Where required by order of the Court, by the <i>Rules of the Supreme Court</i> or by practice direction (b) including informal conferences where reasonably held before or after commencement of proceedings (c) attendances by counsel and instructing legal practitioners at the conferrals and conferences set out in paragraphs (a) and (b) of this item (d) preparation reasonably undertaken for the conferrals and conferences described in paragraphs (a), (b) and (c) of this item (e) conferences between counsel and own instructing legal practitioner where reasonably necessary	per hour	SP/SC/C	
		per hour	SP/SC/C	
		per hour	SP/SC/C	
		per hour	SP/SC/C	
		per hour	SP/SC/C	
28.	Orders Settling and extracting judgment or order (a) With appointment (b) Without appointment	2 hours	RP	638 319
29.	Arbitration proceedings where costs are to be assessed under section 33B(5) of the <i>Commercial Arbitration Act 2012</i> (WA)			The same costs as in an action
30.	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
31.	(a) Execution (b) If against land, an additional	3 hours	RP	374 957
32.	Taxing including drawing (a) Drawing bill of costs and service; and (b) Taxation of costs, including the time spent in preparing for the taxation and time required to be spent attending any mediation or conference convened by the Court or attending to any matter required by the Rules or a Practice Direction		SP	An amount which is reasonable in the circumstances

Item		Time	Fee earner	\$
33.	Copying Copies where reasonably necessary, including of documents for which allowance is otherwise made in this Determination. This item covers all forms of electronic reproduction and copying.	per page		0.165
34.	Accounts and inquiries Taking accounts, inquiries		SP	An amount which is reasonable in the circumstances
35.	Other work (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; or (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) Note: Allowances under item 35 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 per hour	SC SP C JP RP C/PL	
36.	Disbursements In addition to the fees and charges allowed under this Determination— (a) As between a law practice and client, a law practice may charge and be allowed disbursements necessarily or reasonably incurred; and (b) As between party and party, a party may be allowed disbursements incurred by that party except insofar as they are of an unreasonable amount or have been unreasonably incurred, so that subject to the above exceptions, that party is fully reimbursed for its disbursements.			
37.	Travel (a) As between party and party, minor travel as defined in the <i>Legal Profession (Supreme Court) (Contentious Business) Determination 2016</i> , is to be allowed as part of the costs awarded for an attendance at chambers or court within the existing item, without further order. (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. (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. Note: Allowances under item 37(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.			
38.	Claims under the Motor Vehicle (Third Party Insurance) Act 1943 (WA) including (a) Writ of Summons; (b) Statement of Claim; (c) Giving discovery, whether formally or informally; (d) Inspection and giving inspection of discovered documents; (e) Preparation of Entry for Trial, Papers, including Schedules of Damages;			17,611

Item		Time	Fee earner	\$
	(f) Applications for Subpoena to produce documents prior to pre-trial conference; (g) Preparation for and attendance at pre-trial conference or, if appropriate, pre-trial conferences; and (h) Copying. If Counsel is engaged for and attends pre-trial conference, an additional		C	4,730
39.	Settlement of a claim pursuant to section 92(f) <i>Workers Compensation and Injury Management Act</i>	10 hours	SP	5,060

Made by the Legal Costs Committee on 8 June 2022.

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (SUPREME AND DISTRICT COURTS) (CRIMINAL) REPORT 2022

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 and District Courts) (Criminal) Report 2022*.
- (b) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (Supreme and District Courts) (Criminal) Determination 2022*.

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 and District Courts) (Criminal) Determination 2022*, 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);
- (b) considered the comments and suggestions made at a seminar with members of the legal profession held on 2 February 2022; and
- (c) considered the impact of changes in relevant Australian Bureau of Statistics data for the period.

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 and District Courts) (Criminal) Determination 2022*.
- (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 the impact of the COVID-19 pandemic and its projected impact on the Australian economy;
 - (4) taking into account the incidental administrative implications of the calculation of the Goods and Services Tax; and
 - (5) to be consistent with the hourly and daily rates referred to in the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2022* 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 Courts) (Criminal) Determination 2020*¹. Those rates are set out in Table A of the *Legal Profession (Supreme and District Courts) (Criminal) Determination 2022*.
- (c) 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 SC Chair
JANICE DUDLEY Member
MATTHEW CURWOOD SC Member
CRAIG MCKIE Member
ANNETTE MORGAN Member
GREG RICKIE Member

¹ Published in Gazette 18 June 2020

Schedule

LEGAL PROFESSION ACT 2008

**LEGAL PROFESSION (SUPREME AND DISTRICT COURTS) (CRIMINAL)
DETERMINATION 2022**

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 and District Courts) (Criminal) Determination 2022*.

2 Commencement

This Determination comes into operation on 1 July 2022.

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 or 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 Restricted Practitioner category

The amendments brought in by the *Legal Profession (Supreme Court and District Courts) (Criminal) Determination 2016* remain in effect, other than clause 10(e) of that Determination.

6 Increase generally

- (a) The Committee is of the view that increases in the cost of practice over the past several years have justified an increase in the rates in Table A.
- (b) The Committee made no general increase in the 2020 review as a result of the uncertain economic climate at that time due to the COVID-19 pandemic. Given the economic picture in 2022 is more positive, and the fact that rate rises have been modest for the past decade, the Committee determined it was appropriate to include a general increase.
- (c) In making its decision, the Committee is particularly cognisant of the increased costs to law practices occasioned by the purchase of technology and training to enable legal practitioners and staff to work remotely, and investments made by law practices in staff well-being initiatives.
- (d) Other costs incurred by law practices as a result of the COVID-19 pandemic, for example the purchase of sanitiser, masks, rapid antigen tests and other similar measures, are intended to be covered by the rates in this Determination and are not properly chargeable to clients as disbursements.
- (e) The increase in the rates in this Determination are not uniform but have been calculated, generally, on the basis of a 5% increase, with a rounding so that each amount is divisible by 11 in accordance with the long-standing policy of the Committee.

