



PERTH, THURSDAY, 18 JUNE 2020 No. 98

SPECIAL

PUBLISHED BY AUTHORITY KEVIN J. McRAE, GOVERNMENT PRINTER AT 12.00 NOON
© STATE OF WESTERN AUSTRALIA

LEGAL PROFESSION ACT 2008

**LEGAL PROFESSION (SUPREME AND DISTRICT
COURTS) (CONTENTIOUS BUSINESS) REPORT AND
DETERMINATION 2020**

**LEGAL PROFESSION (SUPREME AND DISTRICT
COURTS) (CRIMINAL) REPORT AND
DETERMINATION 2020**

**LEGAL PROFESSION (FAMILY COURT OF
WESTERN AUSTRALIA) REPORT AND
DETERMINATION 2020**

**LEGAL PROFESSION (MAGISTRATES COURT)
(FAMILY LAW) REPORT AND DETERMINATION 2020**

**LEGAL PROFESSION (MAGISTRATES COURT)
(CIVIL) REPORT AND DETERMINATION 2020**

**LEGAL PROFESSION (MAGISTRATES COURT)
(CRIMINAL) REPORT AND DETERMINATION 2020**

**LEGAL PROFESSION (OFFICIAL PROSECUTIONS)
(ACCUSED'S COSTS) REPORT AND
DETERMINATION 2020**

**LEGAL PROFESSION (STATE ADMINISTRATIVE
TRIBUNAL) REPORT 2020**

LEGAL PROFESSION ACT 2008**LEGAL PROFESSION (SUPREME AND DISTRICT COURTS)
(CONTENTIOUS BUSINESS) REPORT 2020**

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 2020*.
- (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 2020*.

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 2020*, 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 Supreme Court of Western Australia, The Law Society of Western Australia (Inc), Australian Lawyers Alliance, the Public Trustee for Western Australia, Mr Stephen Williams, The Insurance Commission of Western Australia, and a group of practitioners acting in personal injury litigation;
- (b) consulted with The District Court of Western Australia;
- (c) considered the comments and suggestions made at a seminar with members of the legal profession held on 13 February 2020;
- (d) considered the advice of the Australian Government Treasury in respect to the COVID-19 pandemic, published at <https://treasury.gov.au/coronavirus>; and
- (e) 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 Incorporation of the costs covered by the Legal Profession (District Court Appeals) (Contentious Business) Determination 2018**

- (a) The information gained as a result of the inquiries and consultations referred to in clause 3 satisfied the Legal Costs Committee that it is no longer necessary to publish a separate *Legal Profession (District Court Appeals) (Contentious Business) Determination*.
- (b) It is the recommendation of the Legal Costs Committee that the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2020* provide for those costs previously included in the *Legal Profession (District Court Appeals) (Contentious Business) Determination 2018*.

5 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 2020*.
- (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; and
- (4) taking into account the incidental administrative implications of the calculation of the Goods and Services Tax,

the hourly and daily rates referred to in subclause 5(a) be varied from the hourly and daily rates used in the *Legal Practitioners (Supreme and District Courts) (Contentious Business) Determination 2018*¹, only to the extent of increasing the rates for Counsel in Table A so as to narrow the gap between Counsel rates and those rates charged by Senior Practitioners and Senior Counsel. Those rates are set out in Table A of the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2020*.

- (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 2020*.
- (d) The recommendations of the Legal Costs Committee are not intended to override any entitlement of a law practice to make a written agreement as to costs with a client under the Act or any successor legislation.

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

Schedule

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (SUPREME AND DISTRICT COURTS) (CONTENTIOUS BUSINESS) DETERMINATION 2020

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 2020*.

2 Commencement

This Determination comes into operation on 1 July 2020.

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 2020.

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

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

5 Item 38 for 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.

¹ Published in Gazette 21 June 2018

- (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.

6 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.

7 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) The increase in Counsel rates, and no increase in Senior Counsel or Senior Practitioner rates in Table A is designed to narrow the gap between those levels of seniority of legal practitioner and 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 Item 12—Family Provision Act claims

- (a) Item 12 was introduced for claims brought under section 7(1) of 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 8(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) Nothing in item 12 is intended to derogate from the trial Judge's discretion as to the awarding of costs.

9 New item 17—Compromises under RSC Order 70

- (a) Item 17 has been introduced to provide for an application made under RSC Order 70, to compromise a claim made by a person under a disability.
- (b) In recognition that these applications are usually accompanied by an opinion from Counsel, and it is not possible to provide for a set fee for Counsel's opinion given the range of matters which may require consideration in respect to that opinion, Counsel's opinion is allowable in accordance with the rate in Table A, for an amount which is reasonable in the circumstances of the matter.
- (c) It is accepted that on occasions Senior Counsel is briefed to give an opinion, and so if it is considered that the engagement of Senior Counsel is necessary, a special order to that effect is required.
- (d) An allowance for a brief to Counsel is only permitted if Counsel providing the opinion is not otherwise briefed in the proceedings.

10 New 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 the new 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.

11 Maximum hourly and daily rates

- (a) The hourly and daily rates set out in Table A are the maximum hourly and daily rates, inclusive of GST, which the Legal Costs Committee determines shall be used to calculate the dollar amounts in the scale of costs set out in Table B. Each item in the scale of costs specifies a dollar amount with reference to the practitioner.
- (b) The rates referred to in paragraph (a) were ascertained in the manner set out in clause 5 of the *Legal Profession (Supreme and District Courts) (Contentious Business) Report 2020*.
- (c) The daily rates set out in Table A are intended to cover all work done on a hearing or trial day, whether in or out of court, including preparation of written submissions and are not intended to be supplemented in any way by additional hourly charges given that the maximum number of hours allowed for the daily rate is 10 hours per day.
- (d) The items in Table B are not intended to be calculated on the basis of a minimum 6 minute unit.

