

LEGAL PROFESSION UNIFORM LAW APPLICATION ACT 2022
LEGAL PROFESSION (SUPREME AND DISTRICT COURTS) (CONTENTIOUS BUSINESS)
REPORT 2024

Made by the Legal Costs Committee under Division 1 of Part 6 of the *Legal Profession Uniform Law Application Act 2022 (Act)*

PART 1 – PRELIMINARY

1 Citation

- (a) This Report may be cited as the *Legal Profession (Supreme and District Courts) (Contentious Business) Report 2024*.
- (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 2024*.

PART 2 – NOTICE AND INQUIRIES

2 Notice under section 139 of the Act

The Legal Costs Committee has complied with the notice provisions of section 139 of the Act.

3 Inquiries and submissions under section 139 of the Act

Before making the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2024*, the Legal Costs Committee:

- (a) reviewed submissions received as a result of the notice given under section 139 of the Act including those made by The Law Society of Western Australia (Inc) and private practitioners;
- (b) considered the comments and suggestions made at a seminar with members of the legal profession held on 5 February 2024;
- (c) considered the impact of changes in relevant Australian Bureau of Statistics data for the period, specifically consumer price index and wage price index data for the period since 1 July 2022;
- (d) considered all responses and comments made by legal practitioners in response to a survey prepared by the Legal Costs Committee for the 2024 review of Contentious Business Determinations;
- (e) met with Registrars of the Supreme Court of Western Australia;
- (f) considered samples of taxed bills of costs from the District and Supreme Courts;
- (g) the Committee also wishes to note that since the publication of the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2022*:
 - i) Chair of the Committee, Ms Clare Thompson SC resigned with effect from 30 June 2023 and was replaced as Chair by Matthew Curwood SC (as his Honour then was);
 - ii) Mrs Carolyn Meighan was appointed as a member of the Committee on 12 December 2023 to fill the vacant member position;
 - iii) Chair of the Committee, his Honour Judge Matthew Curwood SC resigned with effect from 31 May 2024; and

- iv) Since 1 June 2024, Mr Craig McKie has acted as Chair of the Committee.

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 most of the rates used in the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2024*.
- (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 2022*¹. Those rates are set out in Table A of the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2024*.
- (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 2024*.
- (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.

CRAIG MCKIE Acting Chair

JANICE DUDLEY Member

ANNETTE MORGAN Member

GREG RICKIE Member

CAROLYN MEIGHAN Member

¹ Published in Gazette 24 June 2022.

Schedule

LEGAL PROFESSION UNIFORM LAW APPLICATION ACT 2022

LEGAL PROFESSION (SUPREME AND DISTRICT COURTS) (CONTENTIOUS BUSINESS) DETERMINATION 2024

Made by the Legal Costs Committee under section 133 of the *Legal Profession Uniform Law Application Act 2022 (Act)*

1 Citation

This Determination may be cited as the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2024*.

2 Commencement

This Determination comes into operation on 1 July 2024.

3 Application

- (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*, the Act 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 2024.

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

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

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*. The District Court decision in *McGlenn as administrator for Jeffrey Craig McGlenn v Joondalup Hospital Pty Ltd* [No 2] [2014] WADC 3 was also considered in the *Legal Profession (Supreme Court) (Contentious Business) Determination 2016*. The explanations given in those prior Determinations continues to be of relevance but are not repeated in this Determination.

6 Historical child sexual abuse claims

The maximum limits in items 18, 19 and 22 were removed as from 1 July 2022 in cases 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. The rationale for the removal of those item limits was explained in the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2022*.

7 Item 12 - *Family Provision Act* claims

- (a) Item 12 was introduced for claims brought under the *Family Provision Act 1972 (WA)* 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 up to mediation. As a result of its inquiries in the making the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2024*, the Committee holds concerns as to the varied amounts being charged by law practices on a solicitor and own client basis up to and including mediation in proceedings under the *Family Provision Act*. The Committee will continue to monitor data and submissions concerning the costs of proceedings under the *Family Provision Act*.
- (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 Committee resolved to vary item 12 (b) of this Determination for attendances at mediation to reflect hourly rates for senior counsel, counsel and senior practitioners to take into account the significant variation in cases (factually, legally and as to value of estates) which comprise the cases brought under the *Family Provision Act* and a general desirability to have independent counsel involved in the conduct of such cases at mediation.
- (e) Item 12(c) applies to proceedings which do not conclude at mediation and has been amended to include allowances under items 11(b) – 11(e) of this Determination.
- (f) 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.
- (g) 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.
- (h) 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.
- (i) Subject to 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).
- (j) Nothing in item 12 is intended to derogate from the trial Judge's discretion as to the awarding of costs.