7 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.

Table A

Fee Earner	Maximum allowable hourly and daily rates
Senior Practitioner (permitted to practise on his or her own account for 5 years or more) (SP) ¹ hourly rate	\$506
Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) ¹ hourly rate	\$374
Restricted Practitioner (RP) ^{1, 2} hourly rate	\$319

Fee Earner	Maximum allowable hourly and daily rates
Clerk/Paralegal (C/PL) ³	
hourly rate	\$242
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel:	
Counsel (C) ⁴	
hourly rate	\$473
daily rate	\$4,730
Senior Counsel (SC) ⁵	
hourly rate	\$693
daily rate	\$6,930

Notes—

- 1 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.
- 2 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.
- 3 The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.
- 4 The reference to Counsel in this Determination means a practitioner acting as a barrister other than a Senior Counsel, including, for the purposes of items 10, 11, 17, 22, 25 and 26, a practitioner appearing in court who does not practise in accordance with Supreme Court Practice Direction 10.5.
- 5 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).

8 Counsel fees

- (a) All appearances are intended to be charged at the applicable counsel rate, and not at any higher rate that may be applicable to the actual practitioner by reason of the person undertaking the appearance otherwise being entitled to charge as a Senior Practitioner.
- (b) Fees charged by practitioners who practise solely as barristers in accordance with Supreme Court Practice Direction 10.5 are only to be charged at the rates provided for counsel of their seniority and are not to be charged at rates applicable to Senior Practitioner.
- (c) Whilst all rates for Counsel have been increased, the Committee has continued to increase Counsel rates disproportionately to Senior Counsel and Senior Practitioner rates, in line with its practice of narrowing the gap between those levels of seniority of legal practitioner, and to more accurately reflect the market for legal services.
- (d) Recovery of daily fees for counsel on the taxation or assessment of a Bill of Costs is intended to apply only when a full day has been worked, either in Court or in Court and in preparation for a subsequent hearing day.

9 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.

10 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.

11 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) Item 25 of the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2022* will apply to law practice/client costs on appeals to the Supreme Court from any decision of a lower Court or a single Judge exercising the relevant Court's criminal jurisdiction.

Made by the Legal Costs Committee on 8 June 2022.

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (FAMILY COURT OF WESTERN AUSTRALIA) REPORT 2022

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 2022*.
- (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 2022*.

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 2022* 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;
 - (3) considered the comments and suggestions made at a seminar with members of the legal profession held on 2 February 2022;
 - (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 *Family Law Rules 2004*.
- (b) In the *Legal Practitioners (Family Court of Western Australia) Report 2009¹ (2009 Report)* the Legal Costs Committee noted that—
 - (1) the effect of changes brought about by the Family Law Amendment Rules 2008 to the *Family Law Rules 2004* is that the Supreme Court of Western Australia is now responsible for the regulation of legal practitioner/client costs in the Family Court;
 - (2) as a consequence of the rule changes in the Family Court of Australia prior to the 2009 Report, the Family Court would no longer be setting a scale for legal practitioner/client costs;
 - (3) the general rule pursuant to section 117 of the *Family Law Act 1975* (Commonwealth) is that each party to proceedings under that Act bears their own costs;
 - (4) most legal practitioners and their clients in the Family Court's jurisdiction, enter into costs agreements;
 - (5) the Act contains substantial cost disclosure obligations; and
 - (6) party/parties costs are provided for under the Family Court's federal jurisdiction and therefore it is only legal practitioner/client costs that the Legal Costs Committee is concerned with.

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

PART 3—REPORT OF COMMITTEE'S CONCLUSIONS

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/parties 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;

¹ Published in Government Gazette dated 31 March 2009

- (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 2022* 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 2022*; and
- (d) 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 5(a) be varied from the hourly and daily rates used in the *Legal Profession (Family Court of Western Australia) Determination 2020*¹. Those rates are set out in Table A of the *Legal Profession (Family Court of Western Australia) Determination 2022*.
- (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 SC Chair
 JANICE DUDLEY Member
 MATTHEW CURWOOD SC Member
 CRAIG MCKIE Member
 ANNETTE MORGAN Member
 GREG RICKIE Member

Schedule

LEGAL PROFESSION ACT 2008

**LEGAL PROFESSION (FAMILY COURT OF WESTERN AUSTRALIA)
DETERMINATION 2022**

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 2022*.

2 Commencement

This Determination comes into operation on 1 July 2022.

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 Restricted Practitioner category

The amendments brought in by the *Legal Profession (Family Court of Western Australia) Determination 2016* remain in effect, other than clause 5(e) of that Determination.

5 Increase generally

- (a) The Committee is of the view that increases in the cost of practice over the past several years have justified an increase in the rates in Table A.
- (b) The Committee made no general increase in the 2020 review as a result of the uncertain economic climate at that time due to the COVID-19 pandemic. Given the economic picture in 2022 is more positive, and the fact that rate rises have been modest for the past decade, the Committee determined it was appropriate to include a general increase.
- (c) In making its decision, the Committee is particularly cognisant of the increased costs to law practices occasioned by the purchase of technology and training to enable legal practitioners and staff to work remotely, and investments made by law practices in staff well-being initiatives.
- (d) Other costs incurred by law practices as a result of the COVID-19 pandemic, for example the purchase of sanitiser, masks, rapid antigen tests and other similar measures, are intended to be covered by the rates in this Determination and are not properly chargeable to clients as disbursements.
- (e) The increase in the rates in this Determination are not uniform but have been calculated, generally, on the basis of a 5% increase, with a rounding so that each amount is divisible by 11 in accordance with the long-standing policy of the Committee.

