

This erratum to be read in conjunction  
with the attached determination

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## JUSTICE

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JU101

*CORRECTION*

**LEGAL PROFESSION ACT 2008**

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

An error occurred in the notice published for the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2022* of the *Government Gazette* dated 24 June 2022.

The error occurs on—

- |           |   |
|-----------|---|
| Page 3706 | Clause 7(c), third line<br>Delete “Transfer of Land” and replace with “Property Law”                    |
| Page 3710 | Table B, Item 11(b), Fee earner “C”<br>In the third column: Delete “\$5,060” and replace with “\$4,730” |

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**LEGAL PROFESSION ACT 2008**  
**LEGAL PROFESSION (SUPREME AND DISTRICT COURTS) (CONTENTIOUS BUSINESS)**  
**REPORT 2022**

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

**PART 1 – PRELIMINARY**

**1 Citation**

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

**PART 2 – NOTICE AND INQUIRIES**

**2 Notice under section 278 of the Act**

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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**

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Before making the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2022*, the Legal Costs Committee:

- (a) reviewed the submissions received as a result of the notice given under section 278 of the Act including those made by The Law Society of Western Australia (Inc) and Australian Lawyers Alliance;
- (b) considered the comments and suggestions made at a seminar with members of the legal profession held on 2 February 2022; and
- (c) considered the impact of changes in relevant Australian Bureau of Statistics data for the period.

**PART 3 – REPORT OF LEGAL COSTS COMMITTEE’S CONCLUSIONS**

**4 Maximum hourly and daily rates changed – scale of costs amended**

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- (a) The information gained as a result of the inquiries and submissions described in clause 3 satisfied the Legal Costs Committee that the manner in which legal services are provided made it appropriate to continue to adopt the hourly and daily rates charged by law practices as the basis for most of the rates used in the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2022*.
- (b) It is the recommendation of the Legal Costs Committee that:
  - (1) as a result of the inquiries and submissions described in clause 3;
  - (2) having considered the impact of relevant Australian Bureau of Statistics data; and

(3) taking into account the incidental administrative implications of the calculation of the Goods and Services Tax,

the hourly and daily rates referred to in subclause 5(a) be varied from the hourly and daily rates used in the *Legal Practitioners (Supreme and District Courts) (Contentious Business) Determination 2020*<sup>1</sup>. Those rates are set out in Table A of the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2022*.

- (c) It is the recommendation of the Legal Costs Committee, as a result of the inquiries and submissions described in clause 3, that the scale of costs be varied in the manner set out in Table B of the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2022*.
- (d) The recommendations of the Legal Costs Committee are not intended to override any entitlement of a law practice to make a written agreement as to costs with a client under the Act or any successor legislation.

CLARE THOMPSON SC Chair

JANICE DUDLEY Member

MATTHEW CURWOOD SC Member

CRAIG MCKIE Member

ANNETTE MORGAN Member

GREG RICKIE Member

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<sup>1</sup> Published in Gazette 18 June 2020

## Schedule

### LEGAL PROFESSION ACT 2008

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

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

## 1 Citation

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This Determination may be cited as the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2022*.

## 2 Commencement

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This Determination comes into operation on 1 July 2022.

## 3 Application

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- (a) This Determination applies to the remuneration of legal practitioners, clerks and paralegals regarding advice given by legal practitioners in respect of contentious business carried out by legal practitioners in or for the purposes of proceedings before the Supreme Court of Western Australia and the District Court of Western Australia.
- (b) This Determination applies to all contentious business previously covered by the *Legal Profession (District Court Appeals) (Contentious Business) Determination 2018* and its predecessor Determinations.
- (c) This Determination does not apply to the remuneration of law practices based on a written agreement as to costs under the *Legal Profession Act 2008* or any successor legislation, to the extent that a law practice is entitled to charge other than in accordance with this Determination.
- (d) This Determination does not apply to the remuneration of law practices for costs incurred before 1 July 2022.

