

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (MAGISTRATES COURT) (CIVIL) 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 (Magistrates Court) (Civil) Report 2014*.
- (2) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (Magistrates Court) (Civil) 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 (Magistrates Court) (Civil) 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;
 - (b) conferred with the Hon. Chief Justice of Western Australia;
 - (c) consulted with the Magistrates Court and the Chief Magistrate;
 - (d) consulted with The Law Society of Western Australia Inc. and the Western Australian Bar Association Inc.;
 - (e) reviewed the *Legal Practitioners (Magistrates Court) (Civil) Determination 2012¹*; and
 - (f) had regard to relevant provisions of the *Magistrates Court Act 2004* and the *Magistrates Court (Civil Proceedings) Act 2004*.
- (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.

¹ Published in Gazette 29 October 2012.

(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

Hourly rates and scale of costs continued

4. (1) The information gained as a result of the inquiries and submissions described in clause 3 satisfied the Legal Costs Committee that having regard to the provisions of the *Magistrates Court Act 2004* and the *Magistrates Court (Civil Proceedings) Act 2004*, it remains appropriate to determine hourly and daily rates and a scale of costs for legal work applicable to civil proceedings in the Magistrates Court.

(2) It is the recommendation of the Legal Costs Committee that:

- (a) as a result of the inquiries and submissions described in clause 3;
- (b) having considered the impact of relevant Australian Bureau of Statistics data;
- (c) having considered submissions and data from The Law Society of Western Australia; and
- (d) 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 4 (1) be varied from the hourly and daily rates used in the *Legal Practitioners (Magistrates Court) (Civil) Determination 2012* as the basis for the recommended scale of costs which have generally been 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 (Magistrates Court) (Civil) Determination 2014*.

(3) Having regard to the information gained as a result of the inquiries and submissions described in clause 3, the Legal Costs Committee has concluded it remains appropriate to:

- (a) order the scale to reflect the procedures utilised in the Magistrates Court and the flow of litigation;
- (b) maintain consistency where practicable with the format of the *Legal Profession (Supreme Court)(Contentious Business) Determination 2014*; and
- (c) provide for hourly and daily rates applicable to Counsel and Senior Counsel.

(4) It is the recommendation of the Legal Costs Committee as a result of the inquiries and submissions described in clause 3, the scale of costs be varied in the manner set out in Table B of the *Legal Profession (Magistrates Court) (Civil) Determination 2014*.

(5) The Legal Costs Committee intends, because the scale sets maximum hourly and daily rates and amounts and allowances that must not be exceeded, that the hourly and daily rates and scale of costs will apply in circumstances requiring the determination of allowable and other costs in the minor cases procedure of the Magistrates Court.

(6) The Legal Costs Committee intends that the Determination shall apply to all civil proceedings dealt with in the Magistrates Court, including civil jurisdiction conferred on the Court by a written law, such as but not limited to the *Dividing Fences Act 1961* and the *Restraining Orders Act 1997*.

(7) 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 similar legislation.

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

Schedule

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (MAGISTRATES COURT) (CIVIL) DETERMINATION 2014

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

Citation

1. (1) This Determination may be cited as the *Legal Profession (Magistrates Court) (Civil) Determination 2014*.

(2) 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. (1) This Determination applies to the remuneration of practitioners in respect of business carried out by law practices in or for the purposes of civil proceedings before the Magistrates Court.

(2) This Determination does not apply to the remuneration of law practices based on costs incurred in respect of business carried out before the commencement of this Determination.

(3) Nothing in this Determination applies to costs in proceedings transferred to the Magistrates Court pursuant to the *Courts Legislation Amendment and Repeal Act 2004* insofar as those costs relate to work undertaken prior to the date of transfer.

No minimum charge

4. In no respect is this Determination to be seen as providing a minimum charge for any work other than the items referred to in clause 5. For example, item 2(b) provides for \$3,168 for the work involved. The figure of \$3,168 is a maximum, but on taxation less than \$3,168 might be allowed. Where there is a set cost or time or level of fee earner indicated, the purpose is to indicate to the Assessing Officer what reasonably may be expected in most cases.

Fixed items

5. Some items in this Determination have been fixed without any indication of how these items have been calculated. These items are 1, 2(a), 4(a), 12, 13(c), 18(a)(ii), 18(b), 19(a), 21 and 22(a). These have been fixed because, based on past practices, the Court staff require a fixed figure when completing the form of Entry of Judgment by Default and the like.