¹ Published in Gazette on 18 June 2020

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 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 hourly and daily rates
Senior Practitioner (permitted to practise on his or her own account for 5 years or more) (SP) ¹	
hourly rate	\$506
Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) ¹	
hourly rate	\$374
Restricted Practitioner (RP) ^{1, 2}	
hourly rate	\$319
Clerk/Paralegal (C/PL) ³	
hourly rate	\$242
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel:	
Counsel (C) ⁴	
hourly rate	\$473
daily rate	\$4,730
Senior Counsel (SC) ⁵	
hourly rate	\$693
daily rate	\$6,930

Notes—

- 1 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.
- 2 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.
- 3 The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.
- 4 The reference to Counsel in this Determination means a practitioner acting as a barrister other than a Senior Counsel, including, for the purposes of items 10, 11, 17, 22, 25 and 26, a practitioner appearing in court who does not practise in accordance with Supreme Court Practice Direction 10.5.
- 5 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 Counsel fees

- (a) All appearances in court are intended to be charged at the applicable counsel rate, and not at any higher rate that may be applicable to the actual practitioner by reason of the person undertaking the appearance otherwise being entitled to charge as a Senior Practitioner.
- (b) Fees charged by practitioners who practise solely as barristers in accordance with Supreme Court Practice Direction 10.5 are only to be charged at the rates provided for counsel of their seniority in Table A and are not to be charged at rates applicable to a Senior Practitioner.
- (c) Whilst all rates for Counsel have been increased, the Committee has continued to increase Counsel rates disproportionately to Senior Counsel and Senior Practitioner rates, in line with its practice of narrowing the gap between those levels of seniority of legal practitioner, and to more accurately reflect the market for legal services.
- (d) Recovery of daily fees for counsel on the taxation or assessment of a Bill of Costs is intended to apply only when a full day has been worked, either in Court or in Court and in preparation for a subsequent hearing day.

8 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.

9 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.

10 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 8 June 2022.

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (MAGISTRATES COURT) (FAMILY LAW) REPORT 2022

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) (Family Law) Report 2022*.
- (b) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (Magistrates Court) (Family Law) Determination 2022*.

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) (Family Law) Determination 2022* 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 Family Law Practitioners Association of Western Australia;
- (b) considered the comments and suggestions made at a seminar with members of the legal profession held on 2 February 2022;
- (c) consulted with the Family Court of Western Australia;
- (d) reviewed the *Legal Practitioners (Magistrates Court) (Family Law) Determination 2020*¹; and
- (e) had regard to relevant provisions of the *Family Law Rules 2004*.

PART 3—REPORT OF LEGAL COSTS COMMITTEE'S CONCLUSIONS

4 Maximum hourly and daily rates changed—scale of costs

- (a) 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*—
 - (1) it is unnecessary as at the date of this Report to recommend the implementation of a scale of fees for family law work done in the Magistrates Court of Western Australia in respect of party/parties costs; but
 - (2) it is appropriate to determine a scale of fees applicable to the work of legal practitioners, clerks and paralegals in, and in connection with, family law work done in the Magistrates Court of Western Australia on a legal practitioner/client basis; and
 - (3) it is appropriate to continue to adopt the same hourly and daily rates (inclusive of GST) set out in Table A of the *Legal Profession (Family Court of Western Australia) Determination 2022* to be published on or about the same date as this Report and Determination, as the hourly and daily rates applicable to legal practitioners and clerks/paralegals for family law work done in the Magistrates Court of Western Australia, as set out in Table A in the *Legal Profession (Magistrates Court) (Family Law) Determination 2022*.
- (b) 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 SC Chair

JANICE DUDLEY Member

MATTHEW CURWOOD SC Member

CRAIG MCKIE Member

ANNETTE MORGAN Member

GREG RICKIE Member

¹ Published in Gazette 18 June 2020

Schedule

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (MAGISTRATES COURT) (FAMILY LAW) DETERMINATION 2022Made 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) (Family Law) Determination 2022*.

2 Commencement

This Determination comes into operation on 1 July 2022.

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 family law proceedings before a Magistrate in Western Australia, whether in the Magistrates Court at 150 Terrace Road, Perth or in the Magistrates Court of Western Australia sitting anywhere within the State 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 Increase generally

- (a) The Committee is of the view that increases in the cost of practice over the past several years have justified an increase in the rates in Table A.
- (b) The Committee made no general increase in the 2020 review as a result of the uncertain economic climate at that time due to the COVID-19 pandemic. Given the economic picture in 2022 is more positive, and the fact that rate rises have been modest for the past decade, the Committee determined it was appropriate to include a general increase.
- (c) In making its decision, the Committee is particularly cognisant of the increased costs to law practices occasioned by the purchase of technology and training to enable legal practitioners and staff to work remotely, and investments made by law practices in staff well-being initiatives.
- (d) Other costs incurred by law practices as a result of the COVID-19 pandemic, for example the purchase of sanitiser, masks, rapid antigen tests and other similar measures, are intended to be covered by the rates in this Determination and are not properly chargeable to clients as disbursements.
- (e) The increase in the rates in this Determination are not uniform but have been calculated, generally, on the basis of a 5% increase, with a rounding so that each amount is divisible by 11 in accordance with the long-standing policy of the Committee.

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 legal practitioner, clerk or paralegal in providing advice and services to their own clients in respect of family law proceedings and potential proceedings before a Magistrate in Western Australia, whether in the Magistrates Court at 150 Terrace Road, Perth or in the Magistrates Court of Western Australia sitting anywhere within the State 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.

