

3 March 2020

Ms Clare Thompson
Legal Costs Committee
Level 12, International House
26 St Georges Terrace
PERTH WA 6000

By email: LCC@justice.wa.gov.au

Dear Ms Thompson

LEGAL PROFESSION ACT—REVIEW OF CONTENTIOUS BUSINESS DETERMINATIONS

Thank you for your letter dated 28 October 2019.

The Law Society of Western Australia's submission in respect to the contentious business determinations is enclosed.

Should you have any queries or would like to discuss this further, please contact Mary Woodford, General Manager Advocacy, on 9324 8646 or email mwoodford@lawsocietywa.asn.au.

Yours sincerely



Nicholas van Hattem
President

REVIEW OF CONTENTIOUS BUSINESS DETERMINATIONS

To

Legal Costs Committee
Level 12, International House
26 St Georges Terrace
PERTH WA 6000

Law Society Contact

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Date

TUESDAY, 3 MARCH 2020

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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 October 2019 from the Chair of the Legal Costs Committee, Ms Clare Thompson, to submit any comments or suggestions by 10 March 2020 to a review of the following:
- *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2018*
 - *Legal Profession (Supreme and District Courts) (Criminal) Determination 2018*
 - *Legal Profession (District Court Appeals) (Contentious Business) Determination 2018*
 - *Legal Profession (Magistrates Court) (Civil) Determination 2018*
 - *Legal Profession (Magistrates Court) (Criminal) Determination 2018*
 - *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2018*
 - *Legal Profession (Family Court of Western Australia) Determination 2018*
 - *Legal Profession (Magistrates Court) (Family Law) Determination 2018; and*
 - *Legal Profession (State Administrative Tribunal) Determination 2018.*
- 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 2020.

2. Increase to hourly and daily rates in each of the determinations under review

- 2.1 The hourly and daily rates in the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2018*, *Legal Profession (Supreme and District Courts) (Criminal) Determination 2018*, *Legal Profession (District Court Appeals) Determination 2018*, *Legal Profession (Family Court of Western Australia) Determination 2018* and *Legal Profession (Magistrates Court) (Family Law) Determination 2018* 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	\$495
Junior Practitioner (permitted to practice on his or her own account for less than 5 years) (JP) hourly rate	\$352
Restricted Practitioner (RP) hourly rate	\$297
Clerk/paralegal (CPL) hourly rate	\$231
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel:	
Counsel (C) hourly rate	\$418

		daily rate	\$4,180
Senior Counsel	(SC)	hourly rate	\$682
		daily rate	\$6,820

2.2 It is submitted that the maximum hourly and daily rates in all of the determinations under review should be increased as follows¹:

Fee Earner	Current Maximum	Proposed Maximum
Senior Practitioner	\$495	\$528 (\$33 increase)
Junior Practitioner	\$352	\$374 (\$22 increase)
Restricted Practitioner	\$297	\$319 (\$22 increase)
Clerk	\$231	\$253 (\$22 increase)
Counsel	\$418	\$451 ² (\$33 increase)
Senior Counsel	\$682	\$726 (\$44 increase)

2.3 The justification for those increases is as follows:

2.3.1 since the determinations were increased to take into account the effect of GST in 2002, the 'average' increases in the scale (as compared to the wage price index ('WPI') and consumer price index ('CPI')) have been as follows:

Scale Year	Average Increase across the scale as opposed to previous scale (%)	WPI over the period (%)	CPI over the period (%)
2004	8.62	7.10	4.80
2006	6.25	8.10	7.90
2008	11.11	8.00	7.60
2010	5.26	7.00	4.30
2012	5.00	7.20	1.80
2014	4.68	6.50	1.40
2016	1.98	5.00	2.80
2018	2.12	4.10	1.50
TOTALS	46.38%	50.00	32.10

2.4 As is readily apparent, since the 2014 determinations were promulgated there have only been combined increases of around 4.10%, which is:

2.4.1 slightly less than the 4.3% CPI increase over the same period; and

2.4.2 less than half of the wage growth (9.10%) over the same period.

