

LEGAL PROFESSION ACT 2008

LEGAL PRACTITIONERS (STATE ADMINISTRATIVE TRIBUNAL) REPORT 2008

Made by the Legal Costs Committee under section 279 of the Act.

PART 1 – PRELIMINARY

Citation

1. (1) This Report may be cited as the *Legal Practitioners (State Administrative Tribunal) Report 2008*.
- (2) The Determination set out in the Schedule to this report is referred to in this report as the *Legal Practitioners (State Administrative Tribunal) Determination 2008*.

PART 2 – BACKGROUND

Background

2. Prior to commencement of the *Legal Profession Act 2008* (Act), the Legal Costs Committee had no jurisdiction to determine legal costs in connection with matters undertaken or heard in the State Administrative Tribunal (Tribunal).

The Legal Costs Committee has initiated its inquiries and sought submissions in connection with this Report and the Determination in advance of the proclamation of the relevant provisions of the Act in order to ensure this Report and the Determination is published in a timely manner.

PART 3 - NOTICE AND INQUIRIES

Notice under section 278 of the Act

3. 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

4. (a) Before making the *Legal Practitioners (State Administrative Tribunal) Determination 2008* the Legal Costs Committee:
 - (1) reviewed all submissions received as a result of the notice given under section 278 of the Act;
 - (2) consulted with the Tribunal;
 - (3) consulted with The Law Society of Western Australia (Inc) and the Western Australian Bar Association (Inc); and
 - (4) had regard to relevant provisions of the *State Administrative Tribunal Act 2004*.

(b) As part of its inquiries, the Legal Costs Committee met with His Honour, Justice Michael Barker, the President of the State Administrative Tribunal.

The Legal Costs Committee acknowledges that the overriding philosophy of the Tribunal, as expressed through its enabling legislation, is that parties appearing before the Tribunal are to bear their own costs of proceedings.

The Legal Costs Committee 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 is appropriate to establish a scale of costs on a legal practitioner/client basis.

PART 4 – REPORT OF COMMITTEE’S CONCLUSIONS

Hourly rates and scale of costs established

5. 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 4, 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 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) the recommendations of the Legal Costs Committee are not intended to override the entitlement of a practitioner to make a written agreement as to costs with a client under the Act.

TED SHARP, Chairman

ANGELA GAFFNEY, Member

CLARE THOMPSON, Member

MARCUS COCKER, Member

JANICE DUDLEY, Member

Schedule
LEGAL PROFESSION ACT 2008
LEGAL PRACTITIONERS (STATE ADMINISTRATIVE TRIBUNAL) DETERMINATION
2008

Made by the Legal Costs Committee under section 275 of the Act.

Citation

1. This Determination may be cited as the Legal Practitioners (State Administrative Tribunal) Determination 2008.

Commencement

2. This Determination comes into operation on the date of proclamation of the relevant sections of Part 10 of the Act.

Application

3. 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.

No minimum charge

4. In no respect is the Scale to be seen as providing a minimum charge for any work.

Hourly rates

5. The hourly and daily rates set out in the Table to this clause 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 State Administrative Tribunal under the *State Administrative Tribunal Act 2004*.

Table

Fee Earner	Maximum allowable rates
Senior Practitioner (admitted for 5 years or more) (SP) ^a – hourly rate	\$330
Junior Practitioner (admitted for less than 5 years) (JP) ^a – hourly rate	\$231
Clerk/Paralegal (C/PL) – hourly rate	\$110
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel	
Counsel (C)* – hourly rate	\$253
daily rate	\$2,530
Senior Counsel (SC) ^β – hourly rate	\$429
daily rate	\$4,290

^a The reference to Junior Practitioner or to Senior Practitioner in this Determination includes all Australian legal practitioners even if the services were rendered in another State or Territory.

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.

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

Scale of costs

6. 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, shall not exceed an amount calculated at the hourly rates in clause

Made by the Legal Costs Committee on 1 December 2008.