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

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

## 5 Catastrophic personal injury claims

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- (a) The introduction of the items in the determinations relating to catastrophic personal injuries was explained in the *Legal Profession (Supreme Court) (Contentious Business) Determination 2012* and *Legal Profession (Supreme Court) (Contentious Business) Determination 2014*.
- (b) Since the introduction of the provisions for catastrophic personal injuries claims in 2012, the District Court decision in *McGlinn as administrator for Jeffrey Craig McGlinn v Joondalup Hospital Pty Ltd [No 2] [2014] WADC 3* has meant that the stated objective of an early determination that a claim was a catastrophic personal injury claim has been unable to be achieved.

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

## 6 Historical child sexual abuse claims

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

## 7 Items 1 and 3 – pleadings

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- (a) Items 1 and 3 have been amended to include an additional 2 hours for the drafting of a statement of claim, defence or counterclaim. A new item 1(d) of an additional 1 hour is also now claimable for the statement of claim for each additional defendant, as explained in (b) and (c) below. The increasing complexity of pleadings has led the Committee to the view that these increased maximum allowances are appropriate.
- (b) An allowance under item 1(d) is only claimable if a separate claim is made, and separate relief is claimed, against any additional defendant.
- (c) An allowance under item 1(d) is not claimable if the case against multiple defendants is the same, for example if the defendants are co-owners of land in an action brought under section 126 *Transfer of Land Act* or co-mortgagors in an action for possession of land. Whether the additional allowance is claimable in any particular circumstance is a matter for the determination of the Court or the Taxing Officer.

## 8 Items 7 and 8 - Discovery and Inspection

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- (a) The Committee recognises that there have been substantial changes in the manner in which discovery and inspection takes place as a result of, amongst other things, electronic document management and a large increase in the volume of discoverable documents brought about by electronic documentation.
- (b) In light of this, the Committee has decided to remove the limits on items 7 and 8, so that the Taxing Officer may take a more flexible approach to discovery and inspection, and to reduce the need for special costs orders in larger, more document heavy, litigation.
- (c) In doing so, the Committee recognises that the vast bulk of document management tasks, including discovery and inspection, is done by more junior lawyers, graduates, and para legal staff. It has therefore reduced the practitioner level for items 7 and 8 to a maximum of junior practitioner, being, a lawyer with up to 7 years post admission experience.
- (d) The Committee notes that proportionality of costs remains a key aspect of consideration of the reasonable costs recoverable on a taxation, so that despite the

removal of the limits in these items a law practice should not recover disproportionate or unreasonable costs, irrespective of the amount of work done.

## 9 Item 12 - *Family Provision Act* claims

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

## 10 Item 17 – Compromises under RSC Order 70

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

## 11 Item 19 – Preparation of case

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

## 12 Item 26 – District Court Appeals

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

## 13 Item 38 - negotiated motor vehicle personal injury claims

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- (a) The introduction of item 38 was explained in the *Legal Profession (Supreme Court) (Contentious Business) Determination 2012* and *Legal Profession (Supreme Court) (Contentious Business) Determination 2014*. Whilst those paragraphs are not reproduced here, they continue to apply and express the Legal Costs Committee's views on the operation of item 38.
- (b) The allowance set out in item 38 is intended to apply to claims for personal injury under the *Motor Vehicle (Third Party Insurance) Act 1943* which follow a standard procedural pathway.

## 14 Increase generally

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

- (e) The increase in the rates in this Determination are not uniform but have been calculated, generally, on the basis of a 5% increase, with a rounding so that each amount is divisible by 11 in accordance with the long-standing policy of the Committee.

## 15 Counsel fees

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

## 16 Maximum hourly and daily rates

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- (a) The hourly and daily rates set out in Table A are the maximum hourly and daily rates, inclusive of GST, which the Legal Costs Committee determines shall be used to calculate the dollar amounts in the scale of costs set out in Table B. Each item in the scale of costs specifies a dollar amount with reference to the practitioner.
- (b) The rates referred to in paragraph (a) were ascertained in the manner set out in clause 5 of the *Legal Profession (Supreme and District Courts) (Contentious Business) Report 2022*.
- (c) The daily rates set out in Table A are intended to cover all work done on a hearing or trial day, whether in or out of court, including preparation of written submissions and are not intended to be supplemented in any way by additional hourly charges given that the maximum number of hours allowed for the daily rate is 10 hours per day.
- (d) The items in Table B are not intended to be calculated on the basis of a minimum 6 minute unit.

