

Legal Profession (Magistrate Court) (Civil) Determination 2016

Legal Profession (Magistrate Court) (Criminal) Determination 2016

Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2016

To

Legal Costs Committee
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Date

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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 28 September 2017 from the Chair of the Legal Costs Committee, Ms Clare Thompson, to submit any comments or suggestions by 2 March 2018 to a review of the following:
 - *Legal Profession (Magistrates Court) (Civil) Determination 2016*;
 - *Legal Profession (Magistrates Court) (Criminal) Determination 2016*; and
 - *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2016*.
- 1.3 The Legal Costs Committee has resolved to review these Determinations with a view to the commencement date of each new Determination being 1 July 2018.

2. Amendments to the Legal Profession (Magistrates Court) Civil Determination 2016

- 2.1 The Law Society considers that the marked up amendments set out in Annexure A should be made to the *Legal Profession (Magistrates Court) Civil Determination 2016* (subject to the increase to hourly and daily rates proposed below).
- 2.2 In particular and where not self-explanatory:
- 2.2.1 the use of the phrase special costs order at paragraph 4(c) of the report is potentially confusing with the ordinary use of that phrase in relation to applications for special costs orders made pursuant to the *Legal Profession Act 2008* (WA);
 - 2.2.2 the amendment to items 2(c) and 4(b) and 4(c) of the determination reflect the practice that the Magistrates Court no longer requires that statutory declarations be filed;
 - 2.2.3 it is proposed that an item specifically be included for applications for substituted service so as to place some upper limit on the costs that can be recovered (or charged) absent a special costs order for what should ordinarily be fairly straightforward applications;
 - 2.2.4 it is proposed that the allowance at item 12(f) be expressly stated to exclude witness statements which are required as part of the listing conference memorandum;
 - 2.2.5 it is proposed that item 16 be amended to include waiting time. The Magistrates Court has a practice of over listing pre-trial conferences in particular. This results in situations where parties and solicitors are required to spend a significant amount of time waiting for the matter to be called. This can be particularly problematic if there is a non-appearance by the other party and the allowance at taxation when judgment is eventually obtained is limited to the duration of actual pre-trial conference of say 10 minutes when the parties and their solicitor have been at Court for in excess of an hour;
 - 2.2.6 it is proposed that the allowances at item 21 for the drawing of a bill of costs and objecting are increased to SP rather than JP. A taxing officer will still have a discretion to limit the costs allowed to a JP rather than an SP but the provision for the time of a SP reflects that this scale often applies to bills of costs which might be complex, such as matters within the Warden's Court.

3. Consolidating the Legal Profession (Magistrates Court) Civil Determination 2016 and Legal Profession (Magistrate Court) (Criminal) Determination 2016

- 3.1 The Law Society recommends that the *Legal Profession (Magistrates Court) Civil Determination 2016* and *Legal Profession (Magistrate Court) (Criminal) Determination 2016* be consolidated into one Determination for ease of reference.
- 3.2 The Law Society considers that the Determinations should be consolidated unless there are compelling reasons not to consolidate them, for example, if there are difficulties in consolidating the Determinations due to a need to make amendments to legislation.

4. Increase to hourly and daily rates in each of the Determinations under review

- 4.1 The hourly and daily rates in the *Legal Profession (Magistrates Court) (Civil) Determination 2016* and the *Legal Profession (Magistrates Court) (Criminal) Determination 2016* are as follows:

Fee earner	Maximum allowable Hourly and daily rates
Senior Practitioner (permitted to practice on his or her own account for 5 years or more) (SP) hourly rate	\$407
Junior Practitioner (permitted to practice on his or her own account for less than 5 years) (JP) hourly rate	\$308
Restricted Practitioner (RP) hourly rate	\$231
Clerk/paralegal (CPL) hourly rate	\$154
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel:	
Counsel (C) hourly rate	\$330
	\$3,300
Senior Counsel (SC) hourly rate	\$539
	\$5,390

- 4.2 The hourly and daily rates in the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2016* are as follows:

Fee earner	Maximum allowable Hourly and daily rates
Senior Practitioner (permitted to practice on his or her own account for 5 years or more) (SP) hourly rate	\$407
Junior Practitioner (permitted to practice on his or her own account for less than 5 years) (JP) hourly rate	\$308
Restricted Practitioner (RP) hourly rate	\$231
Clerk/paralegal (CPL) hourly rate	\$154
Counsel (C) daily rate	\$3,300
Senior Counsel (SC) daily rate	\$5,390

- 4.3 It is submitted that the maximum hourly and daily rates in all of the Determinations under review should be increased by about 3% to reflect increases in the Consumer Price Index (CPI) and costs associated with the running of a legal practice. The following information is in support of this submission.