¹ With consequential increases to the other scale maximums which have been calculated by reference to a number of hours at a particular rate.

² Assuming the submission made below in respect of the difference between counsel and a senior practitioner is not adopted by the Legal Costs Committee.

2.5 The increases proposed above represent an average increase of 6.84% to the determinations.

2.6 In circumstances where there has been:

2.6.1 a 1.3% increase in CPI for the 2018-2019 financial year;

2.6.2 a 0.5% increase in CPI for the September 2019 quarter alone, with three more quarters to come;³

2.6.3 a 1.6% increase in the WPI for the 2018-2019 financial year;

2.6.4 a 0.7% increase in the WPI for the September 2019 quarter alone, with 3 more quarters to come;⁴ and

2.6.5 over the last 2 determinations (4 years) the increases to the determinations have been significantly less than wage growth (9.1% for WPI vs a 4.1% increase to the determinations);

it is submitted that the increases articulated above (about 6.84%) are warranted. It is likely that the determinations would still be 'behind' the WPI but it will be closer than it presently is.

2.7 Whilst the increase is greater than CPI, the Law Society submits that the WPI should be the primary point of reference. As is demonstrated by the above table, historically, increases to the determinations have been more closely linked to the WPI rather than the CPI. That is sensible because the provision of legal services is the provision of 'personal services' which are predominantly time costed with remuneration being linked to their hourly rate and hours worked rather than number of 'products' manufactured and sold.

2.8 Linking the maximum hourly rates in the determinations to the WPI also better takes into account increases in costs to legal practices for support staff.

2.9 Further, increasing the maximum hourly rates will, in the Law Society's view, increase access to justice rather than limit it. That is for these reasons:

2.9.1 the amounts in the scale are maximums not a minimum charge or even a standard charge;

2.9.2 it will work to decrease the 'gap' between solicitor and client costs and party and party costs where there is a costs agreement;

2.9.3 competition between law practices should always operate as a 'check' on hourly rates;

2.10 Finally, the increases proposed need to be viewed in comparison to the amounts contained in the Federal Court scales. That scale provides the maximum hourly rates for a lawyer at \$650.00 per hour; for junior counsel at \$530.00 per hour; and for senior counsel at \$740.00 per hour.

³ https://www.treasury.wa.gov.au/uploadedFiles/Treasury/Economic_Data/cpi-sep-2019.pdf (noting that this submission was prepared before the December 2019 quarter data was available).

⁴ https://www.treasury.wa.gov.au/uploadedFiles/Treasury/Economic_Data/wages-sep-quarter2019.pdf (noting that this submission was prepared before the December 2019 quarter data was available)

2.11 The hourly and daily rates in the *Legal Profession (Magistrates Court) (Civil) Determination 2018*, *Legal Profession (Magistrates Court) (Criminal) Determination 2018*, *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2018* and *Legal Profession (State Administrative Tribunal) Determination 2018* 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	\$418
Junior Practitioner (permitted to practice on his or her own account for less than 5 years) (JP) hourly rate	\$319
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	\$341
daily rate	\$3,300
Senior Counsel (SC) hourly rate	\$539
daily rate	\$5,390

2.12 It is submitted that the maximum hourly and daily rates in all of the determinations under review should be increased as follows:

Fee Earner	Current Maximum	Proposed Maximum
Senior Practitioner	\$407	\$429 (\$22 increase)
Junior Practitioner	\$308	\$330 (\$22 increase)
Restricted Practitioner	\$231	\$242 (\$11 increase)
Clerk	\$154	\$165 (\$11 increase)
Counsel	\$330	\$363 (\$33 increase)
Senior Counsel	\$539	\$550 (\$11 increase)

2.13 The proposed increases are fairly modest. A more significant increase has been applied to counsel so as to ensure that there is a greater gap between the maximum hourly rate for a junior practitioner and that of counsel.

2.14 A modest increase has been suggested to the rate for senior counsel. However, it is submitted that the Legal Costs Committee might consider increasing the maximum hourly rate for senior counsel noting that in order for senior counsel to be properly briefed in the Magistrates Court the matter is likely to be significantly complex or, most commonly, Warden's Court proceedings. On a party and party basis, if a party briefs senior counsel they will still have to satisfy a taxing officer that it was reasonable to brief senior counsel in all of the circumstances.