**Table A**

Fee Earner	Maximum allowable hourly and daily rates
Senior Practitioner (permitted to practise on his or her own account for 5 years or more) (SP) <sup>1</sup>	
hourly rate	\$506
Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) <sup>1</sup>	
hourly rate	\$374
Restricted Practitioner (RP) <sup>1,2</sup>	
hourly rate	\$319
Clerk/Paralegal (C/PL) <sup>3</sup>	

	hourly rate	\$242
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel:		
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Counsel (C) <sup>4</sup>		
	hourly rate	\$473
	daily rate	\$4,730
Senior Counsel (SC) <sup>5</sup>		
	hourly rate	\$693
	daily rate	\$6,930

**Notes:**

- 1 The reference to Restricted Practitioner, Junior Practitioner or Senior Practitioner in this Determination includes all legal practitioners even if the services were rendered in another State or Territory. Where a local practitioner has held an interstate practising certificate, the length of unrestricted legal practice in that other jurisdiction is to be counted in assessing that practitioner's years of practice for the purposes of this Determination.
- 2 The reference to Restricted Practitioner in this Determination includes practitioners undertaking restricted legal practice for the purposes of obtaining the required experience set out in section 50 of the Act and does not include a reference to an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practise under supervision for disciplinary, medical or other reasons.
- 3 The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.
- 4 The reference to Counsel in this Determination means a practitioner acting as a barrister other than a Senior Counsel, including, for the purposes of items 10, 11, 17, 22, 25 and 26, a practitioner appearing in court who does not practise in accordance with Supreme Court Practice Direction 10.5.
- 5 The reference to Senior Counsel in this Determination means a person within the meaning of item 11 or item 12 of Regulation 5(2) of the *Legal Profession Regulations 2009* (WA).

## 17 Costs

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- (a) Subject to the provisions of the Act permitting a law practice to make a written agreement as to costs with a client, the costs of or in relation to a party to an action or other proceeding, inclusive of GST and counsel fees, but exclusive of other disbursements:
- (1) recoverable by one party from another party; or
  - (2) payable by a party to that party's own law practice,
- shall not exceed the amounts set out in Table B, except as otherwise provided in item 35 of Table B.
- (b) Allowances made under item 35 of Table B are only to be awarded as between a law practice and its client, or if costs are awarded on an indemnity basis and not between party and party, unless the Court otherwise orders.
- (c) Allowances made under item 37(c) of Table B are only to be awarded as between a law practice and its client, or if costs are awarded on an indemnity basis and not between party and party, unless the Court otherwise orders.

## 18 Fixed amounts

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

**Table B**  
**Supreme Court Scale of Costs 2022**

Item		Time	Fee earner	\$
1.	<b>Writ</b>			
	(a) Writ of summons, whether specially or generally endorsed, including instructions, but excluding Statement of Claim	1.5 hours	SP	759
	(b) For each additional defendant named in the Writ			77
	(c) Statement of Claim	12 hours	SP	6,072
	(d) For each additional defendant against whom a separate case is pleaded and relief claimed in the Statement of Claim	1 hour	SP	506
2.	Next friend or guardian <i>ad litem</i>	3 hours	RP	957
3.	<b>Defence</b>			
	(a) Memorandum of appearance			99
	(b) Defence	12 hours	SP	6,072
	(c) Counterclaim	12 hours	SP	6,072
4.	<b>Reply and other pleadings</b> Reply (if necessary), defence to counterclaim, or any other pleading	10 hours	SP	5,060
5.	(a) Third party notice	2 hours	SP	1,012
	(b) Pleadings in third party proceedings	6 hours	SP	3,036
6.	(a) Requesting particulars of a pleading (where and to the extent necessary)	3 hours	JP	1,122
	(b) Giving particulars of a pleading	5 hours	JP	1,870
7.	<b>Discovery</b>			
	(a) Notice requiring discovery			66
	(b) Giving discovery of documents		JP	