4.4 Costs associated with the running of a law practice

In the 2007/2008 the Australian Bureau of Statistics survey of the legal services industry (the most recent survey) the primary expenses of law practices (other than barristers) were listed as follows:¹

Expense	% of total expenses
Labour costs	44%
Rent, leasing and hiring	6.5%
Payment for legal services	5%
Payments for legal support services	15%
Disbursements not already reported	2.5%
Insurance premiums	2.7%
Professional expenses	2.3%
Other	22%

4.6 Labour costs

The *2017 Australian Legal Industry Salary & HR Issues Survey Report* by the Australasian Legal Practice Management Association states:

Anticipated salary changes in 2017

Overall, 46% of firms expect to increase employee wages by more than CPI rates over the next 12 months, the same as in 2016. A similar proportion of firms also expect a wage freeze in 2017 (5% compared to 6.5% in 2016). Slightly higher than in 2016, 19% of firms expect a limited freeze, with increases for some positions only.

Individually negotiated increases (above CPI rates) are the most likely form of salary increase in 2017, with 31% of respondents indicating this is the method used by their firms.

Consumer price index (CPI) adjusted wage increases are also widely used, with 27% of firms opting for CPI salary increases in 2017.

In Western Australia, the survey results were as follows:

- Wage freeze: No increases 5%
- Limited freeze: Increases for some positions only 23%
- CPI adjusted increases only 25%
- 3-5% increase for all roles 16%
- 5-10% increase for all roles 0%
- 10%+ increase for all roles 0%
- Individually negotiated increases - above CPI rates 26%

¹ Australian Bureau of Statistics, *8667.0 – Legal Services, Australia, 2007-08* (24 June 2009) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/8667.0Main+Features12007-08?OpenDocument>>. Submission to Legal Costs Committee – Review of contentious business determinations
The Law Society of Western Australia

National Wage Price Index (Private Sector All Industries)

Since the Law Society's submission dated 8 December 2015 regarding the review of the 2014 Determinations, the Australian Bureau of Statistics has reported the following increases to the Wage Price Index:²

- | | |
|------------------------------------|---------------------------------------|
| • September 2015 to September 2016 | increase 1.9% |
| • September 2016 to December 2016 | increase 0.4% |
| • December 2016 to March 2017 | increase 0.5% |
| • March 2017 to June 2017 | increase 0.5% |
| • June 2017 to September 2017 | <u>increase 0.5%</u>
increase 3.8% |

4.7 Rents

Available information suggests that Perth office rents have decreased over the past two years in light of a high office vacancy rate but this is now stabilising.

According to Colliers International's *CBD Office Research and Forecast Report First Half 2018*,³ the Perth CBD office vacancy rate has moderated to 19.8 per cent down from 21.1 per cent in July 2017. Further:

Over the year to December 2017, good absorption levels underpinned more stability in rental rates for Premium grade space. The flight to quality and resultant high vacancy rate in secondary stock continued to exert downward pressure on net face rents in this segment.

Notwithstanding improving market conditions in the Premium and A grade segments, market incentives have remained stable, at an average 48.25 per cent for Premium and 52.5 per cent for A Grade during the December 2017 quarter, as vacancy remains well above the long term equilibrium level.

As anticipated, supply additions for 2017 were negligible, with just 1,150sqm of new space added.

4.8 Professional Indemnity insurance premiums

Between 2015/16 and 2016/17 the Law Mutual Insurance premium increased by 2.13% and the administration levy decreased by 89.25%.

4.9 Consumer Price Index (CPI) for Perth

CPI changes since the Law Society's submission in relation to the review of the 2014 Determinations are as follows:⁴

% change

² Australian Bureau of Statistics, *ABS.Stat*
http://stat.data.abs.gov.au/Index.aspx?DataSetCode=LABOUR_PRICE_INDEX#.

³ Colliers International, *CBD Office Research and Forecast Report First Half 2018*
http://www.colliers.com.au/find_research/office/cbd_office_-_first_half_2018/.

⁴ Australian Bureau of Statistics, *Consumer Price Index, Australia*
<http://www.abs.gov.au/AUSSTATS/abs@.nsf/second+level+view?ReadForm&prodno=6401.0&viewtitle=Consumer%20Price%20Index,%20Australia~Dec%202017~Latest~31/01/2018&&tabname=Past%20Future%20Issues&prodno=6401.0&issue=Dec%202017&num=&view=&>.

- June 2015 to September 2015 0.5%
- September 2015 to December 2015 0.4%
- December 2015 to March 2016 -0.2%
- March 2016 to June 2016 0.4%
- June 2016 to September 2016 0.7%
- September 2016 to December 2016 0.5%
- December 2016 to March 2017 0.5%
- March 2017 to June 2017 0.2%
- June 2017 to September 2017 0.6%
- September 2017 to December 2017 0.6%

The total CPI increase for Perth between June 2015 and December 2017 was 3.7%.

4.10 Other expenses

The CPI impacts on “Other” expenses for a law practice which include stationery and office supplies, telecommunication expenses, power, technology equipment and services, etc.

4.11 Increases in court fees

In July 2016, the Department of the Attorney General (now the Department of Justice) increased most court fees and charges by 11.1%.

In July 2017, court fees were increased by a further 1.75%.

Copies of letters from the Department to the Law Society advising of these fee increases are at Annexure B.

5. Recommendations

5.1 Recommendation 1

The marked up amendments set out in Annexure A be made to the *Legal Profession (Magistrates Court) Civil Determination 2016* (subject to the increase to hourly and daily rates proposed in Recommendation 3).

