

LEGAL PROFESSION ACT 2008**LEGAL PROFESSION (SUPREME COURT AND DISTRICT COURT) (CRIMINAL) REPORT 2014**

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

PART 1—PRELIMINARY**1. Citation**

- (1) This Report may be cited as the *Legal Profession (Supreme Court and District Court) (Criminal) Report 2014*.
- (2) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (Supreme Court) (Criminal) 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**2. Notice under section 278 of the Act**

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

- (1) Before making the *Legal Profession (Supreme Court and District Court) (Criminal) Determination 2014*, 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) and The Western Australian Bar Association (Inc);
 - (b) reviewed the impact of increases 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**3. Hourly rates and scale of costs established**

- (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 Court and District Court) (Criminal) 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) taking into account the incidental administrative implications of the calculation of the Goods and Services Tax; and
 - (4) to be consistent with the hourly and daily rates referred to in the *Legal Profession (Supreme Court) (Contentious Business) Determination 2014* 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 Court) (Criminal) 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 (Supreme Court and District Court) (Criminal) Determination 2014*.

- (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.

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

Schedule

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (SUPREME COURT AND DISTRICT COURT) (CRIMINAL)
DETERMINATION 2014

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

1. Citation

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

2. Commencement

This Determination comes into operation on 1 July 2014.

3. Application

This Determination applies to the remuneration of law practices, clerks and paralegals in respect of advice given by law practices in or for the purposes of criminal proceedings or potential criminal proceedings which are ultimately dealt with in the Supreme Court of Western Australia and 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. Hourly rates

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.

Table A

Fee Earner	Maximum allowable rates
Senior Practitioner (admitted for 5 years or more) (SP) ^a —hourly rate	\$473
Junior Practitioner (admitted for less than 5 years) (JP) ^a —hourly rate	\$330
Clerk/Paralegal (C/PL)—hourly rate	\$231

^a Where a local legal practitioner has held an interstate practising 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.

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

Counsel (C)*	—hourly rate	\$385
	—daily rate	\$3,850
Senior Counsel (SC)†	—hourly rate	\$671
	—daily rate	\$6,710

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

† 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. 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) In respect of any appeals to the Supreme Court from any decision of a lower Court or single Judge exercising the relevant Court's criminal jurisdiction, item 23 of the *Legal Profession (Supreme Court) (Contentious Business) Determination 2014* will apply to law practice/client costs on such appeals.

Made by the Legal Costs Committee on 11 June 2014.