8 Item 17 – Compromises under RSC Order 70

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

9 Item 26 – District Court Appeals and Single Judge Appeals in the Supreme Court

Clause 12 of the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2022* continues to apply to this Determination. Item 26 has also been amended to provide that single judge appeals in the Supreme Court should be regulated by item 26.

10 Item 38 - negotiated motor vehicle personal injury claims and item 39 Settlement of Claims under the *Workers Compensation and Injury Management Act*

- (a) The Committee resolved to remove the allowances under item 38 and item 39 of the *Legal Practitioners (Supreme and District Courts) (Contentious Business) Determination 2022*.
- (b) Item 38 was intended to apply to claims for personal injury under the *Motor Vehicle (Third Party Insurance) Act 1943* which followed a standard procedural pathway and resulted in a settlement at pre-trial conference. As a result of its inquiries, the Committee reached a view that there was no utility in retaining the item because it was not being utilised and parties deemed it more appropriate to claim costs by reference to all applicable scale items rather than a composite item.
- (c) The allowance set out in item 39 was intended to provide for a specific item to cover work performed effecting a settlement under section 92(f) *Workers Compensation and Injury Management Act 1981*. At the time of introduction of the item (which was introduced as item 37 of the *Legal Profession (District Court Appeals) (Contentious Business) Determination 2018*) the Committee expressed a view that this work was already claimable under other items in the Determination, but the introduction of a special item was intended to remove any doubt in that regard. Since the introduction of item 39 the Committee has noted parties seeking an allowance under item 39 together with allowances under other items in the Determination. In these circumstances the Committee has resolved to remove item 39 from the Determination.

11 Increase generally

- (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 a period of significant inflation since 2022 and the fact that rate rises were modest in the decade of 2012 to 2022, 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 costs of subscriptions for legal resources, investment in technology and training for the purpose of cyber security, to enable legal practitioners and staff to work remotely, and investments made by law practices in staff well-being initiatives.
- (d) The increase in the rates in this Determination are not uniform but have been calculated, generally, on the basis of a 12% increase since 1 July 2022, with a rounding so that each amount is divisible by 11 in accordance with the long-standing policy of the Committee.

12 Counsel fees

- (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) 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.

13 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. 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 2024*.
- (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) ¹ | |
| hourly rate | \$572 |
| Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) ¹ | |
| hourly rate | \$418 |
| Restricted Practitioner (RP) ^{1, 2} | |
| hourly rate | \$352 |
| Clerk/Paralegal (C/PL) ³ | |
| hourly rate | \$264 |
| Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel: | |
| Counsel (C) ⁴ | |
| hourly rate | \$528 |
| daily rate | \$5,280 |

Senior Counsel (SC)⁵

| | |
|-------------|---------|
| hourly rate | \$781 |
| daily rate | \$7,810 |

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 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 5 or item 6 of Rule 9 of the Legal Profession Uniform General Rules 2015 (WA).

14 Costs

- (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.

15 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) and 31(a) in Table B should be fixed amounts.

Table B
Supreme Court Scale of Costs 2024

| Item | | Time | Fee earner | \$ |
|------|--|-------------------------------------|--------------------|--|
| 1. | Writ (a) Writ of summons, whether specially or generally endorsed, including instructions, but excluding Statement of Claim (b) For each additional defendant named in the Writ (c) Statement of Claim (d) For each additional defendant against whom a separate case is pleaded and relief claimed in the Statement of Claim | 1.5 hours 12 hours 1 hour | SP SP SP | 858 88 6,864 572 |
| 2. | Next friend or guardian <i>ad litem</i> | 3 hours | RP | 1,056 |
| 3. | Defence (a) Memorandum of appearance (b) Defence (c) Counterclaim | 12 hours 12 hours | SP SP | 109 6,864 6,864 |
| 4. | Reply and other pleadings Reply (if necessary), defence to counterclaim, or any other pleading | 10 hours | SP | 5,720 |
| 5. | (a) Third party notice (b) Pleadings in third party proceedings | 2 hours 6 hours | SP SP | 1,144 3,432 |
| 6. | (a) Requesting particulars of a pleading (where and to the extent necessary) (b) Giving particulars of a pleading | 3 hours 5 hours | JP JP | 1,254 2,090 |
| 7. | Discovery (a) Notice requiring discovery (b) Giving discovery of documents | | JP | 77 an amount which is reasonable in the circumstances |
| 8. | Inspection Inspection and giving inspection of discovered documents whether by personal attendance or otherwise | | JP | an amount which is reasonable in the circumstances |
| 9. | Interrogatories | | | |