5.2 Recommendation 2

The *Legal Profession (Magistrates Court) Civil Determination 2016* and *Legal Profession (Magistrate Court) (Criminal) Determination 2016* be consolidated into one Determination.

5.3 Recommendation 3

The maximum hourly and daily rates in each of the Determinations under review should be increased by 3% rounded off to \$11 so as to be divisible by 11.


Hayley Cormann
President

Annexure A



Western Australia

Legal Profession Act 2008

**Legal Profession (Magistrates Court) (Civil)
Determination 2016**

As at 01 Jul 2016

Version 00-a0-01

Extract from www.slp.wa.gov.au, see that website for further information

Legal Profession (Magistrates Court) (Civil) Determination 2016

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Western Australia

Legal Profession Act 2008

Legal Profession (Magistrates Court) (Civil) Determination 2016

Part 1 — Preliminary

1. Citation

- (a) This Report may be cited as the *Legal Profession (Magistrates Court) (Civil) Report 2016*.
- (b) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (Magistrates Court) (Civil) Determination 2016*.

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 (Magistrates Court) (Civil) Determination 2016* 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;
- (c) consulted with the Magistrates Court and the Chief Magistrate, The Law Society of Western Australia Inc. and the Western Australian Bar Association Inc;
- (d) consulted with a range of people and organisations within the legal profession in respect to the impact of structural changes in the profession;
- (e) reviewed the *Legal Practitioners (Magistrates Court) (Civil) Determination 2014²*; and
- (f) had regard to relevant provisions of the *Magistrates Court Act 2004* and the *Magistrates Court (Civil Proceedings) Act 2004*, and in particular notes section 13(1) of that Act, which sets out the guiding principles for the conduct of civil proceedings in the Court.

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 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.
- (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
 - (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 subclause 4(a) be varied from the hourly and daily rates used in the *Legal Practitioners (Magistrates Court) (Civil) Determination 2014* as the basis for the recommended scale of costs which have generally been rounded up or down to represent various increases of approximately 2% 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 2016*.
- (c) The Legal Costs Committee has concluded that the matters set out in section 13(1) of the *Magistrates Court (Civil*

Proceedings) Act 2004 properly informs the approach to the recovery of costs recommended in *Legal Profession (Magistrates Court) (Civil) Determination 2016*. In particular the Legal Costs Committee notes —

- (1) the Magistrates Court is not a court of pleadings;
 - (2) there are substantial differences in practice and procedure between the Magistrates Court and other civil courts in this State;
 - (3) it is intended that the Magistrates Court be a low cost jurisdiction;
 - (4) actions where the quantum is less than \$10,000 do not attract an entitlement to party/party costs, ~~without a special costs order~~, except in limited and extra-ordinary circumstances; and
 - (5) the monetary jurisdiction of the Magistrates Court is presently \$75,000.
- (d) 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 —
- (1) order the scale to reflect the procedures utilised in the Magistrates Court and the flow of litigation;
 - (2) maintain consistency where practicable with the format of the *Legal Profession (Supreme Court) (Contentious Business) Determination 2016*; and
 - (3) provide for hourly and daily rates applicable to Counsel and Senior Counsel.
- (e) 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 2016*.
- (f) 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.

- (g) 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, including, for example, the *Dividing Fences Act 1961* and the *Restraining Orders Act 1997*.
- (h) It is the recommendation of the Legal Costs Committee, as a result of the consultations described in clause 3, that the new category of Restricted Practitioner should be introduced in the *Legal Profession (Magistrates Court) (Civil) Determination 2016*.
- (i) 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.

Schedule

Legal Profession Act 2008

Legal Profession (Magistrates Court) (Civil) Determination 2016

1. Citation

This Determination may be cited as the *Legal Profession (Magistrates Court) (Civil) Determination 2016*.

2. Commencement

This Determination comes into operation on 1 July 2016.

3. Application

- (a) This Determination applies to the remuneration of legal practitioners, clerks and paralegals in respect of representation, and advice given, by legal practitioners in or for the purposes of civil proceedings before the Magistrates Court.
- (b) This Determination does not apply to the remuneration of legal practitioners based on costs incurred in respect of business carried out before the commencement of this Determination.

4. No minimum charge

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 \$3,256 for the work involved. The figure of \$3,256 is a maximum, but on taxation less than \$3,256 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.

5. Fixed items

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), 11, 12(c), 17(a)(ii), 17(b), 18(a), 20 and 21(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.

6. Time estimates

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 15(a), which relates to preparation for trial or getting up a 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 19. The hours referred to in this Determination will guide the Assessing Officer about the amount which should be allowed in a particular case.

7. Items 14 and 16—Solicitor as counsel

If independent counsel is not retained for the trial, this will be a factor to be considered by the Assessing Officer who might not then permit the full amount in the determination for fee on brief under item 16(b), as well as a full getting up allowance under item 14. This is in line with the decisions of *Commonwealth v Magriplis* (1962) 3 FLR 47 and *Washbourne v SEC* (1992) 8 WAR 188.

