

## **Review by Legal Costs Committee**

**Legal Profession (Family Court of Western Australia) Determination 2014**

**Legal Profession (State Administrative Tribunal) Determination 2014**

**Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2014**

**To**  
Legal Costs Committee

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## 1 Introduction

- 1.1 The Law Society of Western Australia is the peak professional association for lawyers in Western Australia. Established in 1927, the Law Society is a not-for-profit association dedicated to the representation of its members and the enhancement of the legal profession through being a respected leader and advocate on law reform, access to justice and the rule of law.
- 1.2 This submission is made in response to an invitation by letter dated 1 March 2016 from the Chair of the Legal Costs Committee, Ms Clare Thompson, to submit any comments or suggestions by 8 April 2016 to a review of the following:
- Legal Profession (Family Court of Western Australia) Determination 2014
  - Legal Profession (State Administrative Tribunal) Determination 2014
  - Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2014.
- 1.3 The Law Society promotes a simplified system of costing that is uniform and consistent between jurisdictions. The Law Society's position is that this uniform and consistent approach ought to be adopted with respect to maximum allowable hourly rates, as applicable, in the Legal Costs Committee's Determinations.

## 2 Travel allowance

- 2.1 Item 7 of the Legal Profession (Solicitors Costs) Determination 2015 at items 701, 702 and 703 sets the maximum hourly rates for practitioners and clerks/paralegals and at item 704 provides for time spent travelling, as follows:

***Travel***

*704 Time spent travelling by a law practice is to be charged at no more than one half of the rates contained in items 701 to 703, with a maximum of 8 hours in any one day.*

- 2.2 Paragraph 15 of the Legal Costs Committee's *Legal Profession (Solicitors Costs) Report 2015* states:

*"As a result of its inquiries.... the Legal Costs Committee has resolved to change the maximum hourly rates for travelling time under item 704.*

*In reaching its decision the Legal Costs Committee has considered amendments made to the Law Society of Western Australia's Standard Costs Agreement which contains a provision that a law practice will charge travel at 50% of the agreed hourly rates.*

*The Legal Costs Committee has also considered an informal policy of the Legal Profession Complaints Committee that travel should not ordinarily be charged at a rate of more than 50% of a law practice's normal hourly charge-out rate.*

*Whilst the Legal Costs Committee recognises that during a travel period a law practice may not necessarily utilise legal skill and knowledge, there is a recognition of a loss of opportunity for the time spent travelling.*

*The Legal Costs Committee notes that, having regard to the above:*

*(a) It is the responsibility of a law practice to allocate the cost of time spent on travel fairly and reasonably where the travel is necessary to service more than one client on the day of travel; and*

*(b) Whilst nothing contained in the Determination prevents a law practice from charging time spent on a client matter or client matters in the course of travel (air travel by way of example), the law practice is not entitled to charge a client or clients for both time spent on a client matter (regardless of whether that time relates to the client for whom the travel is being undertaken) and the amount allowed under item 704.*

2.3 For the reasons stated in paragraph 15 of the Legal Costs Committee's *Legal Profession (Solicitors Costs) Report 2015*, it is submitted that an allowance for time spent travelling should be included in each of the Determinations the subject of this review in the same terms as item 704 of the *Legal Profession (Solicitors Costs) Determination 2015*.

2.4 It is the Law Society's view that all Determinations made by the Legal Costs Committee should include an allowance for time spent travelling. In the Law Society's Submission to the Legal Costs Committee dated 8 December 2015 it was submitted that an allowance should be made for time spent travelling in the following Determinations:

- Legal Profession (Supreme Court) (Contentious Business) Determination 2014
- Legal Profession (District Court Appeals) (Contentious Business) Determination 2014
- Legal Profession (Supreme and District Court) (Criminal) Determination 2014
- Legal Profession (Magistrates Court) (Civil) Determination 2014
- Legal Profession (Magistrates Court) (Criminal) Determination 2014.

