

11 March 2025

Chair
Legal Costs Committee
Level 12, Golden Square
32 St George's Terrace
PERTH WA 6000

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

Dear Chair

2025 REVIEW OF THE NON-CONTENTIOUS BUSINESS DETERMINATIONS

I refer to the Legal Costs Committee's Call for Submissions from January 2025, and letter dated 28 February 2025, and on behalf of the Law Society of Western Australia, express our appreciation for the opportunity to provide input in relation to the Non-Contentious Business Determinations review.

The Law Society sets out its submissions below.

1. Introduction

- 1.1. The Law Society of Western Australia (**Society**) is the peak association for the legal profession in Western Australia.
- 1.2. Section 137 of the *Legal Profession Uniform Law Application Act 2022* (**Act**) requires the Legal Costs Committee to review each costs determination in force at least once in the period of 2 years after the determination was made and in each period of 2 years after that period.
- 1.3. Section 139 of the Act requires the Legal Costs Committee to give written notice to the Society of its intention to make or review a costs determination.
- 1.4. Written notice to the Society was made by letter dated 28 February 2025 from the Chair of the Legal Costs Committee, David Bayly SC to review the following determinations:
 - 1.4.1. *Legal Profession (Non- Contentious Business) Determination 2023* ("**Non-contentious Scale**")
 - 1.4.2. *Legal Profession (Non-Contentious Probate) Report 2023* ("**Probate Scale**")
 - 1.4.3. *Legal Profession (Public Notaries) Report 2023* ("**Notaries Scale**")

2. Maximum allowable hourly rates

- 2.1. The table below shows the current maximum allowable hourly rates in items 7 and 8 of the Non-Contentious Scale, clause 4(d) of the Probate Scale and Table A in clause 11 of the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2024* ("**Supreme Court Scale**").

Fee Earner	Non-Contentious Scale commenced 1 July 2023	Probate Scale commenced 1 July 2023	Supreme Court Scale commenced 1 July 2024
Senior Practitioner	517	517	572
Junior Practitioner	374	374	418
Restricted Practitioner	330	330	352
Clerk/Paralegal	253	253	264
Counsel	473	473	528
Senior Counsel	693	n/a	781

2.2. The Legal Costs Committee's biennial review of the Non-Contentious Scale and Probate Scale is historically conducted in the year between reviews of the Supreme Court Scale. In 2023, the maximum allowable hourly rates (for fee earners other than Counsel/ Senior Counsel) in the Solicitors Costs Scale and Probate Scale were increased following the biennial review, to amounts higher than the maximum allowable hourly rates in the then current Supreme Court Scale. The Society supports this approach continuing.

3. Consumer Price Index and Wages Price Index

3.1. In reviewing and determining the maximum hourly rates in a costs scale, it is relevant for the Legal Costs Committee to take into account the movement in the Consumer Price Index ("CPI") and Wages Price Index ("WPI"). Increases in the CPI and WPI necessarily impact on the costs of running a law practice and therefore on the provision of professional legal services.

3.2. The Australian Bureau of Statistics CPI Tables for the period July 2023 to December 2024 is annexed to this submission, **Annexure 1**.

3.3. CPI numbers for Western Australia were as follows:

Quarter	Percentage change from previous period %
September 2023	0.4
December 2023	1.5
March 2024	0.6
June 2024	2.1
September 2024	-0.4
December 2024	0.7
Total increase	4.9

3.4. Between July 2023 and June 2027, the CPI index is likely to continue to increase. Based on the increase in the above table, the total increase is likely to exceed 10%.

3.5. The Australian Bureau of Statistics WPI Tables of percentage changes for the private sector in Western Australia for the period July 2023 to December 2024 is annexed to this submission, **Annexure 2**.

Quarter	Percentage change private sector
September 2023	1.9
December 2023	0.8
March 2024	0.6
June 2024	0.9
September 2024	1.3
December 2024	0.6
Total increase	6.1

- 3.6. Between July 2023 and June 2027, the WPI index is likely to continue to increase. Based on the increase in the above table, the total increase is likely to exceed 10%.

4. The Non- Contentious Scale

- 4.1. The Society notes that the collective experience of current members of the Society's Costs Committee is that law practices and legal practitioners do not charge in accordance with the ad valorem rates in the Non-Contentious Scale.
- 4.2. However, it is understood that this is a matter which the Legal Costs Committee intends to consider more extensively at the next review in 2027.

Item 5

- 4.3. The fixed amounts in items 501 and 502 have not changed since 2015, despite increases in CPI, WPI and the maximum allowable hourly rates in item 7.

Item 603 – copying

- 4.4. The allowance for copying has remained at \$0.165 per page since 2013.
- 4.5. In 2024, the Supreme Court Scale increased the allowance for copying from \$0.165 to \$0.20 per page.

Submission

The Society submits that the following increases are fair and reasonable:

- 4.6. the maximum allowable hourly rates in Item 7 should be increased by at least 10% (inclusive of GST) rounded up or down to be divisible by 11. The increase will need to exceed 10% if adopting the approach referred to above in paragraph 2.2.
- 4.7. the maximum allowable hourly rates in Item 8 should be increased to bring the rates in line with the Supreme Court Scale.
- 4.8. the maximum amounts in Item 5 should be increased by 5% (inclusive of GST) rounded up or down to be divisible by 11.
- 4.9. item 603 should be increased to \$0.20 per page to bring this into line with the Supreme Court Scale.