8. Settled proceedings

It is intended that item 13 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.

9. New item 28—Travel

- (a) This Determination introduces a new item 28 which makes an allowance for travel.
- (b) It is the Committee's view that minor travel, which means incidental travel associated with attendance at court for a hearing where that travel is of a minor duration (minor travel) is properly included in the costs recoverable for the appearance for which it is associated. Item 28 is intended to apply to travel necessary to undertake work

other than minor travel) Examples of minor travel include, but are not limited to —

- (1) a practitioner walking from their usual place of business to a court;
 - (2) a practitioner walking from a carpark to a court; or
 - (3) a practitioner walking or taking public transport from one centrally located court to another centrally located court.
- (c) Item 28, is intended to cover all travel other than minor travel including, but not limited to —
- (1) travel by car or public transport within metropolitan Perth from a practitioner's usual place of business to a suburban court or a court in the City of Perth, for example, driving from Joondalup to the CBD, or taking the train to Armadale from the CBD;
 - (2) travel by car or public transport from a practitioner's usual place of business to visit a client or witness or to undertake any meeting or view necessary for the purposes of the proceedings, regardless of where the destination is;
 - (3) travel by any means from outside the metropolitan area to Perth, for example, flying from Port Hedland; or
 - (4) travel by any means from Perth to outside the metropolitan area, for example, taking the train to Mandurah.
- (d) Items 28(a) and (b) provide for the circumstances where travel is recoverable as part of the party—party costs in a proceeding. Item 28(b) is intended to cover circumstances where the Court convenes at a location other than its usual location for those proceedings. Examples of the situations covered by item 28(b) include, but are not limited to —
- (1) travel required to attend at a court ordered mediation scheduled to take place in Geraldton when the proceedings are case managed by the Court in Perth;
 - (2) travel required to attend a site visit or view, with the Court in attendance;
 - (3) travel required to attend a court ordered examination of a witness prior to trial in Esperance, when the proceedings are case managed by the Court in Perth; or

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- (4) travel required to attend the trial of proceedings in Perth when the proceedings were case managed by the Court in Kalgoorlie.
- (e) Travel to attend a location which does not include the Court and the parties attending together at that location falls within item 28(c).
- (f) Travel to attend at a directions hearing or similar in a centrally located court, from a non-centrally located business address of the legal practitioner, other than that component which falls within the definition of minor travel, falls within item 28(c). Examples of this include but are not limited to —
 - (1) travel by car or public transport from Perth to Mandurah to attend any court hearing;
 - (2) travel by car or public transport from Joondalup to Fremantle to attend any court hearing; or
 - (3) travel from interstate to Perth to attend any court hearing.
- (g) In making its decision in this Determination, the Legal Costs Committee has taken note of 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.
- (h) 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.
- (i) 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.
- (j) The Legal Costs Committee notes that, having regard to the above —
 - (1) 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
 - (2) whilst nothing contained in this 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 28.

10. Introduction of new Restricted Practitioner category

- (a) This determination introduces the new category Restricted Practitioner. This category includes all Australian legal practitioners engaging in restricted legal practice pursuant to section 50 of the Act, during the period when that person is undertaking the “required experience”, as defined in section 50 of the Act, and whilst an endorsement to that effect remains on their practising certificate.
- (b) A Restricted Practitioner is not intended to include 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.
- (c) The Legal Costs Committee consulted the profession regarding the necessity for amendments to the levels of practitioner set out in Table A, in light of the changing nature of legal practice in this State. In particular the Legal Costs Committee was conscious of the changes to admission requirements and pathways to admission, which have resulted in practitioners being admitted to practise without the close supervision of legal practice formerly afforded by articles of clerkship but with a longer period of restricted practice. The effect of this is that practitioners become senior practitioners with less experience than they previously have had, which has the effect of increasing the legal costs to consumers of their services.
- (d) It is the Legal Costs Committee’s view, as expressed in this Determination, that the Determination should as far as possible reflect the regulated structure of the profession and thereby provide consumers of legal services with additional transparency as to the experience of the practitioner providing the legal services.
- (e) So as not to adversely affect clients of legal services provided by those practitioners who would, but for this change, have been Junior Practitioners or Senior Practitioners, transitional arrangements apply so that —

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- (1) practitioners admitted after 1 July 2014, but before 1 July 2016, are entitled to recover their legal costs as if they were Junior Practitioners until 30 June 2018, or the date on which they would, but for this clause, become Junior Practitioners under this Determination; and
- (2) practitioners admitted after 1 July 2011, but before 1 July 2014, are entitled to recover their legal costs as if they were either Junior Practitioners or Senior Practitioners, whichever category would have applied but for this change, until 30 June 2018, or the date on which they would, but for this clause, become Senior Practitioners under this Determination.

11. 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 set out in Table B. Except for certain items, each item in this Determination specifies a dollar amount with reference to the fee earner.
- (b) 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 2016*.
- (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) α	\$407
Junior Practitioner ° (permitted to practise on his or her own account for less than 5 years) (JP)	\$308
Restricted Practitioner (RP) #, °	\$231
Clerk/Paralegal (C/PL) ##	\$154
<u>Counsel fees charged as a disbursement to law practices or charged by in-house Counsel</u>	
Counsel*	
hourly rate	\$330
daily rate	\$3,300
Senior Counsel**	
hourly rate	\$539
daily rate	\$5,390

° 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

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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 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).