### 3 Hourly and daily rates in each of the Determinations under review

3.1 For the reasons listed in paragraphs 4.5 to 4.12 of the Law Society's Submission dated 8 December 2015 to the Legal Costs Committee, the Law Society submits that:

- the hourly and daily rates in the Determinations the subject of this review should be increased by 4.5% rounded off so as to be divisible by 11;  
and
- the maximum amounts in Table C of the Legal Profession (Official Prosecutions) (Accused's Costs) Determination should also be increased by 4.5% rounded off so as to be divisible by 11.

#### 3.2 Legal Profession (Family Court of Western Australia) Determination 2014

The maximum allowable hourly and daily rates in the *Legal Practitioners (Family Court of Western Australia) Determination 2014* are:

<b>Fee Earner</b>	<b>Maximum allowable hourly and daily rates</b>
Senior Practitioner (admitted for 5 years or more) hourly rate	\$473
Junior Practitioner (admitted for less than 5 years) hourly rate	\$330
Clerk/Paralegal hourly rate	\$231
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel	\$385
Counsel            hourly rate	\$3,850
daily rate	\$671
Senior Counsel    hourly rate	\$6,710
daily rate	

In accordance with the Law Society's position that a uniform approach ought to be adopted with respect to hourly and daily rates it is the Law Society's submission that the maximum allowable rates in the next *Legal Practitioners (Family Court of Western Australia) Determination* should be the same as those in the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2016*.

#### 3.2 Legal Profession (State Administrative Tribunal) Determination 2014

The maximum allowable rates in the *Legal Profession (State Administrative Tribunal) Determination 2014* are:

<b>Fee Earner</b>	<b>Maximum allowable hourly and daily rates</b>
Senior Practitioner (admitted for 5 years or more) hourly rate	\$396
Junior Practitioner (admitted for less than 5 years) hourly rate	\$297
Clerk/Paralegal hourly rate	\$143
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel	\$319
Counsel hourly rate	\$3,190
Counsel daily rate	\$528
Senior Counsel hourly rate	\$5,280
Senior Counsel daily rate	

In accordance with the Law Society's position that a uniform approach ought to be adopted with respect to hourly and daily rates it is the Law Society's submission that the maximum allowable rates in the next Legal Profession (State Administrative Tribunal) Determination should be the same as those in the Legal Profession (Magistrates Court) (Civil) Determination 2016.

### **3.3 Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2014**

The maximum allowable rates in the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2014* are the same as those in the *Legal Profession (State Administrative Tribunal) Determination 2014*.

In accordance with the Law Society's position that a uniform approach ought to be adopted with respect to hourly and daily rates, it is the Society's submission that the maximum allowable rates in the next Legal Profession (Official Prosecutions) (Accused's Costs) Determination should be the same as those in the Legal Practitioners (Magistrates Court) (Criminal) Determination 2016.

Table C, item 4 of the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2014* specifies maximum amounts as follows:

***Trial***

- (a) Preparation of case and half day trial, including counsel fee \$7,172
- (b) Second half day \$792

It is also submitted that the maximum amounts in item 4, Table C of the Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2014 should be increased by 4.5% rounded off so as to be divisible by 11.

#### **4. Summary of submissions**

- 4.1 An allowance for time spent travelling should be included in each of the Determinations the subject of this review in similar terms as item 704 of the Legal Profession (Solicitors Costs) Determination 2015.
- 4.2 For the reasons listed in paragraphs 4.5 to 4.12 of the Law Society's Submission dated 8 December 2015 to the Legal Costs Committee, the Law Society submits that:
- the hourly and daily rates in the Determinations the subject of this review should be increased by 4.5% rounded off so as to be divisible by 11; and
  - the maximum amounts in Table C of the Legal Profession (Official Prosecutions) (Accused's Costs) Determination should also be increased by 4.5% rounded off so as to be divisible by 11.



Elizabeth Needham  
**President**