Table A

Fee Earner	Maximum allowable hourly and daily rates
Senior Practitioner (permitted to practise on his or her own account for 5 years or more) (SP) ¹ hourly rate	\$506
Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) ¹ hourly rate	\$374
Restricted Practitioner (RP) ^{1, 2} hourly rate	\$319
Clerk/Paralegal (C/PL) ³ hourly rate	\$242
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel:	

Counsel (C) ⁴	
hourly rate	\$473
daily rate	\$4,730
Senior Counsel (SC) ⁵	
hourly rate	\$693
daily rate	\$6,930

Notes—

- 1 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.
- 2 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.
- 3 The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.
- 4 The reference to Counsel in this Determination means a practitioner acting as a barrister other than a Senior Counsel, including, for the purposes of items 10, 11, 17, 22, 25 and 26, a practitioner appearing in court who does not practise in accordance with Supreme Court Practice Direction 10.5.
- 5 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 Restricted Practitioners

Clause 5 of the *Legal Profession (Family Court of Western Australia) Determination 2022* applies to this Determination.

8 Disbursements

Clause 6 of the *Legal Profession (Family Court of Western Australia) Determination 2022* applies to this Determination.

9 Counsel fees

Clause 7 of the *Legal Profession (Family Court of Western Australia) Determination 2022* applies to this Determination.

10 Travel

Clause 9 of the *Legal Profession (Family Court of Western Australia) Determination 2022* applies to this Determination.

11 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 a family law proceeding (inclusive of GST and Counsel fees but exclusive of other disbursements) in the Magistrates Court of Western Australia, whether in the Magistrates Court at 150 Terrace Road, Perth or sitting anywhere within the State of Western Australia, 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 8 June 2022.

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (MAGISTRATES COURT) (CIVIL) REPORT 2022

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

PART 1—PRELIMINARY

1 Citation

- (a) This Report may be cited as the *Legal Profession (Magistrates Court) (Civil) Report 2022*.
- (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 2022*.

PART 2—NOTICE AND INQUIRIES

2 Notice under section 278 of the Act

The Legal Costs Committee (**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 2022* the Committee—

- (a) reviewed the submissions received as a result of the notice given under section 278 of the Act;
- (b) consulted with the Magistrates Court of Western Australia;
- (c) reviewed the *Legal Practitioners (Magistrates Court) (Civil) Determination (No. 2) 2020*¹;
- (d) considered the comments and suggestions made at a seminar with members of the legal profession held on 2 February 2022; and
- (e) 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 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 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; and
 - (3) 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 (No. 2) 2020*. Those amended rates are set out in Table A of the *Legal Profession (Magistrates Court) (Civil) Determination 2022*.
- (c) The 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 2020*. In particular the 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 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 and District Courts) (Contentious Business) Determination 2022*; and
 - (3) provide for hourly and daily rates applicable to Counsel and Senior Counsel.
- (e) It is the recommendation of the 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 2022*.
- (f) The Committee intends, because the Determination sets maximum hourly and daily rates and amounts and allowances that must not be exceeded, that the hourly and daily rates in Table A and the scale of costs in Table B will apply in circumstances requiring the determination of allowable and other costs in the minor cases procedure of the Magistrates Court.
- (g) The 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) The recommendations of the 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.

¹ Published in Gazette 30 October 2020

CLARE THOMPSON SC Chair
JANICE DUDLEY Member
MATTHEW CURWOOD SC Member
CRAIG MCKIE Member
ANNETTE MORGAN Member
GREG RICKIE Member

Schedule

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (MAGISTRATES COURT) (CIVIL) DETERMINATION 2022

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

1 Citation

This Determination may be cited as the *Legal Profession (Magistrates Court) (Civil) Determination 2022*.

2 Commencement

This Determination comes into operation on 1 July 2022.

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 Definitions

In this Determination—

Act means the *Magistrates Court (Civil Proceedings) Act 2004*, as amended from time to time; and
Rules means the *Magistrates Court (Civil Proceedings) Rules 2005*, as amended from time to time.

5 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(c) provides for \$3,344 for the work involved. The figure of \$3,344 is a maximum, but on taxation less than \$3,344 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.

6 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), 2(b), 4(a), 11(a), 12(c), 17(a)(2), 17(b), 18(a), 20 and 21. 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.

7 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 by Counsel, 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, documents, disclosures and the like, for example items 2(c), 4(b)-(d), 5, 7, 10 and 13. The hours referred to in this Determination will guide the Assessing Officer about the amount which should be allowed in a particular case.

8 Counsel

- (a) In items 14 and 15 of Table B, 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 15(a), as well as a full getting up allowance under item 13. This is in line with the decisions of *Commonwealth v Magriplis* (1962) 3 FLR 47 and *Washbourne v SEC* (1992) 8 WAR 188.
- (b) All appearances allowed for in items 10, 15 and 22 of Table B are intended to be charged at the applicable counsel rate, and not at any higher rate that may be applicable to the actual practitioner by reason of the person undertaking the appearance otherwise being entitled to charge as a Senior Practitioner.

- (c) In this Determination a change has been made to item 15(i) of Table B to correct the anomaly in previous Determinations by which Senior Practitioner rates were recoverable for attendance on a reserved judgment.
- (d) Fees charged by practitioners who practise solely as barristers in accordance with Supreme Court Practice Direction 10.5 are only to be charged at the rates provided for counsel of their seniority in Table A and are not to be charged at rates applicable to a Senior Practitioner.
- (e) Recovery of daily fees for counsel on the taxation or assessment of a Bill of Costs is intended to apply only when a full day has been worked, either in Court or in Court and in preparation for a subsequent hearing day.

9 Settled proceedings

It is intended that item 13 should apply even if there is no trial. Therefore, 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.

10 Restricted Practitioner category

The amendments brought in by the *Legal Profession (Magistrates Court) (Civil) Determination 2016* remain in effect, other than clause 10(e) of that Determination.

