

WORKERS COMPENSATION AND INJURY MANAGEMENT ACT 2023
DRAFT WORKERS COMPENSATION LEGAL PROFESSION AND AUTHORISED
AGENTS COSTS DETERMINATION 2024

Made by the WorkCover WA Costs Committee under section 405 of the *Workers Compensation and Injury Management Act 2023*.

1 Citation

- (1) This determination may be cited as the *Workers Compensation Legal Profession and Authorised Agents Costs Determination 2024* (“Costs Determination”).

2 Commencement

- (1) This Costs Determination comes into operation on 1 July 2024.

3 Application

- (1) This Costs Determination applies to the remuneration of legal practitioners and authorised agents in respect of work carried out for the purposes of proceedings before a WorkCover WA dispute resolution authority.
- (2) This Costs Determination does not apply to the remuneration of legal practitioners or authorised agents in respect of business carried out before the commencement of this Costs Determination.
- (3) This Costs Determination is to be read and applied in its entirety. The scale of costs applicable under this Costs Determination is to be interpreted in accordance with the notes set out in this Schedule.

4 Review

- (1) This costs scale enables the hourly rates used to calculate costs to be adjusted consequent to any changes in the hourly rates available under the Magistrates’ Court costs scale, based on a legal costs determination established under the *Legal Profession Uniform Law Application Act 2022* section 133.
- (2) The Costs Committee may amend or revoke this Costs Determination by a subsequently approved costs determination, pursuant to section 407(5) of the Act.

5 Terms used

- (1) Unless otherwise stated, all terms used in this Costs Determination have the same meaning given in the —

- (a) *Workers Compensation and Injury Management Act 2023*;
- (b) *Workers Compensation and Injury Management Regulations 2024*;
- (c) *Workers Compensation and Injury Management Conciliation Rules 2024 (Conciliation Rules)*; and
- (d) *Workers Compensation and Injury Management Arbitration Rules 2024 (Arbitration Rules)*.

(2) For ease of reference, the terms are reproduced hereunder. In this Costs Determination —

“**agent service**” has the same meaning as is defined in section 303 of the Act

“**application**” means an application for a decision of a dispute resolution authority.

“**approved form**” means a form approved under the Conciliation Rules or a form approved under the Arbitration Rules.

“**Arbitration Service**” means the Workers’ Compensation Arbitration Service established under section 307 of the Act.

“**Arbitration Rules**” means the rules made under section 382 of the Act.

“**arbitrator**” means an officer of WorkCover WA approved under section 309 of the Act as an arbitrator.

“**assessing officer**” means the Director, a conciliator, the Registrar, or an arbitrator.

“**assessment of costs**” means an application for assessment of costs under the Conciliation Rules or under the Arbitration Rules.

“**authorised agent**” means a person defined under section 303 of the Act as authorised to provide agent services.

“**conciliator**” means an officer of WorkCover WA designated under section 309 of the Act as a conciliator.

“**Conciliation Service**” means the Workers’ Compensation Conciliation Service established under section 307 of the Act.

“**Conciliation Rules**” means the rules made under section 381 of the Act.

“**costs**” means —

- (a) costs of a party (including fees, charges and disbursements);
- (b) costs of a proceeding; and
- (c) other costs, if any, prescribed by the regulations

“**costs determination**” means a determination approved and published under section 407 of the Act.

“**Director**” means the officer of WorkCover WA designated under section 308 of the Act as the Director, Conciliation.

“**dispute resolution authority**” means the Director, the Registrar, a conciliator, or an arbitrator.

“**give**” has the same meaning as is defined in section 497(1) of the Act.

“**legal practitioner**” means an Australian legal practitioner within the meaning of that term as defined in the *Legal Profession Uniform Law Application Act 2022*.

“**legal service**” means any service performed by a person —

- (a) in the person’s capacity as a legal practitioner; and
- (b) in or for the purposes of a proceeding before a dispute resolution authority.

“**Magistrates Court costs scale**” means the *Legal Profession Magistrates Court (Civil) Determination 2022* made by the Legal Costs Committee under the *Legal Profession Act 2008*, or any subsequent determination made in substitution for that determination.

“**proceeding**” means a proceeding before a dispute resolution authority.

“**Registrar**” means the officer of WorkCover WA designated under section 308 of the Act as the Registrar, Arbitration.