Item		Time	Fee earner	\$
				an amount which is reasonable in the circumstances
8.	<b>Inspection</b> Inspection and giving inspection of discovered documents whether by personal attendance or otherwise		JP	an amount which is reasonable in the circumstances
9.	<b>Interrogatories</b> (a) Delivery of interrogatories (b) Answers to interrogatories	5 hours 10 hours	SP SP	2,530 5,060
10.	<b>Chambers</b> (a) Proceedings in Chambers other than proceedings to which item 11 applies (b) Attending on a reserved judgment in Chambers (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders) (c) Consent Orders including conferral but excluding extraction	2 days preparation, 1 day hearing per hour 1.5 hours	SC C SP JP	20,790 14,190 506 561
11.	<b>Motions and originating process</b> (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	2 days preparation; 1 day hearing and preparation of case – 50 hours per hour per hour	SC C SP SC C SP SP	46,090 60,280 39,490 6,930 5,060

Item		Time	Fee earner	\$
	<p>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</p> <p><b>Note:</b> an allowance under item 11(a)(2) should only be made where in the opinion of the Court it was reasonable to brief two counsel.</p>			
12.	<p><b>Proceedings under the <i>Family Provision Act 1972</i></b></p> <p><b>Note:</b> refer to clause 9 of the Determination above</p> <p>(a) All work done by legal practitioners prior to mediation including:</p> <ul style="list-style-type: none"> <li>• originating summons and supporting affidavit, provided it complies with any relevant practice directions;</li> <li>• attendance at directions hearings;</li> <li>• compliance with Order 75 rule 3;</li> <li>• advising on merits of the application;</li> </ul> <p>(1) plaintiff</p> <p>(2) executor or personal representative</p> <p>(3) beneficiary defendants</p> <p>(b) Attendance at mediation and informal conferences where necessary and reasonably held prior to or after the commencement of proceedings;</p> <p>(1) plaintiff</p> <p>(2) executor or personal representative</p> <p>(3) beneficiary defendants</p> <p>(c) All work done following mediation, up to and including judgment, and which is not included in items 12(a) &amp; (b)</p> <p><b>PROVIDED THAT:</b></p> <p>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.</p>			<p>7,612</p> <p>2,310</p> <p>4,730</p> <p>4,202</p> <p>1,045</p> <p>4,202</p> <p>An amount calculated in accordance with item 11(a), modified so that the reference to 50 hours should read 40 hours</p>
13.	Proceedings in Court not otherwise provided for, including appeals from a Registrar	2 days preparation; ½ day hearing	C	11,825

Item		Time	Fee earner	\$
14.	<b>Listing Conference</b> Attending at a Listing Conference (convened pursuant to Order 29 Rule 8 of the Rules of the Supreme Court or Rule 43 of the District Court Rules) and all necessary preparation	per hour	SP	
15.	Entry of judgment without trial			319
16.	<b>Offers of compromise, notices, practice directions, etc</b> (a) Payment into or out of Court (b) Offer of compromise under O.24A (c) Acknowledgment of offer under O.24A (d) Acceptance of offer of compromise under O.24A (e) Notice of offer to consent to judgment (f) Other notices and certificates referred to or required by the Rules or procedures of the court (including practice directions)	2 hours 4 hours  4 hours 2 hours	JP SP  SP SP	748 2,024 77 2,024 1,012 88
17.	<b>Application for compromise under O. 70</b> (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 <b>Note:</b> 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	5 10  ½ day	JP JP C/SC C	1,870 3,740 An amount which is reasonable in the circumstances 2,365

