

LEGAL PROFESSION ACT 2008

LEGAL PRACTITIONERS (DISTRICT COURT APPEALS) (CONTENTIOUS BUSINESS) REPORT 2012

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

PART 1 - PRELIMINARY

Citation

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

PART 2 - NOTICE AND INQUIRIES

Notice under section 278 of the Act

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

Inquiries and submissions under section 277 of the Act

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

PART 3 - REPORT OF COMMITTEE'S CONCLUSIONS

Maximum hourly and daily rates – scale of costs amended.

4. (a) The information gained as a result of the inquiries and submissions described in clause 3 satisfied the Legal Costs Committee that the manner in which legal services are provided made it appropriate to continue to adopt the hourly and daily rates charged by law practices as the basis for rates used in the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2012*.
- (b) It is the recommendation of the Legal Costs Committee that:
 - (1) as a result of the inquiries and submissions described in clause 3;

- (2) having considered the impact of relevant Australian Bureau of Statistics data;
- (3) having considered submissions and data from The Law Society of Western Australia and the Western Australian Bar Association; and
- (4) taking into account the incidental administrative implications of the calculation of the Goods and Services Tax,

the hourly and daily rates referred to in sub-clause 4(a) be varied from the hourly and daily rates used in the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2010ⁱ* as the basis for the recommended scale of costs which have been generally rounded up or down to represent various, increases of between 5.13% and 7.41% inclusive of the Goods and Services Tax and for administrative convenience, divisible by 11. Those rates are set out in Table A of the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2012*.

- (c) As a result of the information gained from the inquiries and submissions described in clause 3 it is the recommendation of the Legal Costs Committee that the scale of costs as set out in Table B of the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2012* be adopted for appeals in the District Court.
- (d) The recommendations of the Legal Costs Committee are not intended to override the entitlement of a law practice to make a written agreement as to costs with a client under the Act or any successor legislation.

TED SHARP, Chairman

ANGELA GAFFNEY, Member

CLARE THOMPSON, Member

MARCUS COCKER, Member

JANICE DUDLEY, Member

MATTHEW CURWOOD, Member

Schedule

LEGAL PROFESSION ACT 2008

LEGAL PRACTITIONERS (DISTRICT COURT APPEALS) (CONTENTIOUS BUSINESS) DETERMINATION 2012

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

Citation

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

Commencement

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

Application

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

4. Maximum hourly and daily rates

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

Table A

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

		daily rate	\$3,630
Senior Counsel	(SC)†	hourly rate	\$638
		daily rate	\$6,380

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

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

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

Costs

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

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

shall not exceed the amounts set out in Table B.

TABLE B

DISTRICT COURT APPEALS SCALE OF COSTS 2012

ITEM	DESCRIPTION	TIME	FEE EARNER	\$ AMOUNT
1.	Notice of appeal or Notice of Contention (a) Appeal notice (pursuant to Rule 15 of District Court Rules 2005) (b) Other appeals	1 hour	SP	451
		5 hours	SP	2,255
2.	Interlocutory hearings – as required (including preparation)	per hour	SP	451
			C	363
3.	Preparation of appeal for hearing (including preparation of appeal books)	10 hours	SP	4,510
4.	Counsel fee on hearing (including preparation)	2 days preparation; 1 day hearing	C SC	10,890 19,140
5.	Counsel fee for second and each successive day of hearing		C SC	3,630 6,380
6.	Attendance at appeal by instructing legal practitioner	per hour	SP	451
7.	Attending on reserved decision (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders)	per hour	SP	451
8.	Settling and extracting order disposing of appeal (a) With appointment (b) Without appointment			583
				220
9.	Other notices and certificates referred to or required by the Rules or procedures of the Court (including practice directions)			66
10.	Taxing including drawing (a) Drawing bill of costs and service (b) Taxation of costs (including time spent preparing for the taxation)		SP	Such amounts as are reasonable in the circumstances
				0.165
11.	Copies where reasonably necessary, including of documents for which allowance is otherwise made in this Determination	per page		
12.	Disbursements In addition to the fees and charges allowed under this Determination: (a) As between a law practice and client, a law practice may charge and be allowed disbursements necessarily or reasonably incurred; and (b) As between party and party, a party may be allowed disbursements incurred by that party except insofar as they are of an unreasonable amount or have been unreasonably incurred, so that subject to the above exceptions, that party is fully reimbursed for its disbursements.			