Table A

Fee Earner	Maximum allowable hourly and daily rates
Senior Practitioner (permitted to practise on his or her own account for 5 years or more) (SP) ^o hourly rate	\$495
Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) ^o hourly rate	\$352
Restricted Practitioner (RP) ^{o, #} hourly rate	\$297
Clerk/Paralegal (C/PL) ## hourly rate	\$231
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel:	
Counsel (C)* hourly rate	\$451
daily rate	\$4,510
Senior Counsel (SC)** hourly rate	\$682
daily rate	\$6,820

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

- # The reference to Restricted Practitioner in this Determination includes practitioners undertaking restricted legal practice for the purposes of obtaining the required experience set out in section 50 of the Act and does not include a reference to an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practise under supervision for disciplinary, medical or other reasons.
- ## The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.
- * The reference to Counsel in this Determination means a practitioner acting as a barrister other than a Senior Counsel, 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.
- ** The reference to Senior Counsel in this Determination means a person within the meaning of item 11 or item 12 of Regulation 5(2) of the *Legal Profession Regulations 2009* (WA).

12 Costs

- (a) Subject to the provisions of the Act permitting a law practice to make a written agreement as to costs with a client, the costs of or in relation to a party to an action or other proceeding, inclusive of GST and counsel fees, but exclusive of other disbursements—
- (1) recoverable by one party from another party; or
 - (2) payable by a party to that party's own law practice,
- shall not exceed the amounts set out in Table B, except as otherwise provided in item 36 of Table B.
- (b) Allowances made under item 36 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(b) of Table B are only to be awarded as between a law practice and its client, or if costs are awarded on an indemnity basis and not between party and party, unless the Court otherwise orders.

13 Fixed amounts

Based upon the Legal Costs Committee's enquiries it has determined that items 1(b), 3(a), 7(a), 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 2020

Item		Time	Fee Earner	\$
1.	Writ			
	(a) Writ of summons, whether specially or generally endorsed, including instructions, but excluding Statement of Claim	1.5 hours	SP	742
	(b) For each additional defendant			77
	(c) Statement of Claim	10 hours	SP	4,950
2.	Next friend or guardian <i>ad litem</i>	3 hours	RP	891
3.	Defence			
	(a) Memorandum of appearance	10 hours	SP	99
	(b) Defence	10 hours	SP	4,950
	(c) Counterclaim			4,950
4.	Reply and other pleadings			
	Reply (if necessary), defence to counterclaim, or any other pleading	10 hours	SP	4,950
5.	(a) Third party notice	2 hours	SP	990
	(b) Pleadings in third party proceedings	6 hours	SP	2,970
6.	(a) Requesting particulars of a pleading (where and to the extent necessary)	3 hours	JP	1,056
	(b) Giving particulars of a pleading	5 hours	JP	1,760
7.	Discovery			
	(a) Notice requiring discovery	10 hours	SP	66
	(b) Giving discovery of documents			4,950

Item		Time	Fee Earner	\$
8.	Inspection Inspection and giving inspection of discovered documents whether by personal attendance or otherwise	per hour	SP	495
9.	Interrogatories (a) Delivery of interrogatories (b) Answers to interrogatories	5 hours 10 hours	SP SP	2,475 4,950
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 JP	20,460 13,530 495 528
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	44,660 58,740 38,280 6,820 4,510
12.	Proceedings under section 7(1) of the <i>Family Provision Act 1972</i> Note: refer to clause 8 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; (1) plaintiff (2) executor or personal representative (3) beneficiary defendants			7,250 2,200 4,500 4,000 1,000 4,000

Item		Time	Fee Earner	\$
	(c) All work done following mediation, up to and including judgment, and which is not included in items 12(a) and (b) 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.			An amount calculated in accordance with item 11(a), modified so that the reference to 50 hours should read 40 hours
13.	Proceedings in Court not otherwise provided for, including appeals from a Registrar	2 days preparation; ½ day hearing	C	11,275
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			297
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	704 1,980 66 1,980 990 77
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	1,760 3,520 An amount which is reasonable in the circumstances 2,255
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	2 hours	SP	990

Item		Time	Fee Earner	\$
	(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 8 hours but shall be an amount which is reasonable in the circumstances.	12 hours per hour	SP C/SC	5,940
19.	Preparation of case Preparation of case for trial, includes work reasonably and necessarily undertaken prior to commencement of proceedings 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 120 hours but shall be an amount which is reasonable in the circumstances.	120 hours	SP	59,400
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	352
22.	Trial (a) Fee on brief, i.e. first day of trial and preparation, including submissions (b) Fee on brief for Senior Counsel, i.e. first day of trial and preparation, including submissions (c) Counsel fee for the second and each successive day of hearing (d) Counsel fee for Senior Counsel for second and each successive day of hearing (e) Instructing legal practitioner attending trial (f) Clerk or Restricted Practitioner attending trial (g) Preparation of written closing submissions— (1) when required for trial; and (2) for provision to the Court and the opposing party prior to any oral addresses; and (3) when the work was undertaken on a day on which the trial was not otherwise sitting; or (4) when required to be filed and served following the Court having reserved its decision.	3.5 days preparation; 1st day of trial 3.5 days preparation; 1st day of trial per hour per hour	C SC C SC SP C/PL RP SC/C	20,295 30,690 4,510 6,820 An amount which is reasonable in the circumstances

