

31 March 2022

Clare Thompson SC
Chair
Legal Costs Committee

Email: lcc@justice.wa.gov.au

Dear Ms Thompson

REVIEW OF THE CONTENTIOUS BUSINESS DETERMINATIONS

I refer to your email of 17 March 2022, which has been considered by the Law Society Council following a review by our Costs Committee (“**the Committee**”).

While the Law Society notes that comprehensive submissions were made in 2020 recommending proposed increases with respect to the Legal Costs Determinations (“**the Scales**”), this position was not adopted in the 2022 recommendations. The Law Society after considering the Committees views reached this position based on access to justice principles, including affordability for clients, including the impact on party and party costs liabilities.

Irrespective of the above, the Law Society did however recommend in its 2022 submission that an increase be reconsidered for the following review, in 2024.

Unfortunately, since the matter was last considered, the following external factors have become apparent:

- Transport costs have increased recently due to worldwide fuel shortages occasioned by the conflict in the Ukraine. Although it is unclear how long fuel prices will remain at record highs, this could be an issue for the legal profession, particularly for practitioners travelling from suburbs for Court commitments and country practitioners.
- Anecdotally, the infrastructure cost on practices as a result of the covid pandemic has likely increased in the short term. There appears to be a general reluctance in Western Australia for all employees to remain in offices at any one time, which has arguably increased costs for practices by the necessity of the purchasing of technological equipment and infrastructure for remote working. This is a relatively new development in Western Australia as the State has remained somewhat ‘shielded’ by the covid pandemic until only recently.
- Anecdotally, and according to influential legal recruitment businesses in Perth, there is an indication that legal practitioner salaries are on the rise. It is noted by the Committee that one influential Perth based recruiter has suggested that mid-level lawyers are expecting pay increases of between 5% and 25%, especially at the associate and senior associate levels.
- Noting the publicly available (and very recent) data that the Western Australian unemployment rate is 4.1%, (virtually the same as the national average),

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underemployment has massively reduced, with significant increases in both participation rate and monthly hours. This indicates significant wage increase pressures across the economy which will likely impact law firms' costs of practice. Of course, higher wages will usually impact affordability.¹

The issues with respect to the points above are recent, and therefore, the previously utilised resources of [Wage Price Index](#) and the [Consumer Price Index](#) may not reflect the current position in Western Australia. Further, the resource of the [annual ALPMA Legal Industry HR Issues and Salary Survey](#) may also be useful, however this survey won't be published until April 2022, which of course, is not of benefit at this point in time. Furthermore, the Law Society does not possess current information on the commercial property rental market in Western Australia, however the Legal Costs Committee may wish to consider a market report such as JLL's Australian Office Market Overview 4Q21.²

With the above recent considerations in mind, the Law Society has reviewed its previous position and would support the Legal Costs Committee increasing the scale rates. The factors that were behind the recommendation of the increases in the 2020 submission still apply, except that they are now 2 years old, and there is no evidence that those factors (in favour of increase) have abated or have gone backwards. However, due to the likely limited data at present, the Law Society is of the view that any increases should be consistent and not greater than the increases recommended in our 2020 submission.

I look forward to the outcome of the Legal Cost Committee's review of the Contentious Business Determinations.

Yours sincerely



Rebecca Lee
President

¹ <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/feb-2022>

² <https://www.jll.com.au/en/trends-and-insights/research/australian-office-market-overview-4q21>