

29 April 2026

Mr David Bayly SC  
Chair  
Legal Costs Committee  
Level 12  
32 St Georges Terrace  
PERTH WA 6000

By email: [lcc@justice.wa.gov.au](mailto:lcc@justice.wa.gov.au)

Dear Mr Bayly

## **2026 REVIEW OF THE LEGAL PROFESSION CONTENTIOUS BUSINESS DETERMINATIONS**

I refer to the Legal Costs Committee's letter dated 1 April 2026 and on behalf of the Law Society of Western Australia, express our appreciation for the opportunity to provide input in relation to the 2026 review of the Legal Profession Contentious Business Determinations.

The Law Society's Costs Committee has reviewed the following Contentious Business Costs Determinations:

- Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2024;
- Legal Profession (Supreme and District Courts) (Criminal) Determination 2024;
- Legal Profession (Magistrates Court) (Civil) Determination 2024;
- Legal Profession (Magistrates Court) (Criminal) Determination 2024;
- Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2024;
- Legal Profession (Family Court of Western Australia) Determination 2024;
- Legal Profession (Magistrates Court) (Family Law) Determination 2024; and
- Legal Profession (State Administrative Tribunal) Determination 2024.

The Law Society makes the following submissions:

### **1. Consumer Price Index and Wages Price Index**

- 1.1. 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.
- 1.2. The Australian Bureau of Statistics CPI Tables for the period July 2024 to February 2026 is **Annexure 1** to this submission.

1.3. CPI numbers for Western Australia were as follows:

Month	Percentage change from previous period %
July 2024	0.2
August 2024	-1.1
September 2024	0.1
October 2024	0.5
November 2024	1.2
December 2024	-0.7
January 2025	-0.2
February 2026	0.6
March 2025	1.5
April 2025	1.1
May 2025	-0.5
June 2025	0.0
July 2025	1.0
August 2025	0.1
September 2025	0.4
October 2025	-0.2
November 2025	-0.3
December 2025	0.7
January 2026	0.3
February 2026	0.6
<b>Total increase</b>	<b>5.3</b>

1.4. The Australian Bureau of Statistics WPI Tables of percentage changes for the private sector in Western Australia for the period July 2024 to December 2025 is **Annexure 2** to this submission.

Quarter	Percentage change private sector
September 2024	1.3
December 2024	0.6
March 2025	0.6
June 2025	0.6
September 2025	1.5
December 2025	0.7
<b>Total increase</b>	<b>5.3</b>

1.5. Both the CPI Index and WPI indices are likely to continue to increase.

## 2. Other Uniform Law jurisdictions

The Law Society further notes that the maximum allowable hourly rates in this State, particularly for more senior lawyers, are substantially lower than in other Uniform Law jurisdictions.

For example, in Victoria, the Supreme Court scale<sup>1</sup> provides for recovery as follows:

Fee earner	A reasonable amount up to a maximum of (GST excl)
Legal practitioner of 10 or more years post admission experience	\$900 per hour
Legal practitioner of between 5 and 9 years post admission experience	\$650 per hour
Legal practitioner of less than 5 years post admission experience	\$450 per hour
Employee of a legal practice (including a law graduate) who is not a legal practitioner, exercising legal skill or knowledge	\$390 per hour
Employee of a legal practice (including a law graduate) who is not a legal practitioner, doing work not requiring legal skill or knowledge, capable of performance by a clerk	\$290 per hour

In New South Wales, the Costs Assessment Rules Committee Guidelines<sup>2</sup> provide for hourly rates to be allowed within the ranges below.

Fee earner	Range (exclusive of GST)
Senior partner/partner/specialist (10+ years) (hourly)	\$540 - \$900
Senior Associate (5 years plus) (hourly)	\$360 - \$600
Employed solicitor / junior associate (1-4 years) (hourly)	\$240 - \$480
Senior Counsel (hourly)	\$600 - \$1,000
Junior Counsel (hourly)	\$240 - \$560
Paralegals	\$130 - \$300
Clerks/secretaries	\$90 - \$180

**Recommendation 1: Increase the maximum hourly and day rates to an amount that, when divided by 11, achieves an increase of approximately 10%.**

### 3. Supreme and District Courts Determination

#### Table B, Items (1)(c) and 3(b)

In the collective experience of current members of the Law Society's Costs Committee, pleadings are becoming increasingly complex. This corresponds with increasing

<sup>1</sup> [Supreme Court \(Chapter I Costs Amendment\) Rules 2024](#)

<sup>2</sup> Dated 24 October 2023

observed instances of practitioners charging in excess of 12 hours to draft a statement of claim or defence.

The Law Society notes that these scale items were last increased in 2022, when the Legal Costs Committee resolved to increase the allowance of 10 hours to 12 hours due to the increasing complexity of pleadings. That was the first time that the 10 hour allowance had been increased since the scale was introduced in 1996. While that increase was somewhat recently made, a further increase is warranted given the increasing complexity of claims and involvement of Counsel when drafting pleadings.