Item		Time	Fee Earner	\$
	<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>(j) 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>	1 day	C/SC	
		per hour	SP	
		1 day	SC/C	
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
25.	<p>Appeals to the Court of Appeal and Single Judge appeals (including appeals by way of case stated) and applications for leave to appeal</p> <p>(a) Appeal Notice, Service Certificate, Notice of Respondent's Intention</p> <p>(b) Appellant's Case, Respondent's Answer including relevant forms and all annexures</p> <p>(c) Appellant's Reply to Notice of Contention, when required</p> <p>(d) Settling appeal book indexes, including drafting and settling appeal book index</p> <p>(e) An application in an appeal, an interlocutory or directions hearing before a single Judge or Registrar</p> <p>(f) Preparation of appeal for hearing</p> <p>(g) Counsel fee on hearing, including preparation</p> <p>(h) Senior Counsel fee on hearing, including preparation</p> <p>(i) Counsel fee for the second and each successive day of hearing</p>			495
		40 hours	SC	27,280
		10 hours	SC	6,820
		8 hours	SP	3,872
		10 hours	C	4,510
		10 hours	SP	4,950
		2 days preparation; 1 day hearing	C	13,530
		2 days preparation; 1 day hearing	SC	20,460
			C	4,510

Item		Time	Fee Earner	\$
	(j) Senior Counsel fee for the second and each successive day of hearing		SC	6,820
	(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	495
	(b) Notice of Appeal or Notice of Contention in other appeals	5 hours	SP	2,475
	(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	4,950
	(e) Counsel fee on hearing, including preparation	2 days preparation/ 1 day hearing	C SC	13,530 20,460
	(f) Counsel fee for second and each successive day of hearing		C SC	4,510 6,820
	(g) Attendance at appeal by instructing legal practitioner	per hour	SP	
	(h) Attending on reserved decision, including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders	per hour	SP	
	(i) Other notices and certificates referred to or required by the Rules or procedures of the Court, including the practice directions			66
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	per hour	SP/SC/C	
	(b) including informal conferences where reasonably held before or after commencement of proceedings	per hour	SP/SC/C	
	(c) attendances by counsel and instructing legal practitioners at the conferrals and conferences set out in paragraphs (a) and (b) of this item	per hour	SP/SC/C	
	(d) preparation reasonably undertaken for the conferrals and conferences described in paragraphs (a), (b) and (c) of this item	per hour	C	
	(e) conferences between counsel and own instructing legal practitioner where reasonably necessary	per hour	SP/SC/C	
28.	Orders			
	Settling and extracting judgment or order			
	(a) With appointment	2 hours	RP	594
	(b) Without appointment			297

Item		Time	Fee Earner	\$
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	352 891
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
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.			

Item		Time	Fee Earner	\$
37.	<p>Travel</p> <p>(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.</p> <p>(b) As between party and party, time spent travelling by a law practice which is not minor travel and which is required by reason of an order of the Court requiring the parties to attend at a location other than the location at which the proceedings is case managed, is to be charged at no more than one half of the rates set out in Table A, with a maximum of 8 hours in any one day, without further order.</p> <p>(c) As between a law practice and its own client, time spent travelling by a law practice, other than minor travel, is to be charged at no more than one half of the rates set out in Table A, with a maximum of 8 hours in any one day.</p> <p>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.</p>			
38.	<p>Claims under the Motor Vehicle (Third Party Insurance) Act 1943 (WA) including—</p> <p>(a) Writ of Summons;</p> <p>(b) Statement of Claim;</p> <p>(c) Giving discovery, whether formally or informally;</p> <p>(d) Inspection and giving inspection of discovered documents;</p> <p>(e) Preparation of Entry for Trial, Papers, including Schedules of Damages;</p> <p>(f) Applications for Subpoena to produce documents prior to pre-trial conference;</p> <p>(g) Preparation for and attendance at pre-trial conference or, if appropriate, pre-trial conferences; and</p> <p>(h) Copying.</p> <p>If Counsel is engaged for and attends pre-trial conference, an additional</p>		C	16,775 4,510
39.	Settlement of a claim pursuant to section 92(f) <i>Workers Compensation and Injury Management Act</i>	10 hours	SP	4,950

Made by the Legal Costs Committee on 10 June 2020.

LEGAL PROFESSION ACT 2008**LEGAL PROFESSION (SUPREME AND DISTRICT COURTS)
(CRIMINAL) REPORT 2020**

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 2020*.
- (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 2020*.

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 2020*, 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 13 February 2020;
- (c) considered the advice of the Australian Government Treasury in respect to the COVID-19 pandemic, published at <https://treasury.gov.au/coronavirus>; and
- (d) 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 2020*.
- (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 2020* 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 2018*² only to the extent of increasing the rates for Counsel in Table A so as to narrow the gap between Counsel rates and those rates charged by Senior Practitioners and

² Published in Gazette 21 June 2018

Senior Counsel. Those rates are set out in Table A of the *Legal Profession (Supreme and District Courts) (Criminal) Determination 2020*.

- (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, Chair
 ANGELA GAFFNEY, Member
 MARCUS COCKER, Member
 JANICE DUDLEY, Member
 MATTHEW CURWOOD, Member
 BRENDAN ASHDOWN, Member

Schedule

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (SUPREME AND DISTRICT COURTS) (CRIMINAL) DETERMINATION 2020

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 2020*.

2 Commencement

This Determination comes into operation on 1 July 2020.

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 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) ^o hourly rate	\$495
Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) ^o hourly rate	\$352
Restricted Practitioner (RP) ^{o, #} hourly rate	\$297
Clerk/Paralegal (C/PL) ^{##} hourly rate	\$231

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

Counsel (C)*	
hourly rate	\$451
daily rate	\$4,510
Senior Counsel (SC)**	
hourly rate	\$682
daily rate	\$6,820

- The reference to Restricted Practitioner, Junior Practitioner or Senior Practitioner in this Determination includes all legal practitioners even if the services were rendered in another State or Territory. Where a local practitioner has held an interstate practising certificate, the length of unrestricted legal practice in that other jurisdiction is to be counted in assessing that practitioner's years of practice for the purposes of this Determination.
- # The reference to Restricted Practitioner in this Determination includes practitioners undertaking restricted legal practice for the purposes of obtaining the required experience set out in section 50 of the Act and does not include a reference to an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practise under supervision for disciplinary, medical or other reasons.
- ### The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.
- * The reference to Counsel in this Determination means a practitioner acting as a barrister other than a Senior Counsel and includes a practitioner appearing in court who does not practise in accordance with Supreme Court Practice Direction 10.5.
- ** 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 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) The increase in Counsel rates, and no increase in Senior Counsel or Senior Practitioner rates is designed to narrow the gap between those levels of seniority of legal practitioner and 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 legal practitioner and client, a legal practitioner 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

- (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 2020* 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 10 June 2020.