12. 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 25 of Table B).

(b) Allowances made under item 25 of Table B are only to be awarded as between a law practice and its client, and not between party and party unless the Court otherwise orders. The item is not intended to be used to claim increased allowances for items which should properly fit into another item in the Determination, for example item 10,

(c) The Legal Costs Committee notes the impact of the decision in *Rodwell v Hutchinson* [2010] WASCA 197, and so no allowance is made in this determination for an award of indemnity costs.

(d) The Legal Costs Committee notes the comments of the court in *Defendi v Eden Hill Plasterers* [2008] WASCA 269 at [7] as to the importance of the proportionality principle in litigation in this Court, which arises in respect to all costs incurred in the Court.

Table B
Magistrates Court Civil Scale of Costs 2016

Item		Time	Fee Earner	\$
1.	Letter of demand issued prior to proceedings			77
2.	Claim —			
	(a) Claim, including instructions, but excluding Statement of Claim			407
	(b) For each additional defendant			55
	(c) 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	3,256
3.	Appointment of litigation guardian	2 hours	JP	616
4.	Response —			
	(a) Lodgement of a response to a claim			209
	(b) Statement of defence (including preparation and lodgement of a statutory declaration)	8 hours	SP	3,256

**Legal Profession (Magistrates Court) (Civil) Determination 2016
Schedule**

cl. 12

Item		Time	Fee Earner	\$
	(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	SP	3,256
5.	Third party claim, including instructions and list of documents	8 hours	SP	3,256
6.	Disclosure — Giving additional disclosure where ordered by the Court or a Registrar	5 hours	RP -JP	1,155 1,540
7.	Inspection — Inspection and giving inspection whether by personal attendance or otherwise	per hour	RP JP	
8.	Interrogatories —			
	(a) Delivery of interrogatories	5 hours	SP	2,035
	(b) Answers to interrogatories including affidavit	5 hours	SP	2,035

Legal Profession (Magistrates Court) (Civil) Determination 2016
Schedule

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Item		Time	Fee Earner	\$
9.	Interpleaders — Interpleader proceedings — (a) where uncontested (b) where contested	1 hour	JP	308 An allowance in accordance with item 10
10.	Application to the Court — (a) <u>Applications for substituted service</u> (a) Applications and responses to applications including under Part 21 of the <i>Magistrates Court Civil Proceedings Rules 2005</i> , including all documentation in preparation for hearing (b) Second or subsequent half day (c) <i>Ex parte</i> applications, including preparation (d) If the hearing on any one day comprises a directions hearing or similar only	2 hours 1 day preparation ½ day hearing per hour 1	SP C C SP SP	814 4,950 1,650 1,650 407

Legal Profession (Magistrates Court) (Civil) Determination 2016
Schedule

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Item		Time	Fee Earner	\$
	Note: 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			
11.	Application for entry of judgment by default <i>(without trial)</i>			154
12.	Offers of settlement, notices, certificates practice directions, applications, declarations, memoranda, affidavits —			
	(a) Offers of settlement	2 hours	SP	814
	(b) Acceptance of offer of settlement	2 hours	SP	814
	(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			154
	(d) Preparation, lodgement and service of affidavits and statutory declarations not otherwise provided for	per hour	SP	407

Legal Profession (Magistrates Court) (Civil) Determination 2016
Schedule

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Item		Time	Fee Earner	\$
	(f) Preparation, lodgement and service of a listing conference memorandum <u>excluding witness statements</u>	<u>36</u> hours	SP	<u>2,442</u>
13.	Preparation of case — Preparation for trial (includes work reasonably and necessarily undertaken prior to commencement of proceedings)	50 hours	SP	20,350
14.	Examination of witness before trial by a legal practitioner, pursuant to an order			An allowance in accordance with item 15(e) or (f)
15.	Trial —			
	(a) Fee on brief for Counsel; i.e. half day trial and preparation	2 days preparation ½ day of trial	C	8,250
	(b) Allowance for second half day of trial		C SC	1,650 13,475
	(c) Fee on brief for Senior Counsel ie half day trial and preparation (where two or more Counsel are certified for)	2 days preparation ½ day of trial		

**Legal Profession (Magistrates Court) (Civil) Determination 2016
Schedule**

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Item		Time	Fee Earner	\$
	(d) Allowance for second half day of trial for Senior Counsel	per hour	SC	2,695
	(e) Counsel fee for the second and each successive day of hearing		C	3,300
	(f) Counsel fee for Senior Counsel for second and each successive day of hearing		SC	5,390
	(g) Instructing legal practitioner attending trial		JP/RP	
	(h) Clerk attending trial		CPL	
	<p>Note: Subject to paragraphs (a)—(h) if —</p> <p>(1) The trial lasts less than 2 hours; or</p> <p>(2) The trial does not commence and settles or adjourns on the day of the trial,</p> <p>then the Assessing Officer shall allow such amount as is reasonable in the circumstances</p>			