11 Increase generally

- (a) The Committee is of the view that increases in the cost of practice over the past several years have justified an increase in the rates in Table A and Table B.
- (b) The Committee made no general increase in the 2020 review as a result of the uncertain economic climate at that time due to the COVID-19 pandemic. Given the economic picture in 2022 is more positive, and the fact that rate rises have been modest for the past decade, the Committee determined it was appropriate to include a general increase.
- (c) In making its decision, the Committee is particularly cognisant of the increased costs to law practices occasioned by the purchase of technology and training to enable legal practitioners and staff to work remotely, and investments made by law practices in staff well-being initiatives.
- (d) Other costs incurred by law practices as a result of the COVID-19 pandemic, for example the purchase of sanitiser, masks, rapid antigen tests and other similar measures, are intended to be covered by the rates in this Determination and are not properly chargeable to clients as disbursements.
- (e) The increase in the rates in this Determination are not uniform but have been calculated, generally, on the basis of a 5% increase, with a rounding so that each amount is divisible by 11 in accordance with the long-standing policy of the Committee.

12 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 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 2022*.
- (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 hourly and daily rates
Senior Practitioner (permitted to practise on his or her own account for 5 years or more) (SP) ¹ hourly rate	\$429
Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) ¹ hourly rate	\$341
Restricted Practitioner (RP) ^{1, 2} hourly rate	\$242
Clerk/Paralegal (C/PL) ³ hourly rate	\$165
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel:	
Counsel (C) ⁴ hourly rate	\$385
daily rate	\$3,850

Senior Counsel (SC) ⁵	
hourly rate	\$550
daily rate	\$5,500

Notes—

- 1 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.
- 2 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.
- 3 The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.
- 4 The reference to Counsel in this Determination means a practitioner acting as a barrister other than a Senior Counsel, including, for the purposes of items 10, 11, 17, 22, 25 and 26, a practitioner appearing in court who does not practise in accordance with Supreme Court Practice Direction 10.5.
- 5 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).

13 Costs

- (a) Subject to the provisions of the LP 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 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 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 Magistrates Court.

Table B
Magistrates Court Civil Scale of Costs 2022

Item		Time	Fee Earner	\$
1.	Letter of demand issued prior to proceedings			77
2.	Claim— (a) Claim, including instructions, but excluding Statement of Claim (b) For each additional defendant (c) Statement of Claim including preparation and lodgement	8 hours	SP	429 55 3,432
3.	Appointment of litigation guardian	2 hours	RP	484
4.	Response— (a) Lodgement of a response to a claim (b) Statement of defence (c) Reply to defence (d) Defence and counterclaim, including instructions and statement of claim in the counterclaim and all other necessary documents (e) Defence to counterclaim	8 hours 1.5 hours 8 hours 2 hours	SP SP SP SP	220 3,432 644 3,432 858
5.	Third party claim, including instructions and list of documents	8 hours	SP	3,432

Item		Time	Fee Earner	\$
6.	Particulars— (a) requesting particulars (b) providing particulars	1 hour 2 hours	JP JP	341 682
7.	Disclosure— (a) Providing informal disclosure under Rule 30A (b) Giving additional disclosure where ordered by the Court or a Registrar	2 hours 5 hours	RP RP	484 1,210
8.	Status conference— Status conference conducted under rule 46 of the Rules, including preparation, attendance and reporting to client	1.5 hours	SP	644
9.	Interpleaders— Interpleader proceedings— (a) where uncontested (b) where contested	1 hour	JP	341 An allowance in accordance with item 10
10.	Application to the Court— (a) Applications and responses to applications including under Part 21 of the Rules, including all documentation in preparation for hearing, and hearing (b) Application for substituted service	2 hours	JP	3,150 682
11.	(a) Application for entry of judgment of a liquidated sum by default without trial (b) Application for and entry for judgment for an unliquidated sum by default, including preparation of Form 13 application and affidavits and attendance at hearing if required	3 hours	JP	165 1,023
12.	Offers of settlement, notices, practice directions, applications, declarations, memoranda, affidavits, certificates— (a) Offers of settlement (b) Acceptance of offer of settlement (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 Determination (d) Preparation, lodgement and service of affidavits and statutory declarations not otherwise provided for	2 hours 2 hours per hour	SP SP SP	858 858 165 429
13.	Preparation of case— Preparation for trial, includes work reasonably and necessarily undertaken prior to commencement of proceedings	50 hours	SP	21,450
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.	Trial— (a) Fee on brief for Counsel, i.e. half day trial and preparation (b) Allowance for second half day of trial (c) Fee on brief for Senior Counsel, i.e. half day trial and preparation (where two or more Counsel are certified for) (d) Allowance for second half day of trial for Senior Counsel	2 days preparation ½ day of trial 2 days preparation ½ day of trial 2 days preparation ½ day of trial	C C SC SC	9,625 1,925 13,750 2,750