6 No minimum charge

- (1) In no respect is this Determination to be seen as providing a minimum number of hours for any work done. For example, item 2 provides for up to 3 hours for the work involved. The number of 3 hours is a maximum, but actual hours may need to be substantiated.

7 Maximum costs

- (1) In accordance with section 408 of the Act, legal practitioners and authorised agents are not entitled to be paid or recover an amount that exceeds the maximum costs for the service by this Costs Determination.
- (2) The costs payable to a legal practitioner or authorised agent at each milestone described in the Table to clause 9 must not exceed the maximum amount corresponding to that event.
- (3) Further to this, in accordance with section 409 of the Act, an agreement is not to be made for a legal practitioner or registered agent to receive any greater reward than is provided for in this Costs Determination. Any agreement made contrary to section 409 of the Act is void.
- (4) Subject to clause 8, authorised agents are entitled to be paid or recover 50 per cent of the amount provided for Senior Practitioners in the Table to clause 8.
- (5) Authorised agents are entitled to recover 100 per cent of disbursements, in accordance with item 10 under “Stand Alone Items” of the Table to clause 9.

9 Hourly rates

- (1) This clause is to be read in conjunction with clauses 4(1) and 5(2).
- (2) The hourly rates set out in the Table to this clause are the maximum hourly rates, inclusive of GST, that shall be used to calculate the fixed amounts for each corresponding item in the costs scale set out in the Table to clause 9.
- (3) The maximum hourly rates which a legal practitioner or authorised agents may charge are not to exceed the amounts set out in the Table to this clause.

Table to clause 8

Fee Earner	Maximum Allowable Hourly Rate
Senior Practitioner (permitted to practise on his or her own account for 5 years or more)*	The hourly rate applicable to Senior Practitioners under the Magistrates Court costs scale
Junior Practitioner (permitted to practise on his or her own account for less than 5 years)*	The hourly rate applicable to Junior Practitioners under the Magistrates Court costs scale

Fee Earner	Maximum Allowable Hourly Rate
Restricted Practitioner*	The hourly rate applicable to Restricted Practitioners under the Magistrates Court costs scale
Authorised Agent	50 per cent of the hourly rate applicable to Senior Practitioners under the Magistrates Court costs scale

*Where a local legal practitioner has held an interstate practice certificate, the length of admission in that other jurisdiction is to be counted in assessing that practitioner's years of admission for the purposes of this Determination.

9 Scale of costs

- (1) The maximum hours for which a legal practitioner or authorised agent may charge a client in relation to conciliation, arbitration and Stand-Alone Items are not to exceed the amounts set out in the Table to this clause.

Table to clause 9

WORKERS COMPENSATION SCALE OF COSTS 2024

Item	Description	Maximum Allowable Hours
1	Obtaining instructions from client and attempts to resolve the substantive issues in dispute prior to involvement in a proceeding — may be claimed once only regardless of the point at which the practitioner or agent becomes involved	4
Conciliation Service		
2	Preparation of and lodging an application to the Conciliation Service including relevant supporting documentation in approved form in accordance with the Conciliation Rules.	+3
3	Where the dispute is resolved after the lodging of an application and prior to a conciliation conference, including all necessary preparation and documentation in approved form in accordance with the Conciliation Rules.	+3
4	Where the dispute is resolved at or after a conciliation conference, including all necessary preparation and documentation in approved form in accordance with the Conciliation Rules. Add for each additional conference	+5 +3
Arbitration Service		
5	Preparation of and lodging an application or reply to the Arbitration Service including all necessary documentation in approved form in accordance with the Arbitration Rules. Add for each application to extend time to lodge an application for Arbitration.	8 +1