| Item | | Time | Fee earner | \$ |
|------|--|---|---------------|------------------|
| | (a) Delivery of interrogatories | 5 hours | SP | 2,860 |
| | (b) Answers to interrogatories | 10 hours | SP | 5,720 |
| 10. | Chambers | | | |
| | (a) Proceedings in Chambers other than proceedings to which item 11 applies | 2 days preparation, 1 day hearing | SC C | 23,430 15,840 |
| | (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) | per hour | SP | |
| | (c) Consent Orders including conferral but excluding extraction | 1.5 hours | JP | 627 |
| 11. | Motions and originating process | | | |
| | (a) Originating motion, originating summons or originating application and applications for Judicial Review under Order 56 | 2 days preparation; 1 day hearing and preparation of case – 50 hours | SC C SP | |
| | (1) if Senior Counsel is briefed without second counsel | | | 52,030 |
| | (2) if Senior Counsel is briefed with second counsel | | | 67,870 |
| | (3) if Counsel alone is briefed | | | 44,400 |
| | (b) For 2nd and each successive day of hearing | | SC C | 7,810 5,280 |
| | (c) Attendance at hearing by instructing legal practitioner | per hour | SP | |
| | (d) Attendance at directions hearings, strategic conferences, status 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 | per hour | SP | |

| Item | | Time | Fee earner | \$ |
|------|---|----------|------------|--|
| | (e) Attending on a reserved decision (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders) Note: 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. | per hour | SP | 572 |
| 12. | Proceedings under the <i>Family Provision Act 1972</i> Note: refer to clause 9 of the Determination above (a) All work done by legal practitioners prior to mediation including: <ul style="list-style-type: none"> • originating summons and supporting affidavit, provided it complies with any relevant practice directions; • attendance at directions hearings; • compliance with Order 75 rule 3; • advising on merits of the application; (1) plaintiff (2) executor or personal representative (3) beneficiary defendants (b) Attendance at mediation and informal conferences where necessary and reasonably held prior to or after the commencement of proceedings: <ul style="list-style-type: none"> (1) plaintiff (2) executor or personal representative (3) beneficiary defendants (c) All work done following mediation, up to and including judgment, and which is not included in items 12(a) & (b) | | | 8,525 2,585 5,302 per hour SP/SC/C An amount calculated in accordance with item 11(a) – 11(e) save that item 11(a) is modified so that the reference to 50 hours should read 40 hours |
| | PROVIDED THAT: 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. | | | |

| Item | | Time | Fee earner | \$ |
|------|--|--------------------------------------|------------|--------|
| 13. | Proceedings in Court not otherwise provided for, including appeals from a Registrar | 2 days preparation; ½ day hearing | C | 13,200 |
| 14. | Listing Conference 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 | | | 352 |
| 16. | Offers of compromise, notices, practice directions, etc | | | |
| | (a) Payment into or out of Court | 2 hours | JP | 836 |
| | (b) Offer of compromise under O.24A or by "Calderbank" letter ² | 4 hours | SP | 2,288 |
| | (c) Acknowledgment of offer under O.24A | | | 88 |
| | (d) Acceptance of offer of compromise under O.24A or by "Calderbank" letter | 4 hours | SP | 2,288 |
| | (e) Notice of offer to consent to judgment | 2 hours | SP | 1,144 |
| | (f) Other notices and certificates referred to or required by the Rules or procedures of the court (including practice directions) | | | 99 |
| 17. | Application for compromise under O. 70 | | | |
| | (a) Application for compromise including chamber summons, affidavit in support and all necessary preparation | 5 | JP | 2,090 |
| | (b) If Counsel's opinion is required, preparation of the brief to Counsel, if not otherwise briefed as Counsel in the proceedings | 10 | JP | 4,180 |