Item		Time	Fee Earner	\$
	(i) Attending on reserved judgment (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders)	per hour	SP	
16.	<p>Pre-trial, mediation, conferrals, or other conferences <u>(including waiting time)</u></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	

Legal Profession (Magistrates Court) (Civil) Determination 2016
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Item		Time	Fee Earner	\$
17.	Judgments and orders — (a) Settling and extracting judgment or order (i) with appointment (ii) without appointment (b) Request for certified copy of judgment or order	1 hour	RP	231 209 154
18.	Enforcement — (a) Execution (b) If against land, an additional	3 hours	RP	198 693
19.	Proceedings in court pursuant to <i>Civil Judgments Enforcement Act 2004</i> for the following, including preparation — (a) Means Inquiry (b) Default Inquiry (c) Suspension of enforcement order application (d) Application to cancel or amend an order	1.5 hours	JP RP C/PL	462 352 231

Item		Time	Fee Earner	\$
20.	<p>Registration of judgments — Registration of judgments including those under <i>Service and Execution of Process Act 1992 (Cwlth)</i></p>			209
21.	<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>	per hour	JP JPSP JPSP	55
22.	<p>Appeals — An appeal to a Magistrate from a decision of a Registrar</p>			Allowances calculated in accordance with item 10
23.	<p>Copies — Copies where necessary, including of documents for which allowance is otherwise made in this Determination</p>	per page		0.165

Item	Time	Fee Earner	\$
26.	<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>		
27.	<p>Allowances for witnesses —</p> <p>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 —</p> <p>(a) witnesses necessary to the case because of their professional, scientific or other special skill or knowledge; and</p> <p>(b) witnesses necessary to the case other than those covered in paragraph (a).</p> <p>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;</p> <p>In fixing an allowance for witnesses under either paragraph (a) or paragraph (b), regard should be given to whether it was reasonable in all the circumstances to call a witness in person when the witness was able to give evidence by use of audio-link, video-link or similar technology.</p>		

**Legal Profession (Magistrates Court) (Civil) Determination 2016
Schedule**

cl. 12

Item		Time	Fee Earner	\$
28.	<p>Travel —</p> <p>(a) As between party and party, minor travel as defined in this Determination, 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 28(c) are only to be awarded as between a law practice and its client, and <i>not</i> between party and party unless the Court otherwise orders.</p>			

Notes

- ¹ This is a compilation of the *Legal Profession (Magistrates Court) (Civil) Determination 2016*. The following table contains information about that determination.

Compilation table

Citation	Gazettal	Commencement
<i>Legal Profession (Magistrates Court) (Civil) Determination 2016</i>	24 Jun 2016 p. 2507-15	1 Jul 2016 (see cl. 2)

- ² Published in *Gazette* 20 June 2014.

Annexure B



Government of Western Australia
Department of the Attorney General
Court and Tribunal Services



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Email: travis.lang@justice.wa.gov.au
Our Reference: CS 3233
DotAG Reference: 2010/02743, 2015/02603

Mr David Price
Chief Executive Officer
The Law Society of Western Australia
P O Box Z5345
PERTH WA 6831

Dear Mr Price

The Department of the Attorney General (the Department) will publish in the Government Gazette on Tuesday 14 June 2016 the Attorney General Regulations Amendment (Fees) Regulations 2016 which will effect changes to the following Regulations:

- Supreme Court (Fees) Regulations 2002
- State Administrative Tribunal Regulations 2004; and
- District Court (Fees) Regulations 2002;
- Children's Court (Fees) Regulations 2005;
- Magistrates Court (Fees) Regulations 2005;
- Coroner's Regulations 1997;
- Civil Judgments Enforcement Regulations 2005;
- Fines, Penalties and Infringement Notices Enforcement Regulations 1994; and
- Evidence (Video and Audio Links Fees and Expenses) Regulations 1999.

Effective 4 July 2016, various amendments to the abovementioned Regulations will be made to provide for the following:

- Each year the Department undertakes a review of fees and charges in accordance with Department of Treasury guidelines. As part of the annual review of fees and charges, an 11.1% increase has been approved to most fees and charges across court and tribunals. The major changes to existing fee amounts are listed in Attachment A;
- a new fee structure for charging in the provision of transcription; and
- the ability for a court or tribunal to fully waive a fee or charge has been reviewed and Regulations have been amended to provide that an individual or entity may apply to the court for a reduction of fees. Eligible Individuals will be charged 30% of the full fee payable; the 30% has been capped at \$100. Eligible Entities (corporations) will be charged at the Individual rate.

Full details of all changes will be available from the State Law Publishing Office following gazettal on 14 June 2016.

Should you require any further information, please contact Mr Travis Lang, on 9425 7521.