Item		Time	Fee Earner	\$
	(e) Counsel fee for the second and each successive day of hearing (f) Counsel fee for Senior Counsel for second and each successive day of hearing (g) Instructing legal practitioner attending trial (h) Clerk attending trial Note: Subject to paragraphs (a)—(h) if— (1) the trial lasts less than 2 hours; or (2) the trial does not commence and settles or adjourns on the day of the trial, the Assessing Officer shall allow an amount which is reasonable in the circumstances. (i) Attending on reserved judgment, including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders	per hour per hour per hour	C SC JP/RP C/PL C	3,850 5,500
16.	Pre-trial, mediation, conferrals, or other conferences (a) where required by the Rules, practice direction, order of the Court or legislation; (b) including informal conferences where reasonably held after commencement of proceedings; and (c) preparation reasonably undertaken for the conferences described in paragraphs (a) and (b) of this item.	per hour	SP	
17.	Judgments and orders— (a) Settling and extracting judgment or order (1) with appointment (2) without appointment (b) Request for certified copy of judgment or order	1 hour	RP	242 220 165
18.	Enforcement— (a) Execution (b) If against land, an additional	3 hours	RP	209 726
19.	Proceedings in court pursuant to <i>Civil Judgments Enforcement Act 2004</i> for the following, including preparation— (a) Means Inquiry (b) Default Inquiry (c) Suspension of enforcement order application (d) Application to cancel or amend an order	1.5 hours	JP RP C/PL	512 363 248
20.	Registration of judgments— Registration of judgments including those under <i>Service and Execution of Process Act 1992 (Cth)</i>			220
21.	Assessment of costs including drawing bill— (a) Lodgement of bill of costs (b) Drawing bill of costs, copies and service (c) Making an objection to a bill (d) Assessment of costs (including the time spent in preparing for the assessment)		JP JP JP JP	66 682 341 682
22.	Appeals— An appeal to a Magistrate from a decision of a Registrar			An amount calculated in accordance with item 10

Item		Time	Fee Earner	\$
23.	Copies— Copies where necessary, including of documents for which allowance is otherwise made in this Determination	per page		0.165
24.	Accounts and inquiries— Attending on taking accounts, inquiries		SP	An amount which is reasonable in the circumstances
25.	Other work— (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 or (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) Note: 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 per hour	SC C SP JP RP C/PL	
26.	Disbursements— In addition to the fees and charges allowed under this Determination— (a) As between a law practice and client, a law practice may charge and be allowed disbursements necessarily or reasonably incurred; and (b) As between party and party, a party may be allowed disbursements incurred by that party except insofar as they are of an unreasonable amount or have been unreasonably incurred, so that subject to the above exceptions, that party is fully reimbursed for its disbursements			
27.	Allowances for witnesses— 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— (a) witnesses necessary to the case because of their professional, scientific or other special skill or knowledge; and (b) witnesses necessary to the case other than those covered in paragraph (a). 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. 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.			
28.	Travel— (a) As between party and party, minor travel as defined in the <i>Legal Profession (Magistrates Court) (Civil) Determination 2016</i> , is to be allowed as part of the costs awarded for an attendance at chambers or Court, without further order. (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. (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. Note: 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.			

LEGAL PROFESSION ACT 2008**LEGAL PROFESSION (MAGISTRATES COURT) (CRIMINAL)
REPORT 2022**

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 2022*.
- (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 2022*.

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 2022* 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);
- (b) considered the comments and suggestions made at a seminar with members of the legal profession held on 2 February 2022;
- (c) considered the impact of changes in relevant Australian Bureau of Statistics data for the period;
- (d) reviewed the *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Determination 2020*¹; and
- (e) 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 the impact of the COVID-19 pandemic and its projected impact on the Australian economy; 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 2020*. Those rates are set out in Table A of the *Legal Profession (Magistrates Court) (Criminal) Determination 2022*.

- (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 2018* should be adopted as the basis for costs for the supply of legal services covered under the *Legal Profession (Magistrates Court) (Criminal) Determination 2022*.
- (e) It is further recommended that Table B of the *Legal Profession (Magistrates Court) (Criminal) Determination 2022* be adopted as the basis for costs for the supply of those legal services itemised in that Table.
- (f) 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.

¹ Published in Gazette 18 June 2020

CLARE THOMPSON SC Chair
JANICE DUDLEY Member
MATTHEW CURWOOD SC Member
CRAIG MCKIE Member
ANNETTE MORGAN Member
GREG RICKIE Member

Schedule

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (MAGISTRATES COURT) (CRIMINAL) DETERMINATION 2022

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 2022*.

2 Commencement

This Determination comes into operation on 1 July 2022.

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 Restricted Practitioner category

The amendments brought in by the *Legal Profession (Magistrates Court) (Criminal) Determination 2016* remain in effect, other than clause 5(e) of that Determination.

6 Increase generally

- (a) The Committee is of the view that increases in the cost of practice over the past several years have justified an increase in the rates in Table A and Table B.

- (b) The Committee made no general increase in the 2020 review as a result of the uncertain economic climate at that time due to the COVID-19 pandemic. Given the economic picture in 2022 is more positive, and the fact that rate rises have been modest for the past decade, the Committee determined it was appropriate to include a general increase.
- (c) In making its decision, the Committee is particularly cognisant of the increased costs to law practices occasioned by the purchase of technology and training to enable legal practitioners and staff to work remotely, and investments made by law practices in staff well-being initiatives.
- (d) Other costs incurred by law practices as a result of the COVID-19 pandemic, for example the purchase of sanitiser, masks, rapid antigen tests and other similar measures, are intended to be covered by the rates in this Determination and are not properly chargeable to clients as disbursements.
- (e) The increase in the rates in this Determination are not uniform but have been calculated, generally, on the basis of a 5% increase, with a rounding so that each amount is divisible by 11 in accordance with the long-standing policy of the Committee.

7 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 2022*.
- (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 allowable hourly and daily rates
Senior Practitioner (permitted to practise on his or her own account for 5 years or more) (SP) ¹	
hourly rate	\$429
Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) ¹	
hourly rate	\$341
Restricted Practitioner (RP) ^{1, 2}	
hourly rate	\$242
Clerk/Paralegal (C/PL) ³	
hourly rate	\$165
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel:	
Counsel (C) ⁴	
hourly rate	\$385
daily rate	\$3,850
Senior Counsel (SC) ⁵	
hourly rate	\$550
daily rate	\$5,500

Notes—

- 1 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.
- 2 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.
- 3 The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.
- 4 The reference to Counsel in this Determination means a practitioner acting as a barrister other than a Senior Counsel, including, for the purposes of items 10, 11, 17, 22, 25 and 26, a practitioner appearing in court who does not practise in accordance with Supreme Court Practice Direction 10.5.