**Recommendation 2: The hours in the time column be increased from 12 hours to 18 hours.**

Table B, Items 6(a) and (b)

Since the introduction of this scale item in 1996, the Law Society notes the scale maximum has increased over time as increases to the hourly rates were made from time to time. However, the time allowance on which the scale maximum is based, being 3 hours and 5 hours respectively, has not increased since the scale was introduced in 1996. Combined with the increasing complexity of pleadings, the Law Society submits an increase in the time allowance is warranted.

**Recommendation 3: Increase the hours in the time column for item 6(a) from 3 hours to 5 hours and for item 6(b) from 5 hours to 7 hours.**

Table B, Item 7(b)

The Law Society notes that the designated fee earner for this scale item is a JP. This was the result of amendments made to the scale in 2022. For many years prior to the amendment, the designated fee earner for this item was a SP, however, there was a limit on the number of hours recoverable. In 2022, the fee earner was changed from SP to JP and the limit on hours was removed to reflect that work on discovery was, in the main, undertaken by more junior fee earners.

The Society's understanding is that senior practitioners are often involved in the discovery process and notes that the scale as presently drafted will limit recoverability for their time. Accordingly, it is recommended that the designated fee earner be amended to SP.

**Recommendation 4: Amend the designated fee earner for this scale item from JP to SP.**

Table B, Items 9(a) and (b)

The Law Society submits that items 9(a) and (b) do not sufficiently remunerate solicitors for the time taken to prepare and respond to interrogatories. For example, in personal injuries matters, this requires consideration of the statement of claim, the liability and medical evidence in addition to preparing the actual interrogatories. The Law Society proposes an increase in the allowance for both items, in relation to (a) an increase to 8 hours and (b) an increase to 15 hours.

**Recommendation 5: Increase the hours for item 9(a) from 5 hours to 8 hours and in item 9(b) from 10 to 15 hours.**

Table B, Item 10(a)

The Law Society submits that the position in relation to recovery of fees for Senior Counsel and Counsel under this item requires clarification, noting the 2016 Determination stated:

“An allowance for Senior Counsel has been included in items 10 and 11 in this Determination in recognition of the increasing complexity of matters covered by those items of the Determination. It is not intended that fees for both Senior Counsel and Counsel be recoverable unless the Court is of the opinion that it was reasonable to brief two counsel. It is not intended that fees for Senior Counsel be recoverable unless the Court is of the opinion that it was reasonable to brief Senior Counsel.”

If the intention is to provide an allowance for both Senior Counsel and Counsel, the Law Society proposes that this item be amended for consistency with Item 11(a) (including an allowance for additional days of hearing). Alternatively, the Law Society proposes that a Note be included to clarify the recoverable allowance where Senior Counsel and Counsel are both briefed.

**Recommendation 6: Amend item 10(a) to be consistent with item 11(a) or provide a Note to clarify the recoverable allowance where Senior Counsel and Counsel are briefed.**

Table B, Item 11(a)(3)

There appears to be a calculation error in this item. The maximum dollar figure is \$44,400, however when the hours in the time column are multiplied by the scale hourly rate for Counsel, this produces a figure of \$44,440.

**Recommendation 7: Ensure the scale maximum is correctly calculated for the 2026 Determination.**

Table B, Items 11(d) and 12(b)

The description in the scale for these items omits any allowance for preparation time. The Law Society submits that, consistent with other scale items, including items 10(b), 11(e) and 14, the scale should include an allowance for preparation for the relevant attendance.

**Recommendation 8: Amend the description for items 11(d) and 12(b) to include preparation.**

Table B, item 17(a)

The Law Society considers the cap on item 17(a) to be inadequate. Item 17(a) presently allows \$2,090, being a total of 5 hours at the JP rate. Preparing an application for compromise requires a chamber summons, an affidavit in support (often also with an affidavit for the Trustee), conferral and taking instructions. The time and effort involved in this process will vary greatly, however matters which involve any degree of complexity invariably exceed this cap by a significant margin.

The Law Society submits the cap should be removed entirely with the allowance then simply being what is reasonable in the circumstances. If that submission is not accepted

for all matters, the Law Society submits the cap should be removed in relation to catastrophic injury and historical abuse claims, in line with other scale items.

**Recommendation 9: Amend scale item 17(a) to remove the cap, or to remove the cap for catastrophic injury and historical abuse claims.**

Table B, Item 22(a)

The Law Society submits that opening submissions should be a separate subparagraph in item 22. Opening submissions should be removed from subsection (a) and form a new subsection (b) with the remaining items being renamed from 22(b)-(h) to 22(c)-(i). This new item (b) for opening submissions should provide an allowance that is reasonable in the circumstances. This may reduce the need for parties to apply for special costs orders in matters where opening submissions are deemed necessary, given the current inclusive limit of 3.5 days preparation.

**Recommendation 10: Amend item 22(a) of the scale to remove opening submissions and make a new item 22(b) on the 'amount which is reasonable in the circumstances' basis. The existing items 22(b)-(h) should be relabeled 22(c)-(i).**

Table B, Item 25(f) – Preparation of case for appeal

The Law Society submits that the current allowance of 10 hours does not provide reasonable remuneration for the work reasonably required by solicitors to prepare a case for appeal. This work often includes briefing counsel, advising the client and conferral with the client, the Court and other legal representatives. The Law Society proposes an increase in the allowance of this item from 10 hours to 15 hours.