2.15 Otherwise, the increases represent an average 4.12% increase across the determination. It is recognised that is less than what is proposed for the other determinations, however that is designed in part to ensure that costs remain proportional to the issues that are dealt with in the Magistrates Court in all of the circumstances.

3. Introduction of a refresher fee into the determinations

- 3.1 Where a substantive final hearing, trial or an appeal goes part heard, there can be a significant delay in the matter being resumed. The effect of that delay increases the costs to parties to the proceedings because practitioners are required to refresh the matter prior to recommencing the resumed hearing.
- 3.2 An item for a refresher was a matter referred to by the Court of Appeal in *Strzelecki Holdings Pty Ltd v Jorgensen* [2019] WASCA 96 as being absent from the scale.
- 3.3 The Law Society submits that there is no good reason why, where a trial is adjourned part heard (particularly where the adjournment is through no fault of the parties) that an allowance for a refresher is not made. Given that matters adjourning part heard is not unusual, it cannot be guaranteed that a special costs order would be made in those circumstances.
- 3.4 As such, the Law Society submits that the following item should be added (using the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2018* as an example):

11	<p>...</p> <p>(e) where a hearing is adjourned part heard, a refresher</p>	C / SC	<p>Such amount as is reasonable in the circumstances but in any event not exceeding 5 hours</p>
21	<p>...</p> <p>(j) where a trial is adjourned part heard, a refresher</p>	C / SC	<p>Such amount as is reasonable in the circumstances but in any event not exceeding 1.5 days</p>
24	<p>...</p> <p>(m) where a hearing is adjourned part heard, a refresher</p>	C / SC	<p>Such amount as is reasonable in the circumstances but in any event</p>

				not exceeding 1.0 days
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3.5 It is not suggested, at this stage, that there be a refresher when an interlocutory application is adjourned part heard because of the usually discrete nature of those applications and the fact that there is not usually a significant delay between the adjourned hearing dates. Where an interlocutory application might warrant a refresher, an application for a special costs order would be more appropriate.

4. Removal of the gap between counsel and senior practitioner

4.1 The historical justification for the ‘gap’ between the maximum hourly rates for a senior practitioner and counsel has been that the overheads for counsel are lower than that of a senior practitioner.

4.2 The Law Society does not necessarily accept that to be the case.⁵ However, for the purpose of this submission will assume that is true.

4.3 The determinations provide that where a senior practitioner is acting as counsel, they are only entitled to recover the maximum hourly rate provided for counsel. For example, a senior practitioner appearing at the return of a chamber summons can only charge \$418 per hour but can then charge \$495 per hour for writing the letter reporting the outcome of that hearing.

4.4 Conversely, the rate for counsel is a stand-alone rate for all work done by a practitioner who practices as a barrister.

4.5 This raises a number of issues:

4.5.1 should a senior practitioner be entitled to recover more on a taxation for reading a pleading, than counsel who drew the pleading?;

4.5.2 does it remain proper for a senior practitioner to charge at a higher rate to prepare for court than actually appearing in court?;

4.5.3 why is a junior practitioner entitled, in effect, to an uplift for appearing in court whereas a senior practitioner’s hourly rate is discounted when they appear in court?;

4.5.4 does it remain proper for a senior practitioner instructing counsel at trial to be permitted to charge at, and recover, a higher hourly rate than counsel (other than senior counsel) appearing at the trial?

4.6 The reality is that the vast majority of barristers are practitioners who would otherwise fall within the definition of senior practitioner.

4.7 The Law Society supports an increase to the maximum hourly rate for counsel to match the hourly rate for a senior practitioner.

⁵ For example, other than costs of insurance, it is difficult to see the difference in costs that would be incurred by a practitioner practising as a barrister and a practitioner practising in sole practice. The differences in the cost of insurance takes into account the relevant risk profiles and the availability of advocates’ immunity to a significant portion of a barrister’s practice.