5 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).

8 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 2022

Item		Time	\$
1.	(a) Subject to paragraphs (b) and (c), allow for one adjournment only	1 hour	429
	(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	429
2.	(a) Preparation for, and appearance at, initial bail application and/or application for bail in respect of serious offences set out in the <i>Bail Act 1982</i> (WA)	3.5 hours	1,502
	(b) Preparation for, and appearance at, application to vary bail conditions	1.5 hours	644
3.	Directions hearing, including preparation	4 hours	1,716
4.	(a) Preparation of case and half day trial, including counsel fee		8,516
	(b) Second half day		963
5.	Second and each successive day of trial		3,850
6.	Allowance for preparation where the trial does not proceed or the prosecution offers no evidence		An amount which is reasonable in the circumstances
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	1,155
8.	(a) Short Plea in mitigation, including preparation (plea of up to 30 minutes)		740
	(b) Long Plea in mitigation, including preparation (plea in excess of 30 minutes)		2,205
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 8 June 2022.

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (OFFICIAL PROSECUTIONS) (ACCUSED'S COSTS) REPORT 2022

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 2022*.
- (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 2022*.

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 2022*, the Legal Costs Committee—

- (a) Reviewed the 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
- (b) Considered the comments and suggestions made at a seminar with members of the legal profession held on 2 February 2022.

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 2022* 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 2022*.
- (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 2022*.
- (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 2022* be adopted.
- (e) It is the further recommendation of the Legal Costs Committee that 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 by 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 2022*.
- (h) 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 5(a) are varied from the hourly and daily rates used in the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2020*¹. Those rates are set out in Table B of the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2022*.

CLARE THOMPSON SC Chair

JANICE DUDLEY Member

MATTHEW CURWOOD SC Member

CRAIG MCKIE Member

ANNETTE MORGAN Member

GREG RICKIE Member

¹ Published in Gazette 18 June 2020

Schedule

LEGAL PROFESSION ACT 2008

**LEGAL PROFESSION (OFFICIAL PROSECUTIONS) (ACCUSED'S COSTS)
DETERMINATION 2022**

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 2022*.

2 Commencement

This Determination comes into operation on 1 July 2022.

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 Restricted Practitioner category

The amendments brought in by the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2016* remain in effect, other than clause 5(e) of that Determination.

6 Increase generally

- (a) The Committee is of the view that increases in the cost of practice over the past several years have justified an increase in the rates in Tables A, B and C.
- (b) The Committee made no general increase in the 2020 review as a result of the uncertain economic climate at that time due to the COVID-19 pandemic. Given the economic picture in 2022 is more positive, and the fact that rate rises have been modest for the past decade, the Committee determined it was appropriate to include a general increase.
- (c) In making its decision, the Committee is particularly cognisant of the increased costs to law practices occasioned by the purchase of technology and training to enable legal practitioners and staff to work remotely, and investments made by law practices in staff well-being initiatives.
- (d) Other costs incurred by law practices as a result of the COVID-19 pandemic, for example the purchase of sanitiser, masks, rapid antigen tests and other similar measures, are intended to be covered by the rates in this Determination and are not properly chargeable to clients as disbursements.
- (e) The increase in the rates in this Determination are not uniform but have been calculated, generally, on the basis of a 5% increase, with a rounding so that each amount is divisible by 11 in accordance with the long-standing policy of the Committee.

7 Maximum hourly and daily 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 allowable hourly rates
Senior Practitioner (permitted to practise on his or her own account for 5 years or more) (SP) ¹ hourly rate	\$429
Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) ¹ hourly rate	\$341
Restricted Practitioner (RP) ^{1, 2} hourly rate	\$242
Clerk/Paralegal (C/PL) ³ hourly rate	\$165

Notes—

- 1 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.
- 2 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.
- 3 The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.
 - (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 counsel 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 B

Fee Earner	Maximum allowed daily rates
Counsel (C) ⁴	\$3,850
Senior Counsel (SC) ⁵	\$5,500

Notes—

- 4 The reference to Counsel in this Determination means a practitioner acting as a barrister other than a Senior Counsel, including, for the purposes of items 10, 11, 17, 22, 25 and 26, a practitioner appearing in court who does not practise in accordance with Supreme Court Practice Direction 10.5.
- 5 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.

8 Scale of costs

- (a) Subject to clause 9, 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.
- (b) Fees charged by practitioners who practise solely as barristers in accordance with Supreme Court Practice Direction 10.5 are only to be charged at the rates provided for counsel of their seniority in Table B and are not to be charged at rates applicable to a Senior Practitioner.
- (c) Recovery of daily fees for counsel on the taxation or assessment of a Bill of Costs is intended to apply only when a full day has been worked, either in Court or in Court and in preparation for a subsequent hearing day.

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

- (a) Where a matter is complex, or involves a high degree of skill or urgency, or requires Senior Counsel, notwithstanding the rates 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.

10 Appeals

All costs incurred in relation to an appeal to the Supreme Court of Western Australia or the District Court of Western Australia are to be taxed in accordance with the relevant items in Table B of the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2022*.

