

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (DISTRICT COURT APPEALS) (CONTENTIOUS BUSINESS) REPORT 2014

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

PART 1 - PRELIMINARY

Citation

1. (1) This Report may be cited as the *Legal Profession (District Court Appeals) (Contentious Business) Report 2014*.
- (2) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (District Court Appeals) (Contentious Business) Determination 2014*.
- (3) The citation for this Report (compared to previous Reports) has been amended to be consistent with the title of the Act.

PART 2 - NOTICE AND INQUIRIES

Notice under section 278 of the Act

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

Inquiries and submissions under section 277 of the Act

3. Before making the *Legal Profession (District Court Appeals) (Contentious Business) Determination 2014*, the Legal Costs Committee:

(1) (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 Wage Price Indices for the financial year ending June 2013, and for the September 2013, December 2013 and March 2014 quarters;

(c) conferred with the Hon. Chief Justice of Western Australia; and

(d) conferred with other legal practitioners.

(2) (a) In the submissions referred to in paragraph 3(1)(a) above, the lack of parity between the hourly rates allowed for Senior Practitioners practising in the amalgam and those Counsel who are of considerable experience but who have not been appointed as Queens Counsel or Senior Counsel, is noted.

(b) The Legal Costs Committee has given serious consideration to whether a distinction between practitioners acting as barristers of more than 10 years post admission experience and those of less than 10 years post admission experience should be made. Having consulted with the profession and with the Chief Justice, the Legal Costs Committee has determined that a structural change of this nature to the Determination is not presently justified.

(c) The difference in rates between Senior Practitioners practising in the amalgam and Counsel practising at the independent bar has historically been attributable to the substantially lower costs of practice for those at the independent bar, as compared with practitioners in the amalgam, who generally offer clients a wider range of services.

(d) The Legal Costs Committee has not been provided with sufficient evidence that suggests this historical differential has altered so that the costs incurred by members of the independent bar are now proportionally equivalent to those incurred by law practices in the amalgam.

(e) Furthermore, to make a structural change to the Determination of the nature identified above, even if the necessary information were made available, it would be necessary for the Legal Costs Committee to consider what would be a likely substantial increase in Counsel rates in light of the consumer protection and access to justice objectives of the Determination. This in turn would include giving consideration to the fact that many practitioners, including those at the independent bar, already enter into written agreements under the Act at rates which are in excess of those provided for in the Determination.

PART 3 - REPORT OF LEGAL COSTS 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 Profession (District Court Appeals) (Contentious Business) Determination 2014*.

(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 2012*¹ as the basis for the recommended scale of costs which have been generally rounded up or down to represent various, increases of approximately 6% inclusive of the Goods and Services Tax and for administrative convenience, divisible by 11. Those rates are set out in Table A of the *Legal Profession (District Court Appeals) (Contentious Business) Determination 2014*.

(c) As a result of the information gained from the inquiries and submissions described in clause 3 it is the recommendation of the Legal Costs Committee that the scale of costs as set out in Table B of the *Legal Profession (District Court Appeals) (Contentious Business) Determination 2014* be adopted for appeals in the District Court.

(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.

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

¹ Published in Gazette 24 December 2012

Schedule

LEGAL PROFESSION ACT 2008

**LEGAL PROFESSION (DISTRICT COURT APPEALS) (CONTENTIOUS BUSINESS)
DETERMINATION 2014**

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

Citation

1. (a) This Determination may be cited as the *Legal Profession (District Court Appeals) (Contentious Business) Determination 2014*.
- (b) The citation for this Determination (compared to previous Determinations) has been amended to be consistent with the title of the Act.

Commencement

2. This Determination comes into operation on 1 July 2014.

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 Profession (District Court Appeals) (Contentious Business) Report 2014*.
- (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 (admitted for 5 years or more) (SP) ^α	hourly rate	\$473
Junior Practitioner (admitted for less than 5 years) (JP) ^α	hourly rate	\$330
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 daily rate	\$385 \$3,850
Senior Counsel (SC) [†]	hourly rate daily rate	\$671 \$6710

^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 barrister other than a Senior Counsel.

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

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 2014

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)	1 hour	SP	473
	(b) Other appeals	5 hours	SP	2,365
2.	Interlocutory hearings – as required (including preparation)	per hour	SP	473
			C	385
3.	Preparation of appeal for hearing (including preparation of appeal documents and submissions)	10 hours	SP	4,730
4.	Counsel fee on hearing (including preparation)	2 days preparation; 1 day hearing	C SC	11,550 20,130
5.	Counsel fee for second and each successive day of hearing		C	3,850
			SC	6,710
6.	Attendance at appeal by instructing legal practitioner	per hour	SP	473
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	473
8.	Settling and extracting order disposing of appeal (a) With appointment (b) Without appointment			616
				231
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		SP	Such amounts as are reasonable in the circumstances
	(a) Drawing bill of costs and service (b) Taxation of costs (including time spent preparing for the taxation)			
11.	Copies where reasonably necessary, including of documents for which allowance is otherwise made in this Determination	per page		0.165
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.			

Made by the Legal Costs Committee on 11 June 2014.