- 4.8 It is submitted that such an approach is even more warranted where legislation is now more frequently seeking to legislatively restrict the fees that practitioners can recover. See, for example, section 15L of the *Civil Liability Act 2002* (WA).
- 4.9 The effect of section 15L for example, is that counsel will almost always be restricted to charging less than a senior practitioner who is instructing them on the trial despite counsel having, arguably, the more crucial role in the conduct of the trial and the onerous duties that counsel has to the court when conducting advocacy.
- 4.10 The proposed change would also have the added benefit of being able to amend the definition of counsel in the scale to a practitioner who is practising with a 'barrister-only' condition on their practising certificate to enable the Legal Costs Committee to better adjust hourly rates for barristers and practitioners in the amalgam in the future without needing to involve an artificial distinction between the time that a senior practitioner spends in their office and in court.
- 4.11 Alternatively, the Legal Costs Committee may wish to retain the current definition of counsel so that it can, in the future, increase the maximum hourly rate for counsel (and a practitioner appearing as counsel) beyond the maximum hourly rate for a senior practitioner to, in effect, introduce an advocacy loading to recognise the significant skill and onerous duties involved in advocacy.

5. Part 2A of the *Civil Liability Act 2002* (WA)

- 5.1 The Law Society is not presently aware of any issues in respect of applications for anonymisation and, more specifically, item 10 being inadequate. As such, the Law Society does not see the need to make a submission that a specific item ought to be introduced.
- 5.2 The Law Society also notes that in *ZYX (pseudonym initials) v JD (pseudonym initials)* [2019] WADC 164, Chief Judge Sleight made the following observations:

[86] *It has been the administrative practice of the registry of the District Court of Western Australia to permit plaintiffs in cases involving child sexual abuse causes of action to anonymise the name of the plaintiff by using initials in all court documents filed subsequent to the writ of summons. This practice has not been formally recognised by any practice direction or rules of the court. As mentioned earlier in this decision the court has power (see O 67B r 5 of the RSC) on its own initiative or on the application of any person to make an order where it considers it is in the interests of justice to do so to restrict access to information or a record or any other thing.*

...

[90] *I wish to make some brief observations concerning the practice of the registry of accepting documents, subsequent to a writ of summons, with plaintiffs' names anonymised using initials. This practice should not continue without a formal order from the court. Plaintiffs who wish to obtain this protection should make an application to the court for an order pursuant to O 67B r 5 of the RSC. The application should be made prior to the filing of the writ of summons or at the time of the filing of a writ of summons. It is preferable that the application be made prior to the filing of the writ of summons or at least an order sought immediately after the filing of the writ of summons prohibiting the publication of the plaintiff's*

name as otherwise a non-party would have an entitlement to a copy of the writ of summons under DCR r 71 and be able to identify the plaintiff.

- 5.3 Further, the Law Society does not expect that applications by plaintiffs for pseudonyms or similar are likely to be significantly contested. It would appear that the only applications which are likely to be contested are (or were) applications by defendants. Given the observations by the Chief Judge in ZYX, at [94] in particular, it should be unlikely that those applications will be seriously contested either. However, as the decision in ZYX notes, an application will still have to be made and reasons given by the court. As such, an allowance in accordance with item 10 appears to remain adequate at this point in time.

6. Item 12 – Family Provision Claims

- 6.1 It would assist to have some clarity about whether the allowance for acting for a beneficiary is a ‘per beneficiary’ allowance where a practitioner acts for more than one beneficiary or is a ‘universal’ allowance for all of the beneficiaries that a practitioner acts for.
- 6.2 The Law Society is of the view it should be a ‘universal’ allowance, noting that a special costs order can always be sought in an appropriate case where multiple beneficiaries are being represented by a single practitioner and, by virtue of their number or other factors, the matter has been unusually difficult, complex or important.
- 6.3 The Law Society would support an increase to the maximums to take into account any increases to the maximum hourly rates.
- 6.4 Otherwise, there have been no particular complaints or problems with the item that the Law Society sees a need to comment on or make submissions in respect of.