² 'Calderbank' in accordance with the principles of *Calderbank v Calderbank* [1975] 3 All ER 333.

| Item | | Time | Fee earner | \$ |
|------|--|--|---------------------------------|--|
| | <p>(c) Counsel's opinion</p> <p>Note: 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.</p> <p>(d) Counsel fee on hearing, including preparation and submissions, if any</p> <p>(e) Attendance at hearing by instructing legal practitioner</p> | <p>½ day</p> <p>per hour</p> | <p>C/SC</p> <p>C</p> <p>JP</p> | <p>An amount which is reasonable in the circumstances</p> <p>2,640</p> |
| 18. | <p>Entry for trial/Entry for hearing</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>Note: 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 of Schedules required by District Court Rules 45C and 45D, shall not be limited to 12 hours but shall be an amount which is reasonable in the circumstances.</p> <p>Note: 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 of Schedules required by District Court Rules 45C and 45D, shall not be limited to 12 hours but shall</p> | <p>2 hours</p> <p>12 hours</p> <p>per hour</p> | <p>SP</p> <p>SP</p> <p>C/SC</p> | <p>1,144</p> <p>6,864</p> |

| Item | | Time | Fee earner | \$ |
|------|--|---|---------------------------------------|---|
| | be an amount which is reasonable in the circumstances. | | | |
| 19. | <p>Preparation of case</p> <p>Preparation of case for trial, includes work reasonably and necessarily undertaken prior to commencement of proceedings</p> <p>Note: 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 130 hours but shall be an amount which is reasonable in the circumstances.</p> <p>Note: 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> | 130 hours | SP | 74,360 |
| 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 | 418 |
| 22. | <p>Trial</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>3.5 days preparation; 1st day of trial</p> <p>3.5 days preparation; 1st day of trial</p> | <p>C</p> <p>SC</p> <p>C</p> <p>SC</p> | <p>23,760</p> <p>35,145</p> <p>5,280</p> <p>7,810</p> |

| Item | | Time | Fee earner | \$ |
|------|--|---|--|---|
| | <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) when the work was undertaken on a day on which the trial was not otherwise sitting;</p> <p>or</p> <p>(4) when required to be filed and served following the Court having reserved its decision.</p> <p>(h) Refresher fee for Counsel:</p> <p>(1) where a matter is part heard, with 20 business days or more between the conclusion of one part of the hearing and the commencement of a subsequent part; and</p> <p>(2) the Court is of the view that a refresher fee is reasonable in all the circumstances</p> <p>Note: a refresher fee is not payable in circumstances covered by item 22(g)</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>(ii) For each five hearing days after the first five, an additional fee on brief</p> <p>Note: If the claim is one declared by the Court to be a catastrophic</p> | <p>per hour</p> <p>per hour</p> <p>1 day</p> <p>per hour</p> <p>1 day</p> | <p>SP</p> <p>C/PL RP</p> <p>SC/C</p> <p>C/SC</p> <p>SP</p> <p>SC/C</p> | <p>An amount which is reasonable in the circumstances</p> |

| Item | | Time | Fee earner | \$ |
|------|---|--|--|---|
| | <p>personal injury claim, the time reasonably spent by Counsel or Senior Counsel in preparation of case for trial shall not be limited to 3.5 days but shall be an amount which is reasonable in the circumstances.</p> <p>Note: 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 Counsel or Senior Counsel in preparation of case for trial, shall not be limited to 3.5 days but shall be an amount which is reasonable in the circumstances.</p> | | | |
| 23. | <p>Re-trial or Re-hearing</p> <p>(a) Preparation of case for re-trial or re-hearing</p> <p>(b) Re-trial or re-hearing</p> | | | An amount which is reasonable in the circumstances |
| 24. | <p>(a) Special case, case stated (otherwise than by way of appeal) or trial of an issue</p> <p>(b) For the second and each successive day of the trial or hearing</p> | | | An amount which is reasonable in the circumstances |
| 25. | <p>Appeals to the Court of Appeal including applications for leave to appeal</p> <p>(a) Appeal Notice, Service Certificate, Notice of Respondent's Intention</p> <p>(b) Appellant's Case, Respondent's Answer including relevant forms and all annexures</p> <p>(c) Appellant's Reply to Notice of Contention, when required</p> <p>(d) Settling appeal book indexes, including drafting and settling appeal book index</p> <p>(e) An application in an appeal, an interlocutory or directions</p> | <p></p> <p>40 hours</p> <p>10 hours</p> <p>8 hours</p> <p>10 hours</p> | <p></p> <p>SC</p> <p>SC</p> <p>SP</p> <p>C</p> | <p></p> <p>572</p> <p>31,240</p> <p>7,810</p> <p>4,576</p> <p>5,280</p> |