LEGAL PROFESSION ACT 2008**LEGAL PROFESSION (FAMILY COURT OF WESTERN AUSTRALIA) REPORT 2020**

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 2020*.
- (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 2020*.

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 2020* 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) and the Family Law Practitioners' Association of Western Australia;
 - (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 13 February 2020;
 - (4) considered the advice of the Australian Government Treasury in respect to the COVID-19 pandemic, published at <https://treasury.gov.au/coronavirus>;
 - (5) considered the impact of changes in relevant Australian Bureau of Statistics data for the period; and
 - (6) had regard to relevant provisions of the *Family Law Rules 2004*.
- (b) In the *Legal Practitioners (Family Court of Western Australia) Report 2009¹ (2009 Report)* the Legal Costs Committee noted that—
 - (1) the effect of changes brought about by the Family Law Amendment Rules 2008 to the *Family Law Rules 2004* is that the Supreme Court of Western Australia is now responsible for the regulation of legal practitioner/client costs in the Family Court;
 - (2) as a consequence of the rule changes in the Family Court of Australia prior to the 2009 Report, the Family Court would no longer be setting a scale for legal practitioner/client costs;
 - (3) the general rule pursuant to section 117 of the *Family Law Act 1975* (Commonwealth) is that each party to proceedings under that Act bears their own costs;
 - (4) most legal practitioners and their clients in the Family Court's jurisdiction, enter into costs agreements;
 - (5) the Act contains substantial cost disclosure obligations; and
 - (6) party/party costs are provided for under the Family Court's federal jurisdiction and therefore it is only legal practitioner/client costs that the Legal Costs Committee is concerned with.

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

¹ Published in Government Gazette dated 31 March 2009

PART 3—REPORT OF COMMITTEE'S CONCLUSIONS

4 Maximum hourly and daily rates changed

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

- (a) it is unnecessary as at the date of this Report to recommend the implementation of a scale of fees in the Family Court in respect of party/party costs; but
- (b) it is appropriate to determine a scale of fees applicable to the work of legal practitioners, clerks and paralegals in, and in connection with the Family Court on a legal practitioner/client basis;
- (c) it is appropriate to take into consideration the impact of the COVID-19 pandemic and its projected impact on the Australian economy;
- (d) 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 2020* 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 2020*; and
- (e) 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 2018*², only to the extent of increasing the rates for Counsel in Table A so as to narrow the gap between Counsel rates and those rates charged by Senior Practitioners and Senior Counsel. Those rates are set out in Table A of the *Legal Profession (Family Court of Western Australia) Determination 2020*.
- (f) The recommendations of the Legal Costs Committee are not intended to override the entitlement of a legal practitioner to make a written agreement as to costs with a client under the Act.

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

Schedule

LEGAL PROFESSION ACT 2008

**LEGAL PROFESSION (FAMILY COURT OF WESTERN AUSTRALIA)
DETERMINATION 2020**

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 2020*.

2 Commencement

This Determination comes into operation on 1 July 2020.

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.

6 Hourly rates

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

² Published in Gazette 21 June 2018

- (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) [°] hourly rate	\$495
Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) [°] hourly rate	\$352
Restricted Practitioner (RP) ^{°, #} hourly rate	\$297
Clerk/Paralegal (C/PL) ^{##} hourly rate	\$231
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel:	
Counsel (C) [*] hourly rate	\$451
daily rate	\$4,510
Senior Counsel (SC) ^{**} hourly rate	\$682
daily rate	\$6,820

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

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

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

^{*} The reference to Counsel in this Determination means a practitioner acting as a barrister other than a Senior Counsel and includes a practitioner appearing in court who does not practise in accordance with Supreme Court Practice Direction 10.5.

^{**} 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) The increase in Counsel rates, and no increase in Senior Counsel or Senior Practitioner rates in Table A, is designed to narrow the gap between those levels of seniority of legal practitioner and 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 10 June 2020.

LEGAL PROFESSION ACT 2008**LEGAL PROFESSION (MAGISTRATES COURT) (FAMILY LAW)
REPORT 2020**

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 2020*.
- (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 2020*.

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 2020* 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 13 February 2020;
- (c) considered the advice of the Australian Government Treasury in respect to the COVID-19 pandemic, published at <https://treasury.gov.au/coronavirus>;
- (d) consulted with the Family Court of Western Australia;
- (e) reviewed the *Legal Practitioners (Magistrates Court) (Family Law) Determination 2018*⁵; and
- (f) 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/party 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 for 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 2020* 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 2020*.
- (b) It is appropriate to take into consideration the impact of the COVID-19 pandemic and its projected impact on the Australian economy.

¹ Published in Gazette 21 June 2018.

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

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

Schedule

LEGAL PROFESSION ACT 2008
**LEGAL PROFESSION (MAGISTRATES COURT) (FAMILY LAW)
 DETERMINATION 2020**

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) (Family Law) Determination 2020*.

2 Commencement

This Determination comes into operation on 1 July 2020.