Item		Time	Fee earner	\$
	(e) Attendance at hearing by instructing legal practitioner	per hour	JP	
18.	<p><b>Entry for trial/Entry for hearing</b></p> <p>(a) Advising on, and preparing, documents required to be filed by the Rules of the Supreme Court or the Rules of the District Court</p> <p>(b) Preparation of Schedules (if any) required by District Court Rules 45C and 45D</p> <p>(c) Advice on evidence</p> <p><b>Note:</b> In relation to particulars of damages under District Court Rule 45C, if the claim is one declared by the Court to be a catastrophic personal injury claim, the time reasonably spent by a legal practitioner, or by a clerk or paralegal of a legal practitioner in preparation of case for trial, shall not be limited to 12 hours but shall be an amount which is reasonable in the circumstances.</p> <p><b>Note:</b> In relation to particulars of damages under District Court Rule 45C, if the claim is for damages as a result of an allegation of historical child sexual abuse brought under the amendments to Part 2A of the <i>Civil Liability Act</i> which came into effect on 1 July 2018, the time reasonably spent by a legal practitioner, or by a clerk or paralegal of a legal practitioner in preparation of case for trial, shall not be limited to 12 hours but shall be an amount which is reasonable in the circumstances.</p>	<p>2 hours</p> <p>12 hours</p> <p>per hour</p>	<p>SP</p> <p>SP</p> <p>C/SC</p>	<p>1,012</p> <p>6,072</p>
19.	<p><b>Preparation of case</b></p> <p>Preparation of case for trial, includes work reasonably and necessarily undertaken prior to commencement of proceedings</p> <p><b>Note:</b> If the claim is one declared by the Court to be a catastrophic personal injury claim, the time reasonably spent by a legal practitioner, or by a clerk or paralegal of a legal practitioner in preparation of case for trial shall</p>	130 hours	SP	65,780

Item		Time	Fee earner	\$
	<p>not be limited to 130 hours but shall be an amount which is reasonable in the circumstances.</p> <p><b>Note:</b> If the claim is for damages as a result of an allegation of historical child sexual abuse brought under the amendments to Part 2A of the <i>Civil Liability Act</i> which came into effect on 1 July 2018, the time reasonably spent by a legal practitioner, or by a clerk or paralegal of a legal practitioner in preparation of case for trial, shall not be limited to 130 hours but shall be an amount which is reasonable in the circumstances.</p>			
20.	Examination of witness before trial, pursuant to an order			An allowance in accordance with item 22(c) or (d)
21.	Application for and striking jury	1 hour	JP	374
22.	<p><b>Trial</b></p> <p>(a) Fee on brief, i.e. first day of trial and preparation, including submissions</p> <p>(b) Fee on brief for Senior Counsel, i.e. first day of trial and preparation, including submissions</p> <p>(c) Counsel fee for the second and each successive day of hearing</p> <p>(d) Counsel fee for Senior Counsel for second and each successive day of hearing</p> <p>(e) Instructing legal practitioner attending trial</p> <p>(f) Clerk or Restricted Practitioner attending trial</p> <p>(g) Preparation of written closing submissions:</p> <p>(1) when required for trial; and</p> <p>(2) for provision to the Court and the opposing party prior to any oral addresses; and</p>	<p>3.5 days preparation; 1st day of trial</p> <p>3.5 days preparation; 1st day of trial</p> <p></p> <p>per hour</p> <p>per hour</p> <p></p>	<p>C</p> <p>SC</p> <p>C</p> <p>SC</p> <p>SP</p> <p>C/PL RP</p> <p>SC/C</p>	<p>21,285</p> <p>31,185</p> <p>4,730</p> <p>6,930</p> <p></p> <p></p> <p>An amount which is reasonable in the circumstances</p>