7. Item 36 – Motor Vehicle Claims

- 7.1 The general view of the Costs Committee of the Law Society is that neither plaintiff nor defence lawyers consider that item 36 is of great value.
- 7.2 Plaintiff lawyers appear to have the view that the amount is inadequate. Defence lawyers have a view that it is too generous or that plaintiff lawyers see it as a ‘fixed fee’.
- 7.3 In any event, the item is effectively voluntary as it generally requires that the parties agree costs. Anecdotally the experience of Costs Committee members is that the item is rarely used because parties at a pre-trial conference will generally be reluctant to agree that the costs be taxed pursuant to item 36 because the plaintiff will invariably contend that item 36 is inadequate and they want a special costs order or defendants will not want to expose themselves to the maximum provided for in item 36.
- 7.4 The reality is that most plaintiff and defendant lawyers know the ‘going rate’ for a claim and negotiate without regard to item 36. For that reason, the Law Society supports removing item 36 and leaving what is an appropriate amount to the highly experienced taxing officers in the District Court.

8. Compromises under Order 70 rule 10

- 8.1 At present, compromises are dealt with pursuant to item 10. The general practice has been to claim counsel’s opinion in support of the compromise as a disbursement.
- 8.2 However, the Law Society would be supportive of the introduction of an item that specifically refers to counsel’s opinion on a compromise application and otherwise includes an allowance pursuant to item 10. The Law Society submits that it could be added to item 10 as follows:

10	... (d) on an application for compromise pursuant to Order 70 rule 10, counsel’s opinion in respect of the compromise		C / SC	Such amount as is reasonable in the circumstances
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- 8.3 It is submitted that “such amount as is reasonable in the circumstances” is preferable to a maximum as the circumstances relating to the compromise will be varied and counsel’s opinion may be straightforward or incredibly detailed depending on the matter. For example, a compromise opinion in a family provision claim in a small estate will ordinarily be more complex than an opinion in a birth defects negligence case.

9. Means inquiries and default inquiries

- 9.1 The Law Society’s view is that means inquiries and default inquiries in the Supreme and District Courts are already catered for by item 13. In any event, the Registrar who conducts the means or default inquiry will, as a matter of practice, ordinarily fix the costs.
- 9.2 A means inquiry or default inquiry in the Supreme or District Courts could be relatively straightforward or fairly complex. In circumstances where item 13 would cover those proceedings, the Registrars (who are also taxing officers) generally fix the costs in any event.⁶
- 9.3 The Law Society submits there is no good reason to intervene in an area which, as a matter of practice, is generally reported to be working well.

10. Claims harvesting

- 10.1 The Legal Costs Committee has raised the issue of claims harvesting with the Law Society whereby practitioners pursue accident or injury victims to lodge claims which might have dubious merit or perhaps even be exaggerated or falsified. It has been suggested by the Committee that introducing a cap on costs payable on low value claims might discourage this.
- 10.2 The Law Society has no knowledge of such claims.
- 10.3 However, it would seem that introducing such a cap might only serve to further invite those claims to be made as it would ‘highlight’ the fee that could be achieved. It would also operate to limit the costs exposure of those putative plaintiffs which the claims harvesters might offer to indemnify further increasing the possibility of such claims.

⁶ The preference in enforcement proceedings is to fix costs because there is little point in putting parties to the additional expenses of a further taxation each time there is an enforcement proceeding.

- 10.4 In the Law Society's view if such a process is occurring it is a matter that is more properly dealt with by legislative intervention or, perhaps, by the Legal Profession Complaints Committee rather than by the imposition of anything within the determinations.