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 Hourly rates

- (a) The hourly and daily rates set out in Table A are the maximum hourly and daily rates, inclusive of GST, which the Legal Costs Committee determines shall be used to calculate the dollar amounts chargeable by a legal practitioner, clerk or paralegal in providing advice and services to their own clients in respect of 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) ^o hourly rate	\$495
Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) ^o hourly rate	\$352
Restricted Practitioner (RP) ^{o, #} hourly rate	\$297
Clerk/Paralegal (C/PL) ^{##} hourly rate	\$231

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

Counsel (C)*	
hourly rate	\$451
daily rate	\$4,510
Senior Counsel (SC)**	
hourly rate	\$682
daily rate	\$6,820

- The reference to Restricted Practitioner, Junior Practitioner or Senior Practitioner in this Determination includes all legal practitioners even if the services were rendered in another State or Territory. Where a local practitioner has held an interstate practising certificate, the length of unrestricted legal practice in that other jurisdiction is to be counted in assessing that practitioner's years of practice for the purposes of this Determination.
- # The reference to Restricted Practitioner in this Determination includes practitioners undertaking restricted legal practice for the purposes of obtaining the required experience set out in section 50 of the Act and does not include a reference to an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practise under supervision for disciplinary, medical or other reasons.
- ## The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.
- * The reference to Counsel in this Determination means a practitioner acting as a barrister other than a Senior Counsel and includes a practitioner appearing in court who does not practise in accordance with Supreme Court Practice Direction 10.5.
- ** 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).

6 Restricted Practitioners

Clause 5 of the *Legal Profession (Family Court of Western Australia) Determination 2020* applies to this Determination.

7 Disbursements

Clause 6 of the *Legal Profession (Family Court of Western Australia) Determination 2020* applies to this Determination.

8 Counsel fees

Clause 7 of the *Legal Profession (Family Court of Western Australia) Determination 2020* applies to this Determination.

9 Travel

Clause 9 of the *Legal Profession (Family Court of Western Australia) Determination 2020* applies to 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 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 10 June 2020.

LEGAL PROFESSION ACT 2008**LEGAL PROFESSION (MAGISTRATES COURT) (CIVIL)
REPORT 2020**

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

PART 1—PRELIMINARY**1 Citation**

- (a) This Report may be cited as the *Legal Profession (Magistrates Court) (Civil) Report 2020*.
- (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 2020*.

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

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

3 Inquiries and submissions under section 277 of the Act

Before making the *Legal Profession (Magistrates Court) (Civil) Determination 2018* 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 impact of changes in relevant Australian Bureau of Statistics data for the period;
- (c) considered the comments and suggestions made at a seminar with members of the legal profession held on 13 February 2020;
- (d) considered the advice of the Australian Government Treasury in respect to the COVID-19 pandemic, published at <https://treasury.gov.au/coronavirus>;
- (e) reviewed the *Legal Practitioners (Magistrates Court) (Civil) Determination 2018*¹; and
- (f) had regard to relevant provisions of the *Magistrates Court Act 2004* and the *Magistrates Court (Civil Proceedings) Act 2004*, and in particular notes section 13(1) of that Act, which sets out the guiding principles for the conduct of civil proceedings in the Court.

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

- (a) The information gained as a result of the inquiries and submissions described in clause 3 satisfied the Legal Costs Committee that having regard to the provisions of the *Magistrates Court Act 2004* and the *Magistrates Court (Civil Proceedings) Act 2004*, it remains appropriate to determine hourly and daily rates and a scale of costs for legal work applicable to civil proceedings in the Magistrates Court.
- (b) It is the recommendation of the Legal Costs Committee that—
 - (1) as a result of the inquiries and submissions described in clause 3;
 - (2) having considered the impact of relevant Australian Bureau of Statistics data;
 - (3) having considered 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 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 2016*. Those amended rates are set out in Table A of the *Legal Profession (Magistrates Court) (Civil) Determination 2020* only to the extent of increasing the rates for Counsel in Table A so as to narrow the gap between Counsel rates and those rates charged by Senior Practitioners and Senior Counsel.

¹ Published in Gazette 21 June 2018

- (c) The Legal Costs Committee has concluded that the matters set out in section 13(1) of the *Magistrates Court (Civil Proceedings) Act 2004* properly informs the approach to the recovery of costs recommended in *Legal Profession (Magistrates Court) (Civil) Determination 2020*. In particular the Legal Costs Committee notes—
- (1) the Magistrates Court is not a court of pleadings;
 - (2) there are substantial differences in practice and procedure between the Magistrates Court and other civil courts in this State;
 - (3) it is intended that the Magistrates Court be a low cost jurisdiction;
 - (4) actions where the quantum is less than \$10,000 do not attract an entitlement to party/party costs, without a special costs order; and
 - (5) the monetary jurisdiction of the Magistrates Court is presently \$75,000.
- (d) Having regard to the information gained as a result of the inquiries and submissions described in clause 3, the Legal Costs Committee has concluded it remains appropriate to—
- (1) order the scale to reflect the procedures utilised in the Magistrates Court and the flow of litigation;
 - (2) maintain consistency where practicable with the format of the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2020*; and
 - (3) provide for hourly and daily rates applicable to Counsel and Senior Counsel.
- (e) It is the recommendation of the Legal Costs Committee as a result of the inquiries and submissions described in clause 3, the scale of costs be varied in the manner set out in Table B of the *Legal Profession (Magistrates Court) (Civil) Determination 2020*.
- (f) The Legal Costs Committee intends, because the scale sets maximum hourly and daily rates and amounts and allowances that must not be exceeded, that the hourly and daily rates and scale of costs will apply in circumstances requiring the determination of allowable and other costs in the minor cases procedure of the Magistrates Court.
- (g) The Legal Costs Committee intends that the Determination shall apply to all civil proceedings dealt with in the Magistrates Court, including civil jurisdiction conferred on the Court by a written law, including, for example, the *Dividing Fences Act 1961* and the *Restraining Orders Act 1997*.
- (h) The recommendations of the Legal Costs Committee are not intended to override any entitlement of a law practice to make a written agreement as to costs with a client under the Act or any similar legislation.