Table C
Official Prosecutions (Accused's Costs) Scale of Costs 2022

Item		Maximum time	Maximum amount
1	Adjournments		
1	(a) Subject to paragraphs (b) and (c), allow for one adjournment only	1 hour	\$429
	(b) Costs for additional adjournments to be awarded on application to, and at the discretion of, the presiding Magistrate		

Item		Maximum time	Maximum amount
	(c) Each Court ordered adjournment	1 hour	\$429
2	Bail application		
	(a) Preparation for, and appearance at, initial bail application and/or application for bail in respect of serious offences set out in the <i>Bail Act 1982 (WA)</i>	3.5 hours	\$1,502
	(b) Preparation for, and appearance at, application to vary bail conditions	1.5 hours	\$644
3	Directions hearing, including preparation	4 hours	\$1,716
4	Trial		
	(a) Preparation of case and half day trial, including counsel fee		\$9,625
	(b) Second half day		\$968
5	Second or each successive day of trial		\$3,850
6	An allowance for preparation where the trial does not proceed or the prosecution offers no evidence		An amount which is reasonable in the circumstances
7	Counsel's fee For attending court for remand appearance, directions hearing, status conference, mention, callover, reserved decision or other appearance not otherwise accounted for	3 hours	\$1,155
8	Disbursements		
	(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 8 June 2022.

LEGAL PROFESSION ACT 2008**LEGAL PROFESSION (STATE ADMINISTRATIVE TRIBUNAL)
REPORT 2022**

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 2022*.
- (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 2022*.

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 2022* the Legal Costs Committee—
 - (1) 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);
 - (2) considered the comments and suggestions made at a seminar with members of the legal profession held on 2 February 2022;
 - (3) consulted with the State Administrative Tribunal (**Tribunal**); and
 - (4) had regard to relevant provisions of the *State Administrative Tribunal Act 2004*.
- (b) The Legal Costs Committee acknowledges that the overriding philosophy of the Tribunal, as expressed through its enabling legislation, is that parties appearing before the Tribunal are to bear their own costs of proceedings.

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

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

PART 3—REPORT OF COMMITTEE'S CONCLUSIONS**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 2022* as the hourly and daily rates applicable to legal practitioners and clerks/paralegals in the State Administrative Tribunal of Western Australia as set out in Table A in the *Legal Profession (State Administrative Tribunal) Determination 2022*.
- (d) 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 SC Chair

JANICE DUDLEY Member

MATTHEW CURWOOD SC Member

CRAIG MCKIE Member

ANNETTE MORGAN Member

GREG RICKIE Member

¹ Published in Government Gazette dated 16 December 2008

Schedule

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (STATE ADMINISTRATIVE TRIBUNAL) DETERMINATION 2022Made 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 2022*.

2 Commencement

This Determination comes into operation on 1 July 2022.

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 Restricted Practitioner category

The amendments brought in by the *Legal Profession (State Administrative Tribunal) Determination 2016* remain in effect, other than clause 5(e) of that Determination.

6 Increase generally

- (a) The Committee is of the view that increases in the cost of practice over the past several years have justified an increase in the rates in Table A.
- (b) The Committee made no general increase in the 2020 review as a result of the uncertain economic climate at that time due to the COVID-19 pandemic. Given the economic picture in 2022 is more positive, and the fact that rate rises have been modest for the past decade, the Committee determined it was appropriate to include a general increase.
- (c) In making its decision, the Committee is particularly cognisant of the increased costs to law practices occasioned by the purchase of technology and training to enable legal practitioners and staff to work remotely, and investments made by law practices in staff well-being initiatives.
- (d) Other costs incurred by law practices as a result of the COVID-19 pandemic, for example the purchase of sanitiser, masks, rapid antigen tests and other similar measures, are intended to be covered by the rates in this Determination and are not properly chargeable to clients as disbursements.
- (e) The increase in the rates in this Determination are not uniform but have been calculated, generally, on the basis of a 5% increase, with a rounding so that each amount is divisible by 11 in accordance with the long-standing policy of the Committee.

7 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 legal practitioner, clerk or paralegal in providing advice and services to clients in respect of proceedings and potential proceedings in the 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 day, whether in or out of the Tribunal, including preparation of written submissions and are not intended to be supplemented in any way by additional hourly charges given that the maximum number of hours allowed for the daily rate is 10 hours per day.

Table A

Fee Earner	Maximum allowable hourly and daily rates
Senior Practitioner (permitted to practise on his or her own account for 5 years or more) (SP) ¹	
hourly rate	\$429
Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) ¹	
hourly rate	\$341
Restricted Practitioner (RP) ^{1, 2}	
hourly rate	\$242
Clerk/Paralegal (C/PL) ³	
hourly rate	\$165

Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel:

Counsel (C) ⁴	
hourly rate	\$385
daily rate	\$3,850
Senior Counsel (SC) ⁵	
hourly rate	\$550
daily rate	\$5,500

Notes—

- 1 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.
- 2 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.
- 3 The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.
- 4 The reference to Counsel in this Determination means a practitioner acting as a barrister other than a Senior Counsel, including, for the purposes of items 10, 11, 17, 22, 25 and 26, a practitioner appearing in court who does not practise in accordance with Supreme Court Practice Direction 10.5.
- 5 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).

8 Counsel fees

- (a) All appearances in the Tribunal are intended to be charged at the applicable counsel rate, and not at any higher rate that may be applicable to the actual practitioner by reason of the person undertaking the appearance otherwise being entitled to charge as a Senior Practitioner.
- (b) Fees charged by practitioners who practise solely as barristers in accordance with Supreme Court Practice Direction 10.5 are only to be charged at the rates provided for counsel of their seniority in Table A and are not to be charged at rates applicable to a Senior Practitioner.
- (c) Recovery of daily fees for counsel on the taxation or assessment of a Bill of Costs is intended to apply only when a full day has been worked, either in Court or in Court and in preparation for a subsequent hearing day.

9 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.

10 Travel

- (a) For the purposes of this Determination, minor travel means incidental travel associated with attendance at a court or the Tribunal 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 or the Tribunal;
 - (2) a practitioner walking from a carpark to a court or the Tribunal; or
 - (3) a practitioner walking or taking public transport from one centrally located court or the Tribunal to another centrally located court or the Tribunal.
- (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.

11 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 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 8 June 2022