**Recommendation 11: The allowance under Table B, Item 25(f) – Preparation of case for appeal – be increased from 10 hours to 15 hours.**

Table B, Item 27(b)

The Law Society submits the word 'including' is unnecessary in this item and should be deleted.

**Recommendation 12: Delete the word 'including' from the beginning of this scale item.**

Table B, Item 27(c)

The Law Society considers that this scale item appears to be redundant, noting that the work which this scale item includes is already covered by scale items 27(a), (b) and (e).

**Recommendation 13: Remove scale item 27(c).**

Table B, Item 36(b)

The tests for recoverability of disbursements on a party and party basis and solicitor and own client basis are currently in the same terms. Namely, both items 36(a) and 36(b) state the test for recovery of costs on a solicitor and own client cost basis. This appears to have been a consequence of an attempt to implement the Law Society's previous

submission. Item 36(b) 'as between party and party' should reflect the 'necessarily and reasonably incurred' test.

**Recommendation 14:** In Table B, Disbursements item 36(b), the test for recoverability 'as between a party and party' should be amended to the 'necessarily or reasonably incurred' test.

#### 4. Magistrates Court (Civil) Determination

##### Table B, Item 10

The Law Society notes that applications pursuant to the *Restraining Orders Act 1997* (WA) fall within this scale item. In the experience of the Law Society's Committee members, the scale maximum does not adequately cover the work reasonably and necessarily required in respect of such applications, particularly where applications are heard over more than one day and Counsel is briefed to appear at the hearing together with an instructing solicitor.

**Recommendation 15:** The allowance in Item 10 be increased from 8 hours to 16 hours.

##### Table B, Item 26

The Law Society submits the tests for recoverability 'as between a law practice and client' and 'as between a party and party', as presently stated, have been reversed.

**Recommendation 16:** Table B, Disbursements item 26 - the test for recoverability 'as between a law practice and client' and 'as between party and party' be amended as follows:

The test as between a law practice and client, be amended to disbursements incurred 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.

As between party and party, the allowance be disbursements necessarily or reasonably incurred.

#### 5. Magistrates Court (Criminal) Determination

The scale does not currently include an allowance for disbursements. The Law Society submits that it is reasonable for disbursements to be included.

**Recommendation 17:** Amend the scale to include an allowance for disbursements 'as between a party and party' and 'as between a law practice and client'.

## 6. State Administrative Tribunal Determination

The allowance for disbursements as between a law practice and client incorrectly refers to the test for recovery on a party and party basis.

**Recommendation 18:** Amend the allowance for disbursements ‘as between a law practice and client’ to disbursements incurred 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.

## 7. Family Court of Western Australia Determination

The scale includes an allowance for disbursements as between a law practice and client. However, the basis for recovery incorrectly refers to the test for recovery on a party and party basis.

**Recommendation 19:** Amend the allowance for disbursements ‘as between a law practice and client’ to disbursements incurred 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.

The Law Society acknowledges and appreciates the Legal Costs Committee’s support for continuing professional development in this area and welcomes future opportunities for our Costs Committee to collaborate with the Legal Costs Committee.

If you have any queries please contact Susie Moir, Director, Advocacy and Professional Development on [smoir@lawsocietywa.asn.au](mailto:smoir@lawsocietywa.asn.au) or telephone 9324 8646.

Yours sincerely



Judy McLean  
**President**

## Annexure 1 – Consumer Price Index

### Consumer Price Index (CPI) ⓘ

**Measure:** Percentage change from previous period PCT • **Index:** All groups CPI • **Adjustment Type:** Original • **Region:** Perth • **Frequency:** Monthly

Time Period		
Jul 2024		0.2
Aug 2024		-1.1
Sep 2024		0.1
Oct 2024		0.5
Nov 2024		1.2
Dec 2024		-0.7
Jan 2025		-0.2
Feb 2025		0.6
Mar 2025		1.5
Apr 2025		1.1
May 2025		-0.5
Jun 2025		0
Jul 2025		1
Aug 2025		0.1
Sep 2025		0.4
Oct 2025		-0.2
Nov 2025		-0.3
Dec 2025		0.7
Jan 2026		0.3
Feb 2026		0.6
Mar 2026		1.2

**Source: Australian Bureau of Statistics: Consumer Price Index, Australia, March 2026 |**

## Annexure 2 – Wage Price Index

### 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>	<i>Quarterly Index IN</i>	<i>Percentage change from previous quarter PCT</i>	<i>Percentage change from corresponding quarter of previous year PCT</i>
<i>Time Period</i>			
2024-Q3	152.3	1.3	3.7
2024-Q4	153.2	0.6	3.5
2025-Q1	154.1	0.6	3.5
2025-Q2	155.1	0.6	3.2
2025-Q3	157.4	1.5	3.3
2025-Q4	158.5	0.7	3.5

**Source: Australian Bureau of Statistics Stat Data Explorer (BETA) • Wage Price Index**