Time estimates

6. The reason for stating the number of hours estimated to be necessary to perform each of the items of work described in this Determination is to provide guidance to the Court when dealing with the question of costs so that the Court has some idea how much time is reasonably necessary to perform work in most cases. For example, in item 16(a), which relates to preparation for trial or getting up case for trial, the time indicated is that which can be expected in most cases. Some items reflect a number of hours that have been estimated so as to include work done with respect to the process of obtaining and considering evidence, interrogatories, documents, disclosures and the like, for example items 2(b), 4(b), 5, 10 and 20. The hours referred to in this Determination will guide the Assessing Officer about the amount which should be allowed in a particular case.

Settled proceedings

7. It is intended that item 14 should apply even if there is no trial. Thus, if the case is settled before trial and the law practice can demonstrate that preparation for trial was carried out, costs may be recovered for that work and allowed on an assessment of costs.

Maximum hourly and daily rates

8. (1) 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 set out in Table B. Except for certain items, each item in this Determination specifies a dollar amount with reference to the fee earner.

(2) The rates referred to in paragraph (a) were ascertained in the manner set out in clause 4 of the *Legal Profession (Magistrates Court) (Civil) Report 2014*.

(3) 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.

(4) 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 rates
Senior Practitioner (admitted for 5 years or more) (SP) ^α		hourly rate	\$396
Junior Practitioner (admitted for less than 5 years) (JP) ^α		hourly rate	\$297
Clerk/Paralegal (CPL)		hourly rate	\$143
Counsel fees charged as a disbursement to law practices or charged by in-house Counsel:			
Counsel (C)*		hourly rate	\$319
		daily rate	\$3,190
Senior Counsel (SC)†		hourly rate	\$528
		daily rate	\$5,280

^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 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).

Costs

9. (1) 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 (except as otherwise provided in item 26 of Table B).

(2) Allowances made under item 26 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.

Table B

MAGISTRATES COURT CIVIL SCALE OF COSTS 2014

Item		Time	Fee Earner	Maximum Amount \$
1.	Letter of demand issued prior to proceedings			77
2.	Claim: (a) Claim, including instructions, but excluding Statement of Claim For each additional defendant (b) Statement of Claim (including preparation and lodgement of a particulars of claim, where necessary or by order, and statutory declaration and list of documents)	8 hours	SP	396 55 3,168
3.	Appointment of litigation guardian	2 hours	JP	594
4.	Response: (a) Lodgement of a response to a claim (b) Statement of defence (including preparation and lodgement of a statutory declaration) (c) Counterclaim, including instructions and statement of claim in the counterclaim, statutory declaration in support of counterclaim (where required), and all other documents necessary	8 hours 8 hours	SP SP	198 3,168 3,168
5.	Third party claim, including instructions and list of documents	8 hours	SP	3,168
6.	Disclosure: Giving additional disclosure where ordered by the Court	3 hours	JP	891
7.	Inspection: Inspection and giving inspection whether by personal attendance or otherwise	per hour	JP	297
8.	Interrogatories: (a) Delivery of interrogatories (b) Answers to interrogatories including affidavit	5 hours 5 hours	SP SP	1,980 1,980

Item		Time	Fee Earner	Maximum Amount \$
9.	<p>Interpleaders: Interpleader proceedings:</p> <p>(a) where uncontested</p> <p>(b) where contested</p>	1 hour	JP	297
				An allowance in accordance with item 10
10.	<p>Application to the Court:</p> <p>Proceedings and/or responses to applications (including all documentation and preparation for hearing)</p> <p><i>Note: In relation to the above, if the proceedings do not commence and settle or adjourn on the day of the hearing then the Assessing Officer shall allow such amount as is reasonable in the circumstances</i></p>	1 day preparation ½ day hearing	C	4,785
11.	Applications in court, including applications under Part 21 of the <i>Magistrates Court (Civil Proceedings) Rules 2005</i> , not otherwise provided for	1 hour	SP	396
12.	Application for entry of judgment by default (<i>without trial</i>)			143
13.	<p>Offers of settlement, notices, practice directions, applications, declarations, memoranda, affidavits:</p> <p>(a) Offers of settlement</p> <p>(b) Acceptance of offer of settlement</p> <p>(c) Other notices and certificates referred to or required by the Act, Rules or procedures of the Court (including practice directions) not otherwise specified in this Scale</p> <p>(d) Preparation, lodgement and service of affidavits and statutory declarations not otherwise provided for</p> <p>(e) Drawing and serving of interlocutory orders (where ordered or required)</p> <p>(f) Preparation, lodgement and service of a listing conference memorandum</p> <p>(g) Applications in court not otherwise provided for</p>	2 hours	SP	792
		2 hours	SP	792
				143
		per hour	SP	396
		2 hours	JP	594
		6 hours	SP	2,376
		1 hour	JP	297

