

LEGAL PROFESSION ACT 2008
LEGAL PROFESSION (DISTRICT COURT APPEALS) (CONTENTIOUS BUSINESS)
REPORT 2018

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

PART 1 - PRELIMINARY

1. Citation

- (a) This Report may be cited as the *Legal Profession (District Court Appeals) (Contentious Business) Report 2018*.
- (b) 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 2018*.

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.

3. Inquiries and submissions under section 277 of the Act

Before making the *Legal Profession (District Court Appeals) (Contentious Business) Determination 2018*, the Legal Costs Committee:

- (a) reviewed all submissions received as a result of the notice given under section 278 of the Act;
- (b) 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

- (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 2018*.
- (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 2016*¹ as the basis for the recommended scale of costs. Those rates are set out in Table A of the *Legal Profession (District Court Appeals) (Contentious Business) Determination 2018*.

- (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 2018* 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.

CLARE THOMPSON, Chair

ANGELA GAFFNEY, Member

MARCUS COCKER, Member

JANICE DUDLEY, Member

MATTHEW CURWOOD, Member

BRENDAN ASHDOWN, Member

¹ Published in Gazette 24 June 2016

Schedule

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (DISTRICT COURT APPEALS) (CONTENTIOUS BUSINESS) DETERMINATION 2018

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

1. Citation

This Determination may be cited as the *Legal Profession (District Court Appeals) (Contentious Business) Determination 2018*.

2. Commencement

This Determination comes into operation on 1 July 2018.

3. Application

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 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. Restricted Practitioner category

The amendments brought in by the *Legal Profession (District Court Appeals) (Contentious Business) Determination 2016* remain in effect. Clause 5(e) of that Determination ceases to have effect with the introduction of this Determination.

5. 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 2018*.
- (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) ^o	hourly rate \$495
Junior Practitioner (permitted to practise on his or her	

own account for less than 5 years) (JP) [°]	hourly rate	\$352
Restricted Practitioner (RP) ^{°, #}	hourly rate	\$297
Clerk/Paralegal (C/PL) ^{##}	hourly rate	\$231
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel:		
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Counsel (C) [*]	hourly rate	\$418
	daily rate	\$4,180
Senior Counsel (SC) ^{**}	hourly rate	\$682
	daily rate	\$6,820

[°] 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.

[#] 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.

^{##} The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.

^{*} The reference to Counsel in this Determination means a practitioner acting as barrister other than a Senior Counsel and includes a practitioner appearing in court who does not practise in accordance with Supreme Court Practice Direction 10.5.

^{**} 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)*.

6. Counsel fees

- (a) Appearances allowed for in item 2 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) The increase in Counsel rates, and no increase in Senior Counsel rates in Table A is designed to narrow the gap between those levels of seniority of counsel and 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.

7. Costs

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 2018

Item		Time	Fee Earner	\$
1.	Notice of appeal or Notice of Contention			
	(a) Appeal notice (pursuant to Rule 15 of District Court Rules 2005)	1 hour	SP	495
	(b) Other appeals	5 hours	SP	2,475
2.	Interlocutory hearings – as required (including preparation)	per hour	C	
3.	Preparation of appeal for hearing (including preparation of appeal documents and submissions)	10 hours	SP	4,950
4.	Counsel fee on hearing (including preparation)	2 days preparation/ 1 day hearing	C	12,540
			SC	20,460
5.	Counsel fee for second and each successive day of hearing		C	4,180
			SC	6,820
6.	Attendance at appeal by instructing legal practitioner	per hour	SP	
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	
8.	Settling and extracting order disposing of appeal			
	(a) With appointment			627

Item		Time	Fee Earner	\$
	(b) Without appointment			242
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	An amount which is reasonable in the circumstances
11.	Copies where reasonably necessary, including of documents for which allowance is otherwise made in this Determination	per page		0.165
12.	<p>Disbursements</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>			
13	<p>Travel</p> <p>(a) As between party and party, minor travel as defined in the <i>Legal Profession (District Court Appeals) (Contentious Business) Determination 2016</i>, is to be allowed as part of the costs awarded for an attendance at chambers or court, 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>Note: Allowances under item 13(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>			

Made by the Legal Costs Committee on 13 June 2018.