| Item | | Time | Fee earner | \$ |
|------|--|--------------------------------------|------------|------------------|
| | hearing before a single Judge or Registrar | | | |
| | (f) Preparation of appeal for hearing | 10 hours | SP | 5,720 |
| | (g) Counsel fee on hearing, including preparation | 2 days preparation; 1 day hearing | C | 15,840 |
| | (h) Senior Counsel fee on hearing, including preparation | 2 days preparation; 1 day hearing | SC | 23,430 |
| | (i) Counsel fee for the second and each successive day of hearing | | C | 5,280 |
| | (j) Senior Counsel fee for the second and each successive day of hearing | | SC | 7,810 |
| | (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. | Single Judge Appeals in the Supreme Court and Appeals in the District Court (including leave to appeal) | | | |
| | (a) Notice of Appeal or Notice of Contention pursuant to Rule 15 of the District Court Rules 2005 | 1 hour | SP | 572 |
| | (b) Notice of Appeal or Notice of Contention in other appeals | 5 hours | SP | 2,860 |
| | (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 | 5,280 |
| | (e) Counsel fee on hearing, including preparation | 2 days preparation/1 day hearing | C SC | 15,840 23,430 |

| Item | | Time | Fee earner | \$ |
|------|---|--|---|--|
| | (f) Counsel fee for second and each successive day of hearing (g) Attendance at appeal by instructing legal practitioner (h) Attending on reserved decision, including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders (i) Other notices and certificates referred to or required by the Rules or procedures of the Court, including the practice directions | per hour per hour | C SC SP SP | 5,280 7,810 88 |
| 27. | Pretrial, mediation, conferrals, or other conferences (a) Where required by order of the Court, by the <i>Rules of the Supreme Court</i> or by practice direction (b) including informal conferences where reasonably held before or after commencement of proceedings (c) attendances by counsel and instructing legal practitioners at the conferrals and conferences set out in paragraphs (a) and (b) of this item (d) preparation reasonably undertaken for the conferrals and conferences described in paragraphs (a), (b) and (c) of this item (e) conferences between counsel and own instructing legal practitioner where reasonably necessary | per hour per hour per hour per hour per hour | SP/SC/C SP/SC/C SP/SC/C SP/SC/C SP/SC/C | |
| 28. | Orders Settling and extracting judgment or order (a) With appointment (b) Without appointment | 2 hours | RP | 704 352 |

| Item | | Time | Fee earner | \$ |
|------|---|----------|---------------------------|--|
| 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 (b) If against land, an additional | 3 hours | RP | 418 1,056 |
| 32. | Taxing including drawing (a) Drawing bill of costs and service; and (b) Taxation of costs, including the time spent in preparing for the taxation and time required to be spent attending any mediation or conference convened by the Court or attending to any matter required by the Rules or a Practice Direction | | SP | An amount which is reasonable in the circumstances |
| 33. | Copying Copies where reasonably necessary, including of documents for which allowance is otherwise made in this Determination. This item covers all forms of electronic reproduction and copying. | per page | | 0.20 |
| 34. | Accounts and inquiries Taking accounts, inquiries | | SP | An amount which is reasonable in the circumstances |
| 35. | 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 | per hour | SC SP C JP RP | |

| Item | | Time | Fee earner | \$ |
|------|--|----------|------------|----|
| | <p>clerk or paralegal of a legal practitioner, on work not covered by any other item or by paragraph (a)</p> <p>Note: Allowances under item 35 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> | per hour | C/PL | |
| 36. | <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 incurred by the law practice except insofar as they are of an unreasonable amount or have been unreasonably incurred, so that subject to the above exceptions, the law practice is fully reimbursed for its disbursements; 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>Travel</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>Note: 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> | | | |