11. Redundant items

- 11.1 The Law Society's view is that items 22 and 23, for re-trial and special case, remain relevant and ought be retained.
- 11.2 The Law Society is ambivalent about item 20, for striking a jury, being retained. Section 123 of the *Criminal Procedure Act 2004* (WA) provides that trial by jury is a no costs jurisdiction. That being the case, item 20 could only relate to a civil jury in a defamation case.
- 11.3 To the Law Society's knowledge, there has only been one recent defamation case actually put to a jury, but there have been various successful applications for a trial by jury. Given that the *Defamation Act 2005* (WA) anticipates the option of trial by civil jury in a defamation case that may be a basis to retain the item. However, it is not clear that with a civil jury there is any 'striking' that takes place.
- 11.4 If item 20 was removed, there is no reason why it could not be the subject of a specific order for costs by the trial judge (if indeed substantial additional costs were incurred by virtue of the jury). In any event, the current allowance of 1 hour by a junior practitioner for what is probably a specialist task is likely to be inadequate in any event and will likely see an application for a special costs order.

12. Item 30 - Costs of a provisional assessment

- 12.1 In the Law Society's view, the introduction of an item in respect of the costs of a provisional assessment will only serve to further and unnecessarily increase the potential for disputes arising from the provisional assessment process.
- 12.2 The provisional assessment process is not a process that is found in the rules, but rather is a practice direction of the court. The system has been, in the Law Society's view, working extremely well.
- 12.3 Further, given that when a provisional estimate is given it is given as a fixed sum, the inclusion of an item in respect of the costs of the provisional assessment is likely to be more illusory than real. The Registrars are more than capable of taking into account the costs of the process when formulating an estimate. It also avoids the position where a party seeks to object to the specific allowance for costs of the provisional assessment, rather than the actual provisional assessment itself.
- 12.4 One amendment that the Law Society would support is a specific reference within item 30 for an amount for attending directions hearings and/or confidential conferences during the course of a taxation.

13. Recommendations

13.1 Recommendation 1⁷

The allowance in relation to hourly and daily rates for the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2020*, *Legal Profession (Supreme and District Courts) (Criminal) Determination 2020*, *Legal Profession (District Court Appeals) Determination 2020*, *Legal Profession (Family Court of Western Australia) Determination 2020* and *Legal Profession (Magistrates Court) (Family Law) Determination 2020* be 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	\$528
Junior Practitioner (permitted to practice on his or her own account for less than 5 years) (JP) hourly rate	\$374
Restricted Practitioner (RP) hourly rate	\$319
Clerk/paralegal (CPL) hourly rate	\$253
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel:	
Counsel (C) hourly rate	\$451
daily rate	\$4,510
Senior Counsel (SC) hourly rate	\$726
daily rate	\$7,260

13.2 Recommendation 2⁸

The allowances in relation to hourly and daily rates for the *Legal Profession (Magistrates Court) (Civil) Determination 2020*, *Legal Profession (Magistrates Court) (Criminal) Determination 2020*, *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2020* and *Legal Profession (State Administrative Tribunal) Determination 2020* be 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	\$429
Junior Practitioner (permitted to practice on his or her own account for less than 5 years) (JP) hourly rate	\$330
Restricted Practitioner (RP) hourly rate	\$242

⁷ Subject to recommendation 4.

⁸ Subject to recommendation 4

Clerk/paralegal	(CPL)	hourly rate	\$165
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel:			
Counsel	(C)	hourly rate	\$363
		daily rate	\$3,630
Senior Counsel	(SC)	hourly rate	\$550
		daily rate	\$5,550

13.3 Recommendation 3

There be consequential amendments to the scale maximums to take into account the increased maximum hourly rates contained in recommendations 1 and 2.

13.4 Recommendation 4

The maximum hourly rate for counsel be increased to, at this stage, match the hourly rate for a senior practitioner.

13.5 Recommendation 5

There be items added to enable refresher fees to be claimed where a hearing, appeal or trial adjourns part heard.

13.6 Recommendation 6

Item 36 of the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination* be removed.

13.7 Recommendation 7

The following addition be made to item 10:

10	...		C / SC	Such amount as is reasonable in the circumstances
	(d) on an application for compromise pursuant to Order 70 rule 10, counsel's opinion in respect of the compromise			

13.8 Recommendation 8

Item 22 and 23 of the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination* be retained.

13.9 Recommendation 9

Item 20 of the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination* be removed.

13.10 Recommendation 10

Item 30 of the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination* be amended to include reference to attending at any directions hearing and any confidential conference.



Nicholas van Hattem
President