Item		Time	Fee earner	\$
	preparation of case for trial, shall not be limited to 3.5 days but shall be an amount which is reasonable in the circumstances.			
23.	<b>Re-trial or Re-hearing</b> (a) Preparation of case for re-trial or re-hearing (b) Re-trial or re-hearing			An amount which is reasonable in the circumstances
24.	(a) Special case, case stated (otherwise than by way of appeal) or trial of an issue (b) For the second and each successive day of the trial or hearing			An amount which is reasonable in the circumstances
25.	<b>Appeals to the Court of Appeal and Single Judge appeals (including appeals by way of case stated) and applications for leave to appeal</b> (a) Appeal Notice, Service Certificate, Notice of Respondent's Intention (b) Appellant's Case, Respondent's Answer including relevant forms and all annexures (c) Appellant's Reply to Notice of Contention, when required (d) Settling appeal book indexes, including drafting and settling appeal book index (e) An application in an appeal, an interlocutory or directions hearing before a single Judge or Registrar (f) Preparation of appeal for hearing (g) Counsel fee on hearing, including preparation (h) Senior Counsel fee on hearing, including preparation	  40 hours  10 hours  8 hours  10 hours  10 hours  2 days preparation; 1 day hearing  2 days preparation; 1 day hearing	  SC  SC  SP  C  SP  C  SC	  506 27,720 6,930 4,048 4,730 5,060 14,190 20,790

Item		Time	Fee earner	\$
	(i) Counsel fee for the second and each successive day of hearing		C	4,730
	(j) Senior Counsel fee for the second and each successive day of hearing		SC	6,930
	(k) Instructing legal practitioner attending appeal	per hour	SP/JP	
	(l) Attending on reserved decision, including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders	per hour	SP	
26.	<b>District Court Appeals</b>			
	(a) Notice of Appeal or Notice of Contention pursuant to Rule 15 of the District Court Rules 2005	1 hour	SP	506
	(b) Notice of Appeal or Notice of Contention in other appeals	5 hours	SP	2,530
	(c) Interlocutory hearings – as required, including preparation	per hour	C	
	(d) Preparation of appeal for hearing, including preparation of appeal documents and submissions	10 hours	SP	5,060
	(e) Counsel fee on hearing, including preparation	2 days preparation/1 day hearing	C SC	14,190 20,790
	(f) Counsel fee for second and each successive day of hearing		C SC	4,730 6,930
	(g) Attendance at appeal by instructing legal practitioner	per hour	SP	
	(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			77

Item		Time	Fee earner	\$
	Court, including the practice directions			
27.	<p><b>Pretrial, mediation, conferrals, or other conferences</b></p> <p>(a) Where required by order of the Court, by the <i>Rules of the Supreme Court</i> or by practice direction</p> <p>(b) including informal conferences where reasonably held before or after commencement of proceedings</p> <p>(c) attendances by counsel and instructing legal practitioners at the conferrals and conferences set out in paragraphs (a) and (b) of this item</p> <p>(d) preparation reasonably undertaken for the conferrals and conferences described in paragraphs (a), (b) and (c) of this item</p> <p>(e) conferences between counsel and own instructing legal practitioner where reasonably necessary</p>	<p>per hour</p> <p>per hour</p> <p>per hour</p> <p>per hour</p> <p>per hour</p>	<p>SP/SC/C</p> <p>SP/SC/C</p> <p>SP/SC/C</p> <p>SP/SC/C</p> <p>SP/SC/C</p>	
28.	<p><b>Orders</b></p> <p>Settling and extracting judgment or order</p> <p>(a) With appointment</p> <p>(b) Without appointment</p>	<p>2 hours</p>	<p>RP</p>	<p>638</p> <p>319</p>
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			374



Item		Time	Fee earner	\$
36.	<p><b>Disbursements</b></p> <p>In addition to the fees and charges allowed under this Determination:</p> <p>(a) As between a law practice and client, a law practice may charge and be allowed disbursements necessarily or reasonably incurred; and</p> <p>(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.</p>			
37.	<p><b>Travel</b></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><b>Note:</b> 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><b>Claims under the <i>Motor Vehicle (Third Party Insurance) Act 1943 (WA)</i> including</b></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>			17,611

Item		Time	Fee earner	\$
	If Counsel is engaged for and attends pre-trial conference, an additional		C	4,730
39.	Settlement of a claim pursuant to section 92(f) <i>Workers Compensation and Injury Management Act</i>	10 hours	SP	5,060

Made by the Legal Costs Committee on 8 June 2022.