Item		Time	Fee Earner	Maximum Amount \$
14.	Preparation of case: Preparation for trial (includes work reasonably and necessarily undertaken prior to commencement of proceedings)	50 hours	SP	19,800
15.	Examination of witness before trial by a legal practitioner, pursuant to an order			An allowance in accordance with item 16(e) or (f)
16.	<p>Trial:</p> <p>(a) Fee on brief for Counsel; i.e. half day trial and preparation</p> <p>(b) Allowance for second half day of trial</p> <p>(c) Fee on brief for Senior Counsel i.e. half day trial and preparation (where two or more Counsel are certified for)</p> <p>(d) Allowance for second half day of trial for Senior Counsel</p> <p>(e) Counsel fee for the second and each successive day of hearing</p> <p>(f) Counsel fee for Senior Counsel for second and each successive day of hearing</p> <p>(g) Instructing legal practitioner attending trial</p> <p>(h) Clerk attending trial</p> <p><i>Note: Subject to paragraphs (a) - (h) if:</i> <i>(1) The trial lasts less than 2 hours; or</i> <i>(2) The trial does not commence and settles or adjourns on the day of the trial, then the Assessing Officer shall allow such amount as is reasonable in the circumstances</i></p> <p>(i) Attending on reserved judgment (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders)</p>	<p>2 days preparation 1/2 day of trial</p> <p>2 days preparation 1/2 day of trial</p> <p>per hour</p> <p>per hour</p> <p>per hour</p>	<p>C</p> <p>C</p> <p>SC</p> <p>SC</p> <p>C</p> <p>SC</p> <p>JP</p> <p>CPL</p> <p>SP</p>	<p>7,975</p> <p>1,573</p> <p>13,200</p> <p>2,640</p> <p>3,190</p> <p>5,280</p> <p>297</p> <p>143</p> <p>396</p>

Item		Time	Fee Earner	Maximum Amount \$
17.	<p>Pre-trial, mediation, conferrals, or other conferences</p> <p>(a) where required by the applicable <i>Rules</i> of the Court, practice direction, order of the Court or legislation;</p> <p>(b) including informal conferences where reasonably held after commencement of proceedings; and</p> <p>(c) preparation reasonably undertaken for the conferences described in paragraphs (a) and (b) of this item.</p>	per hour	SP	396
18.	<p>Judgments and orders:</p> <p>(a) Settling and extracting judgment or order</p> <p>(i) with appointment</p> <p>(ii) without appointment</p> <p>(b) Request for certified copy of judgment or order</p>	1 hour	JP	297 198 143
19.	<p>Enforcement:</p> <p>(a) Execution</p> <p>(b) If against land, an additional</p>	3 hours	JP	198 891
20.	<p>Proceedings in court pursuant to <i>Civil Judgments Enforcement Act 2004</i> for the following:</p> <p>(a) Means Inquiry</p> <p>(b) Default Inquiry</p> <p>(c) Suspension of enforcement order application</p> <p>(d) Application to cancel or amend an order;</p> <p>For each appearance by legal practitioner</p> <p>For each appearance by clerk</p>	8 hours 3 hours	SP CPL	3,168 429
21.	<p>Registration of judgments: Registration of judgments including those under <i>Service and Execution of Process Act 1992 (Cwlth)</i></p>			198
22.	<p>Assessment of costs including drawing bill:</p> <p>(a) Lodgement of bill of costs</p> <p>(b) Drawing bill of costs, copies and service</p> <p>(c) Making an objection to a bill</p> <p>(d) Assessment of costs (including the time spent in preparing for the assessment)</p>		SP	55 Such amounts as are reasonable in the circumstances

Item		Time	Fee Earner	Maximum Amount \$
23.	Appeals: An appeal to a Magistrate from a decision of a Registrar			Allowances calculated in accordance with item 10
24.	Copies: Copies where necessary, including of documents for which allowance is otherwise made in this Determination	per page		0.165
25.	Accounts and inquiries: Attending on taking accounts, inquiries		SP	Such amounts as are reasonable in the circumstances
26.	Other work: (a) Time reasonably spent by a legal practitioner on work requiring the skill of a legal practitioner (of the standing indicated) but not covered by any other item or (b) Time reasonably spent by a legal practitioner, or by a clerk or paralegal of a legal practitioner, on work not covered by any other item or by paragraph (a)	per hour	SP/JP/SC/C/CPL	
27.	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			
28.	Allowances for witnesses: The amount of any costs to be paid in respect of work done by a legal practitioner in conducting any proceedings in a case may include a reasonable allowance for: (a) witnesses called because of their professional, scientific or other special skill or knowledge; and (b) witnesses called other than those covered in paragraph (a). In fixing an allowance for witnesses under paragraph (b), including the Claimant and Defendant, the Assessing Officer may have regard to the amount of salary, wages, or income (if any) actually lost by the witness.			

Made by the Legal Costs Committee on 11 June 2014.