Yours sincerely



JOANNE STAMPALIA
A/EXECUTIVE DIRECTOR
COURT AND TRIBUNAL SERVICES

9 June 2016

ATTACHMENT A

Supreme Court (Fees) Regulations 2002

General Division

Item	Individual or Eligible Entity		Entity		Eligible Individual	
	Current Fee	New Fee	Current Fee	New Fee	Current Fee	New Fee
Commence action	1,085.00	1,205.00	2,113.00	2,348.00	N/A	100.00
Entry for hearing	1,085.00	1,205.00	2,113.00	2,348.00	N/A	100.00
Daily hearing fee	726.00	807.00	1,885.00	2,094.00	N/A	100.00
Chambers application	255.00	283.00	495.00	550.00	N/A	85.00

Court of Appeal

Item	Individual or Eligible Entity		Entity		Eligible Individual	
	Current Fee	New Fee	Current Fee	New Fee	Current Fee	New Fee
Filing an appeal notice	181.00	201.00	469.00	521.00	N/A	60.50
Filing Appellants case / Respondents answer	2,726.00	3,029.00	7,084.00	7870.00	N/A	100.00
Setting down fee	909.00	1010.00	1,768.00	1,964.00	N/A	100.00
Daily hearing fee	726.00	807.00	1,885.00	2,094.00	N/A	100.00
Chambers application	255.00	283.00	495.00	550.00	N/A	85.00

Probate

Item	Current Fee	New Fee
Application for grant or second subsequent	304.00	338.00
Depositing a will in the Registry	72.00	80.00
Certification under seal of a document true copy	17.65	19.60
Exemplification of a grant	90.50	101.00
Search and inspection of document or files of documents	36.60	40.70

State Administrative Tribunal Regulations 2004

Item	Individual or Eligible Entity		Entity		Eligible Individual	
	Current Fee	New Fee	Current Fee	New Fee	Current Fee	New Fee
Schedule 3 – Application Fee	1,370.00	1,522.00	1,370.00	1,522.00	N/A	100.00
Schedule 3 – Hearing fee	1,370.00	1,522.00	1,370.00	1,522.00	N/A	100.00
Schedule 4 – Application by an individual	500.00	556.00	913.00	1,014.00	N/A	100.00
Schedule 4 – Hearing fee (individual)	457.00	508.00	592.00	658.00	N/A	100.00

District Court (Fees) Regulations 2002

Item	Individual or Eligible Entity		Entity		Eligible Individual	
	Current Fee	New Fee	Current Fee	New Fee	Current Fee	New Fee
Commence action	722.00	802.00	1,409.00	1,565.00	N/A	100.00
Entry for hearing	722.00	802.00	1,409.00	1,565.00	N/A	100.00
Daily hearing fee	634.00	704.00	1,650.00	1,833.00	N/A	100.00
Chambers application	181.00	201.00	353.00	392.00	N/A	60.50
Application for leave to appeal	272.00	302.00	468.00	520.00	N/A	90.50
Filing an appeal notice	409.00	454.00	1,058.00	1,175.00	N/A	100.00
Application for an extraordinary drivers licence	182.00	193.00	N/A	N/A	N/A	58.00

Magistrates Court (Fees) Regulations 2005

Item	Individual or Eligible Entity		Entity		Eligible Individual	
	Current Fee	New Fee	Current Fee	New Fee	Current Fee	New Fee
Commence action Minor Case	106.00	118.00	206.00	229.00	N/A	35.30
Commence action \$10k-\$50k	269.00	299.00	526.00	584.00	N/A	90.00
Commence action exceeding \$50k	429.00	477.00	834.00	927.00	N/A	100.00
Entry for hearing Minor Case	167.50	186.00	325.00	361.00	N/A	55.50
Entry for hearing \$10k-\$50k	305.00	339.00	588.00	653.00	N/A	100.00
Entry for hearing exceeding \$50k	338.00	376.00	656.00	729.00	N/A	100.00
Half daily hearing fee Minor Case	96.50	107.00	252.00	280.00	N/A	32.10
Half daily hearing fee \$10k-\$50k	169.50	188.50	440.00	489.00	N/A	56.50
Half daily hearing fee exceeding \$50k	242.00	269.00	627.00	697.00	N/A	80.50
Chambers application Minor Case	88.50	98.50	171.50	190.50	N/A	29.40
Chambers application \$10k-\$50k	106.50	118.50	206.00	229.00	N/A	35.40
Chambers application exceeding \$50k	143.50	159.50	281.00	312.00	N/A	47.80
Application for extraordinary drivers licence	182.00	193.00	N/A	N/A	N/A	58.00

Fines, Penalties and Infringement Notices Enforcement Regulations 1994

Item	Current Fee	New Fee
Fee for issuing a final demand	16.40	18.20
Fee for preparing an enforcement certificate for infringement notice	13.95	15.50
Fee for registering an infringement notice with the Registry	52.00	58.00
Fee for issuing a notice of intention to enforce	34.60	38.40
Fee for issuing an enforcement warrant	163.00	181.00



Government of **Western Australia**
Department of Justice
Court and Tribunal Services

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Our Reference: CS 338-2017
DoJ Reference: 02282-2016

Mr David Price
Chief Executive Officer
The Law Society of Western Australia
P O Box Z5345
PERTH WA 6831

Dear Mr Price

COURT AND TRIBUNAL FEE INCREASES

Each year the Department of Justice undertake a review of fees and charges in accordance with Department of Treasury guidelines.