5. Probate Scale

- 5.1. The fixed amounts payable for services provided under clause 4(a) were increased by 10% following the Legal Costs Committee's review in 2023.
- 5.2. Since then, it can reasonably be inferred that the costs of running a law practice and providing legal services have increased, based on the movement in CPI and WPI.
- 5.3. Clause 4(d) of the Probate Scale outlines the maximum allowable hourly rates for a clerk/paralegal, restricted practitioner, junior practitioner and senior practitioner. However, these fee earners are not defined in accordance with the approach adopted in the Supreme Court Scale. Namely, by reference to (C/PL), (RP), (JP) and (SP). Notwithstanding this, clause 5 of the Probate Scale refers to "SP".
- 5.4. Further, the reference "C" appears in clause 5. While this is clearly intended to be a reference to Counsel this should be made clear.

Submission

The Society submits that the following increases are fair and reasonable:

- 5.5. The fixed allowances in clauses 4(a), (b) and (c) of the Probate Scale should be increased by 5% (inclusive of GST) rounded up or down to be divisible by 11.
- 5.6. the maximum allowable hourly rates in clause 4(d) should be increased by at least 10% (inclusive of GST) rounded up or down to be divisible by 11. The increase will need to exceed 10% if adopting the approach referred to at paragraph 2.2 above.
- 5.7. Clause 4(d) should define fee earners as follows: Senior Practitioner (SP), Junior Practitioner (JP), Restricted Practitioner (RP), clerk/paralegal (C/P).
- 5.8. Clause 5 should make it clear that the reference to "C" is to Counsel.

6. Notaries Scale

- 6.1. Section 15A of the *Public Notaries Act 1979* (WA) provides that a Public Notary may charge a fee for providing notarial services but that fee shall not exceed the fee for those services fixed from time to time by legal costs determination made under the *Legal Profession Uniform Law Application Act 2022*.
- 6.2. Unlike the Non-contentious Scale and Probate Scale, there is no ability for a Public Notary to contract out of the legal costs determination. Arguably, the rates set by the Notaries Scale therefore assumes greater importance for Public Notaries than for legal practitioners.

Submission

- 6.3. The Society submits that an increase of 5.0% to the rates in the scale (inclusive of GST), rounded up or down to be divisible by 11, is warranted.

The Law Society welcomes the Legal Costs Committee's offer of greater collaboration with our Costs Committee in the future, and would be pleased to co-ordinate a meeting in or about October 2025 between the two committees to discuss any new costs scales structures or systems in the future.

If you have any queries please contact Susie Moir, General Manager Advocacy and Professional Development on smoir@lawsocietywa.asn.au or telephone 9324 8646.

Yours sincerely



Gary Mack
President

Encl Annexure 1 and Annexure 2

ANNEXURE 1

Percentage change (from previous quarter)									
Period	Sydney	Melbourne	Brisbane	Adelaide	Perth	Hobart	Darwin	Canberra	Weighted average of eight capital cities
2024 December	-0.1	0.1	0.6	-0.1	0.7	1.5	-0.1	0.1	0.2
2024 September	0.5	0.7	-0.9	0.5	-0.4	-1.1	0.1	0.3	0.2
2024 June	1.0	0.7	1.0	1.3	2.1	0.1	0.9	0.9	1.0
2024 March	1.0	1.0	1.1	0.7	0.6	1.0	0.7	1.0	1.0
2023 December	0.4	0.6	0.5	0.7	1.5	0.7	0.5	0.4	0.6
2023 September	1.3	1.3	0.7	1.7	0.4	0.9	0.9	0.8	1.2
2023 June	1.0	0.6	1.0	1.1	0.8	0.4	1.2	1.1	0.8
2023 March	1.4	1.2	1.9	1.2	0.9	1.2	1.3	1.4	1.4
2022 December	1.8	1.6	1.5	1.7	3.6	1.5	0.9	1.2	1.9
2022 September	2.3	2.1	1.8	2.6	-0.5	2.3	1.9	1.9	1.8
2022 June	1.6	1.8	2.1	2.1	1.7	1.8	2.1	1.6	1.8
2022 March	1.7	2.3	2.2	1.9	3.3	2.0	2.1	2.2	2.1
2021 December	1.2	1.1	1.6	1.5	1.4	2.2	0.8	1.0	1.3
2021 September	0.7	0.8	1.3	0.7	0.8	0.3	1.5	1.3	0.8
2021 June	0.8	0.3	0.8	0.5	1.9	1.1	1.0	0.8	0.8
2021 March	0.4	0.3	0.6	0.6	1.4	0.8	2.6	0.9	0.6
2020 December	1.0	1.5	1.1	0.7	-1.0	0.8	0.6	0.8	0.9
Source: Australian Bureau of Statistics, Consumer Price Index, Australia December Quarter 2024									

ANNEXURE 2

Data Explorer User Guide



Filters

Applied filters **7** 24 data points

Index: × Total hourly rates of pay excluding bonuses × Sector: × ... > Private ×



Overview



Table



Labels



Layout



Download



Developer API



Full screen

Wage Price Index

Index: Total hourly rates of pay excluding bonuses • **Sector:** Private •

Industry: All Industries • **Adjustment Type:** Original • **Region:** Western Australia •

Frequency: Quarterly

<i>Measure</i>		Quarterly Index ^{IN}	Percentage change from previous quarter ^{PCT}	Percentage change from corresponding quarter of previous year ^{PCT}
<i>Time Period</i>				
2023-Q1		142.7	0.8	4.4
2023-Q2		144	0.9	4.3
2023-Q3		146.8	1.9	4.6
2023-Q4		148	0.8	4.6
2024-Q1		148.9	0.6	4.3
2024-Q2		150.3	0.9	4.4
2024-Q3		152.3	1.3	3.7
2024-Q4		153.2	0.6	3.5

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