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

Schedule

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (MAGISTRATES COURT) (CIVIL) DETERMINATION 2020

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

1 Citation

This Determination may be cited as the *Legal Profession (Magistrates Court) (Civil) Determination 2020*.

2 Commencement

This Determination comes into operation on 1 July 2020.

3 Application

- (a) This Determination applies to the remuneration of legal practitioners, clerks and paralegals in respect of advice given by legal practitioners in or for the purposes of civil proceedings before the Magistrates Court.
- (b) This Determination does not apply to the remuneration of legal practitioners based on costs incurred in respect of business carried out before the commencement of this Determination.

4 No minimum charge

In no respect is this Determination to be seen as providing a minimum charge for any work other than the items referred to in clause 5. For example, item 2(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.

5 Fixed items

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

6 Time estimates

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

7 Counsel

- (a) In items 14 and 16, if independent counsel is not retained for the trial, this will be a factor to be considered by the Assessing Officer who might not then permit the full amount in the determination for fee on brief under item 16(b), as well as a full getting up allowance under item 14. This is in line with the decisions of *Commonwealth v Magriplis* (1962) 3 FLR 47 and *Washbourne v SEC* (1992) 8 WAR 188.
- (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) 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.
- (d) The increase in Counsel rates, and no increase in Senior Counsel or Senior Practitioner rates in Table A is designed to narrow the gap between those levels of seniority of legal practitioner and more accurately reflect the market for legal services.
- (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.

8 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.

9 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.

10 Maximum hourly and daily rates

- (a) The hourly and daily rates set out in Table A are the maximum hourly and daily rates, inclusive of GST, which the Legal Costs Committee determines shall be used to calculate the dollar amounts set out in Table B. Except for certain items, each item in this Determination specifies a dollar amount with reference to the fee earner.
- (b) The rates referred to in paragraph (a) were ascertained in the manner set out in clause 4 of the *Legal Profession (Magistrates Court) (Civil) Report 2020*.
- (c) The daily rates set out in Table A are intended to cover all work done on a hearing or trial day whether in or out of court including preparation of written submissions and are not intended to be supplemented in any way by additional hourly charges given that the maximum number of hours allowed for the daily rate is 10 hours per day.
- (d) The items in Table B are not intended to be calculated on the basis of a minimum 6 minute unit.

Table A

Fee Earner	Maximum allowable hourly rates
Senior Practitioner ^o (permitted to practise on his or her own account for 5 years or more) (SP) ^a	\$418
Junior Practitioner ^o (permitted to practise on his or her own account for less than 5 years) (JP)	\$319
Restricted Practitioner (RP) ^{#, o}	\$231
Clerk/Paralegal (C/PL) ^{##}	\$154

Counsel fees charged as a disbursement to law practices or charged by in-house Counsel		Maximum allowed rates
Counsel*	hourly rate	\$363
	daily rate	\$3,630
Senior Counsel**	hourly rate	\$539
	daily rate	\$5,390

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

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

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

* The reference to Counsel in this Determination means a practitioner acting as a barrister other than a Senior Counsel, including for the purposes of items 10, 15 and 22, a practitioner appearing in court who does not practise in accordance with Supreme Court Practice Direction 10.5.

** 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).

11 Costs

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

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

shall not exceed the amounts set out in Table B (except as otherwise provided in item 25 of Table B).

(b) Allowances made under item 25 of Table B are only to be awarded as between a law practice and its client, and not between party and party unless the Court otherwise orders. The item is not intended to be used to claim increased allowances for items which should properly fit into another item in the Determination, for example item 10.

(c) The Legal Costs Committee notes the impact of the decision in *Rodwell v Hutchinson* [2010] WASCA 197, and so no allowance is made in this determination for an award of indemnity costs.

(d) The Legal Costs Committee notes the comments of the court in *Defendi v Eden Hill Plasterers* [2008] WASCA 269 at [7] as to the importance of the proportionality principle in litigation in this Court, which arises in respect to all costs incurred in the Court.

Table B
Magistrates Court Civil Scale of Costs 2018

Item		Time	Fee Earner	\$
1.	Letter of demand issued prior to proceedings			77
2.	Claim—			
	(a) Claim, including instructions, but excluding Statement of Claim			418
	(b) For each additional defendant			55
	(c) Statement of Claim (including preparation and lodgement of a particulars of claim, where necessary or by order, and list of documents)	8 hours	SP	3,344
3.	Appointment of litigation guardian	2 hours	RP	462

Item		Time	Fee Earner	\$
4.	Response— (a) Lodgement of a response to a claim (b) Statement of defence (c) Counterclaim, including instructions and statement of claim in the counterclaim, and all other documents necessary	8 hours 8 hours	SP SP	209 3,344 3,344
5.	Third party claim, including instructions and list of documents	8 hours	SP	3,344
6.	Disclosure— Giving additional disclosure where ordered by the Court or a Registrar	5 hours	RP	1,155
7.	Inspection— Inspection and giving inspection whether by personal attendance or otherwise	per hour	RP	
8.	Interrogatories— (a) Delivery of interrogatories (b) Answers to interrogatories including affidavit	5 hours 5 hours	SP SP	2,090 2,090
9.	Interpleaders— Interpleader proceedings— (a) where uncontested (b) where contested	1 hour	JP	308 An allowance in accordance with item 10
10.	Application to the Court— (a) Applications and responses to applications including under Part 21 of the <i>Magistrates Court Civil Proceedings Rules 2005</i> , including all documentation in preparation for hearing (b) Second or subsequent half day (c) <i>Ex parte</i> applications, including preparation (d) If the hearing on any one day comprises a directions hearing or similar only (e) Application for substituted service Note: If the proceedings do not commence and settle or adjourn on the day of the hearing, then the Assessing Officer shall allow an amount which is reasonable in the circumstances	1 day preparation ½ day hearing per hour 1 hour 2 hours	C C SP SP JP	5,445 1,815 407 638
11.	Application for entry of judgment by default (<i>without trial</i>)			154
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 Scale (d) Preparation, lodgement and service of affidavits and statutory declarations not otherwise provided for (e) Preparation, lodgement and service of a listing conference memorandum excluding witness statements	2 hours 2 hours per hour 3 hours	SP SP SP SP	836 836 154 418 1,254