Effective 10 July 2017, various amendments to the below fee regulations will be made to provide an increase in court fees to match the movement in costs as determined by the Department. Fees and charges under the below mentioned Regulations have been increased by 1.75%. The major proposed changes to existing fee amounts are listed in Attachment A.

- Children's Court (Fees) Regulations 2005;
- Civil Judgments Enforcement Regulations 2005;
- Coroner's Regulations 1997;
- District Court (Fees) Regulations 2002;
- Evidence (Video and Audio Links Fees and Expenses) Regulations 1999;
- Fines, Penalties and Infringement Notices Enforcement Regulations 1994;
- Magistrates Court (Fees) Regulations 2005;
- State Administrative Tribunal Regulations 2004; and
- Supreme Court (Fees) Regulations 2002

Full details of all changes will be available from the State Law Publishing Office following gazettal on 7 July 2017. Should you require any further information, please contact Mr Travis Lang on 9425 7521.

Yours sincerely

Joanne Stampalia
A/Executive Director
Court and Tribunal Services

4 July 2017

Attachment A

Supreme Court (Fees) Regulations 2002

General Division

Item	Individual		Corporate	
	Current Fee	Proposed Fee	Current Fee	Proposed Fee
Commence action	1,205.00	1,226.00	2,348.00	2,389.00
Entry for hearing	1,205.00	1,226.00	2,348.00	2,389.00
Daily hearing fee	807.00	821.00	2,094.00	2,131.00
Chambers application	283.00	288.00	550.00	560.00

Court of Appeal

Item	Individual		Corporate	
	Current Fee	Proposed Fee	Current Fee	Proposed Fee
Filing an appeal notice	201.00	205.00	521.00	530.00
Filing Appellants case / Respondents answer	3,029.00	3,082	7,870.00	8,008.00
Setting down fee	1,010.00	1,028.00	1,964.00	1,998.00
Daily hearing fee	807.00	821.00	2,094.00	2,131.00
Chambers application	283.00	288.00	550.00	560.00

Probate

Item	Current Fee	Proposed Fee
Application for grant or second subsequent	338.00	344.00
Depositing a will in the Registry	80.00	81.50
Certification under seal of a document true copy	19.60	19.95
Exemplification of a grant	101.00	103.00
Search and inspection of document or files of documents	40.70	41.40

Attachment A

District Court (Fees) Regulations 2002

Item	Individual		Corporate	
	Current Fee	Proposed Fee	Current Fee	Proposed Fee
Commence action	802.00	816.00	1,565.00	1,592.00
Entry for hearing	802.00	816.00	1,565.00	1,592.00
Daily hearing fee	704.00	716.00	1,833.00	1,865.00
Chambers application	201.00	205.00	392.00	399.00
Application for leave to appeal	302.00	307.00	520.00	529.00
Filing an appeal notice	454.00	462.00	1,175.00	1,196.00
Application for an extraordinary drivers licence	193.00	196.50	N/A	N/A

Magistrates Court (Fees) Regulations 2005

Item	Individual		Corporate	
	Current Fee	Proposed Fee	Current Fee	Proposed Fee
Commence action Minor Case	118.00	120.00	229.00	233.00
Commence action \$10k-\$50k	299.00	304.00	584.00	594.00
Commence action exceeding \$50k	477.00	485.00	927.00	943.00
Entry for hearing Minor Case	186.00	189.50	361.00	367.00
Entry for hearing \$10k-\$50k	339.00	345.00	653.00	664.00
Entry for hearing exceeding \$50k	376.00	383.00	729.00	742.00
Half daily hearing fee Minor Case	107.00	109.00	280.00	285.00
Half daily hearing fee \$10k-\$50k	188.50	192.00	489.00	498.00
Half daily hearing fee exceeding \$50k	269.00	274.00	697.00	709.00
Chambers application Minor Case	98.50	100.00	190.50	194.00
Chambers application \$10k-\$50k	118.50	120.50	229.00	233.00
Chambers application exceeding \$50k	159.50	162.50	312.00	317.00
Application for extraordinary drivers licence	193.00	196.50	N/A	N/A

Attachment A

State Administrative Tribunal Regulations 2004

Item	Current Fee	Proposed Fee
Schedule 3 – Application Fee	1,522.00	1,549.00
Schedule 3 – Hearing fee (person)	1,522.00	1,549.00
Schedule 4 – Application by an individual	556.00	566.00
Schedule 4 – Application fee for other than an individual	556.00	566.00
Schedule 4 – Hearing fee (individual)	457.00	465.00
Schedule 4 – Hearing fee for other than an individual	457.00	465.00

Fines, Penalties and Infringement Notices Enforcement Regulations 1994

Item	Current Fee	Proposed Fee
Fee for issuing a final demand	18.20	18.50
Fee for preparing an enforcement certificate for infringement notice	15.50	15.75
Fee for registering an infringement notice with the Registry	58.00	59.00
Fee for issuing a notice of intention to enforce	38.40	39.10
Fee for issuing an enforcement warrant	181.00	184.00