Item		Time	Fee Earner	\$
13.	Preparation of case— Preparation for trial (includes work reasonably and necessarily undertaken prior to commencement of proceedings)	50 hours	SP	20,900
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 ie half day trial and preparation (where two or more Counsel are certified for) (d) Allowance for second half day of trial for Senior Counsel (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, then the Assessing Officer shall allow such amount as 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)	2 days preparation ½ day of trial 2 days preparation ½ day of trial per hour per hour per hour	C C SC SC C SC JP/RP C/PL SP	9,075 1,815 13,475 2,695 3,630 5,390
16.	Pre-trial, mediation, conferrals, or other conferences (a) where required by the applicable <i>Rules</i> of the Court, 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	231 209 154
18.	Enforcement— (a) Execution (b) If against land, an additional	3 hours	RP	198 693

Item		Time	Fee Earner	\$
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	484 352 231
20.	Registration of judgments— Registration of judgments including those under <i>Service and Execution of Process Act 1992 (Cwlth)</i>			209
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)	per hour	JP JP JP	55
22.	Appeals— An appeal to a Magistrate from a decision of a Registrar			Allowances calculated in accordance with item 10
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			

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

Made by the Legal Costs Committee on 10 June 2020.

LEGAL PROFESSION ACT 2008**LEGAL PROFESSION (MAGISTRATES COURT) (CRIMINAL)
REPORT 2020**

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 2020*.
- (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 2020*.

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 2020* 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 13 February 2020;
- (c) considered the advice of the Australian Government Treasury in respect to the COVID-19 pandemic, published at <https://treasury.gov.au/coronavirus>;
- (d) considered the impact of changes in relevant Australian Bureau of Statistics data for the period;
- (e) reviewed the *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Determination 2018*¹; and
- (f) had regard to relevant provisions of the *Magistrates Court Act 2004*.

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

- (a) The Legal Costs Committee notes that the criminal jurisdiction of the Magistrates Court covers a wide range of summary criminal matters.
- (b) The Legal Costs Committee considers that as a consequence of the position stated in subclause 4(a), it is appropriate for a general scale of fees based on hourly rates to continue to apply to the time reasonably taken to perform the services provided by a law practice in, or for the purposes of contentious business in the criminal jurisdiction of the Magistrates Court.
- (c) It is the recommendation of the Legal Costs Committee that—
 - (1) as a result of the inquiries and submissions described in clause 3;
 - (2) having considered the impact of relevant Australian Bureau of Statistics data;
 - (3) having considered 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 2018*, only to the extent of increasing the rates for Counsel in Table A so as to narrow the gap between Counsel rates and those rates charged by Senior Practitioners and Senior Counsel. Those

¹ Published in Gazette 21 June 2018

rates are set out in Table A of the *Legal Profession (Magistrates Court) (Criminal) Determination 2020*.

- (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 2020*.
- (e) It is further recommended that Table B of the *Legal Profession (Magistrates Court) (Criminal) Determination 2020* 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.

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

Schedule

LEGAL PROFESSION ACT 2008
**LEGAL PROFESSION (MAGISTRATES COURT) (CRIMINAL)
DETERMINATION 2020**

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 2020*.

2 Commencement

This Determination comes into operation on 1 July 2020.

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 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 2020*.
- (c) The daily rates set out in Table B below are intended to cover all work done on a hearing or trial day whether in or out of court including preparation of written submissions and are not intended to be supplemented in any way by additional hourly charges given that the maximum number of hours allowed for the daily rate is 10 hours per day.
- (d) The items in Table B are not intended to be calculated on the basis of a minimum 6 minute unit.

Table A

Fee Earner	Maximum allowed hourly rates
Senior Practitioner ^o (permitted to practise on his or her own account for 5 years or more) (SP) ^a	\$418
Junior Practitioner ^o (permitted to practise on his or her own account for less than 5 years) (JP)	\$319
Restricted Practitioner (RP) ^{#, o}	\$231
Clerk/Paralegal (C/PL) ^{##}	\$154
Maximum allowed rates	
Counsel fees charged as a disbursement to law practices or charged by in-house Counsel	
Counsel*	
hourly rate	\$363
daily rate	\$3,630
Senior Counsel**	
hourly rate	\$539
daily rate	\$5,390

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

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

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

^{*} The reference to Counsel in this Determination means a practitioner acting as a barrister other than a Senior Counsel and includes a practitioner appearing in court who does not practise in accordance with Supreme Court Practice Direction 10.5.

^{**} 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 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 2020

Item		Time	\$
1.	(a) Subject to paragraphs (b) and (c), allow for one adjournment only	1 hour	418
	(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	418
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	1,463
	(b) Preparation for, and appearance at, application to vary bail conditions	1.5 hours	627
3.	Directions hearing, including preparation	4 hours	1,672
4.	(a) Preparation of case and half day trial, including counsel fee		8,074
	(b) Second half day		913
5.	Second and each successive day of trial		3,630
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	1,089
8.	(a) Short Plea in mitigation, including preparation (plea of up to 30 minutes)		693
	(b) Long Plea in mitigation, including preparation (plea in excess of 30 minutes)		2,079
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 10 June 2020

LEGAL PROFESSION ACT 2008**LEGAL PROFESSION (OFFICIAL PROSECUTIONS)
(ACCUSED'S COSTS) REPORT 2020**

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 2020*.
- (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 2020*.

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 2020*, 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);
- (b) Considered the comments and suggestions made at a seminar with members of the legal profession held on 13 February 2020; and
- (c) Considered the advice of the Australian Government Treasury in respect to the COVID-19 pandemic published at <https://treasury.gov.au/coronavirus>.

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 2020* 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 2020*.
- (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 2020*.
- (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 2020* 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 2020*.
- (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 2018*¹ only to the extent of increasing the rates for Counsel in Table A so as to narrow the gap between Counsel rates and those rates charged by Senior Practitioners and Senior Counsel. Those rates are set out in Table B of the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2020*.

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

Schedule

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (OFFICIAL PROSECUTIONS) (ACCUSED'S COSTS) DETERMINATION 2018

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 2020*.

2 Commencement

This Determination comes into operation on 1 July 2020.

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 Rates

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

Table A

Fee Earner	Maximum allowed hourly rates
Senior Practitioner ^a (permitted to practise on his or her own account for 5 years or more) (SP) ^o	\$418
Junior Practitioner ^a (permitted to practise on his or her own account for less than 5 years) (JP)	\$319
Restricted Practitioner (RP) [#] . ^o	\$231
Clerk/Paralegal (C/PL) ^{##}	\$154

- ^o 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.

¹ Published in Gazette 21 June 2018

- # The reference to Restricted Practitioner in this Determination includes practitioners undertaking restricted legal practice for the purposes of obtaining the required experience set out in section 50 of the Act and does not include a reference to an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practise under supervision for disciplinary, medical or other reasons.
- ## The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.
- (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 [§]	\$3,630
Senior Counsel*	\$5,390

§ The reference to Counsel in this Determination means a practitioner acting as a barrister other than as Senior Counsel and includes a practitioner appearing in court who does not practise in accordance with Supreme Court Practice Direction 10.5.

* 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.

7 Scale of costs

- (a) Subject to clause 8, the costs recoverable by a successful accused in an official prosecution (inclusive of counsel fees but exclusive of other disbursements) shall not exceed the amounts set out in Table C.
- (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) The increase in Counsel rates, and no increase in Senior Counsel or Senior Practitioner rates in Table B is designed to narrow the gap between those levels of seniority of legal practitioner and 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 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.

9 Appeals

All costs incurred in relation to an appeal to the Supreme Court of Western Australia are to be taxed in accordance with the relevant items in Table B of the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2020*.

Table C

Official Prosecutions (Accused's Costs) Scale of Costs 2020

Item	Maximum time	Maximum amount
1 Adjournments		
(a) Subject to paragraphs (b) and (c), allow for one adjournment only	1 hour	\$418
(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	\$418

Item		Maximum time	Maximum amount
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	\$1,463
	(b) Preparation for, and appearance at, application to vary bail conditions	1.5 hours	\$627
3	Directions hearing, including preparation	4 hours	\$1,672
4	Trial		
	(a) Preparation of case and half day trial, including counsel fee		\$8,074
	(b) Second half day		\$913
5	Second or each successive day of trial		\$3,630
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	\$1,089
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 10 June 2020.

LEGAL PROFESSION ACT 2008**LEGAL PROFESSION (STATE ADMINISTRATIVE TRIBUNAL)
REPORT 2020**

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 2020*.
- (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 2020*.

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 2020* 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 13 February 2020;
 - (3) considered the advice of the Australian Government Treasury in respect to the COVID-19 pandemic, published at <https://treasury.gov.au/coronavirus>; 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 State Administrative Tribunal (**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 2020* as the hourly and daily rates applicable to legal practitioners and clerks/paralegals in the State Administrative

¹ Published in Government Gazette dated 16 December 2008

Tribunal of Western Australia as set out in Table A in *the Legal Profession (State Administrative Tribunal) Determination 2020*. The hourly and daily rates are varied only to the extent of increasing the rates for Counsel in Table A so as to narrow the gap between Counsel rates and those rates charged by Senior Practitioners and Senior Counsel.

- (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, Chair
ANGELA GAFFNEY, Member
MARCUS COCKER, Member
JANICE DUDLEY, Member
MATTHEW CURWOOD, Member
BRENDAN ASHDOWN, Member

Schedule

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (STATE ADMINISTRATIVE TRIBUNAL) DETERMINATION 2020

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

1 Citation

This Determination may be cited as the *Legal Profession (State Administrative Tribunal) Determination 2020*.

2 Commencement

This Determination comes into operation on 1 July 2020.

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 Hourly rates

- (a) The hourly and daily rates set out in Table A are the maximum hourly and daily rates, inclusive of GST, which the Legal Costs Committee determines shall be used to calculate the dollar amounts chargeable by a legal practitioner, clerk or paralegal in providing advice and services to clients in respect of proceedings and potential proceedings in the 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) ^o hourly rate	\$418
Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) ^o hourly rate	\$319
Restricted Practitioner (RP) ^{o, #} hourly rate	\$231
Clerk/Paralegal (C/PL) ^{##} hourly rate	\$154

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

Counsel (C)*	
hourly rate	\$363
daily rate	\$3,630
Senior Counsel (SC)**	
hourly rate	\$539
daily rate	\$5,390

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

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

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

* The reference to Counsel in this Determination means a practitioner acting as a barrister other than a Senior Counsel and includes a practitioner appearing in a court or the Tribunal who does not practise in accordance with Supreme Court Practice Direction 10.5.

** 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

- 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.
- 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.
- The increase in Counsel rates, and no increase in Senior Counsel or Senior Practitioner rates in Table A, is designed to narrow the gap between those levels of seniority of legal practitioner and more accurately reflect the market for legal services.
- 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

- 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—
 - a practitioner walking from their usual place of business to a court or the Tribunal;
 - a practitioner walking from a carpark to a court or the Tribunal; or
 - a practitioner walking or taking public transport from one centrally located court or the Tribunal to another centrally located court or the Tribunal.
- 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.
- 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.
- 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.
- 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 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 10 June 2020.