Item	Description	Maximum Allowable Hours
6	<p>Where the dispute is resolved after the lodging of an application to the Arbitration Service and prior to the arbitration hearing, including all necessary preparation and documentation in the approved form and attendance at a directions hearing in accordance with the Arbitration Rules.</p> <p>Add for each additional directions hearing</p> <p>Add for each interlocutory application</p> <p>Add for the first pre-arbitration conference</p> <p>Add for each subsequent pre-arbitration conference</p>	<p>+30</p> <p>+1</p> <p>+2</p> <p>+4</p> <p>+2</p>
7	<p>Attendance at an arbitration hearing, including any incidental preparation on the day of the hearing in accordance with the Arbitration Rules.</p> <p>Add for each additional hearing day.</p>	<p>+10</p> <p>+7</p>
Stand Alone Items—Applicable to conciliation or arbitration service as appropriate		
8	<p>Settlement of the claim by agreement under Part 12 Division 12 and applying for registration of a settlement agreement under section 152. (excluding disbursements which are to be paid in accordance with item 10)</p> <p>Excludes agreements made for settlement of common law damages.</p>	10
9	<p>Allowances for witnesses. The amount of any costs to be paid in respect of work done by a practitioner in conducting any proceedings in a dispute may include a reasonable allowance for —</p> <p>(a) witnesses called because of their professional, scientific or other special skill or knowledge; and</p> <p>(b) witnesses called other than those covered in paragraph (a).</p> <p>In fixing an allowance for witnesses under paragraph (b) the assessing officer may have regard to the amount of salary, wages or income (if any) actually lost by the witness, and any expenses in respect of meals, lodging and travel reasonably and necessarily incurred by the witness in attending the proceedings and justify by voucher.</p>	
10	<p>Disbursements (not to include counsel fee and must be justified by voucher).</p> <p>Such amount that is necessarily and reasonably incurred under the circumstances.</p>	

the Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2022 item 39 provides for work performed in relation to lodgement of a common law deed under s.433(3).

10 Methodology — Conciliation Service and Arbitration Service

- (1) References to “items” under this clause are in reference to those items under “Conciliation Service” and “Arbitration Service” of the scale of costs.
- (2) Items 1 and 2 of the scale are consecutive, cumulative milestones, subject to clause 10(3) and 10(4). For example, to seek payment or to recover for legal services or agent services provided under item 4, the legal practitioner or authorised agent must first conclude the milestones, and thereby provide the legal services or agent services, described in items 1 and 2 inclusive of the scale. Items 3 and 4 are not claimable cumulatively and a claim under only one item or the other may be made.
- (3) Where the legal practitioner or authorised agent did not provide services during the Conciliation Service stage of the process, the legal practitioner or authorised agent cannot claim under items 2 to 4.
- (4) Where a legal practitioner or authorised agent provides services in relation to Part 2 Division 10 of the Act, the legal practitioner or authorised agent cannot claim under items 2 to 4.
- (5) Where a dispute is not resolved in the Conciliation Service and an application is made to the Arbitration Service, and the legal practitioner or authorised agent provided services during the Conciliation Service proceedings, the items 4 to 7 of the scale are consecutive, cumulative milestones to items 1 and 2. For example where legal or agent services were provided through the Conciliation Service and into the Arbitration Service, to seek payment or to recover for legal or agent services provided under item 7, the legal practitioner or authorised agent must first conclude the milestones, and have provided the services described in items 1, 2, 4 and 5 to 7.
- (6) This Determination applies to milestones attained and completed in the Workers Compensation Conciliation Service and Workers Compensation Arbitration Service. The Costs Determination in force at the time the relevant services were rendered will apply to transitional matters and milestones attained and completed when this Costs Determination comes into operation.
- (7) This clause should be read in conjunction with clause 11.

11 Stand-Alone items

- (1) References to “items” under this clause are in reference to those items under “Stand Alone Items” of the costs scale.
- (2) The legal services described in items 8 to 10 may occur at any stage in the process and are additional to the milestone events (regardless of which event or events have been achieved) and are to be read as being in addition to the overall total remuneration.
- (3) Item 9 — Allowances for witnesses —
 - (a) Where a witness is summonsed under section 343 of the Act, in accordance with the Arbitration Rules, the summons must be given to the person whose attendance is required 7 days before the day on which the person is required to attend before an arbitrator.
 - (b) If the summons is not given to the person in accordance with the Arbitration Rules and any witness allowance for the expenses of attendance is not paid or tendered to the person at the time of giving the summons, or not later than a reasonable time before the time at which the person is required to attend, then the person to whom the summons is directed is not required to comply with the summons.

- (c) In accordance with the Arbitration Rules, except with the leave of the arbitrator, medical evidence must be given in writing and a medical practitioner may not be called to give oral evidence.
- (4) Item 10 — Disbursements —
- (a) Reference to voucher in item 10 refers to copies of any vouchers, accounts and receipts relevant to the disbursements claimed.
 - (b) Disbursements must be necessarily and reasonably incurred under the circumstances.
 - (c) Medical reports — except with the leave of an arbitrator, parties may only use as evidence the medical reports of one doctor in each medical speciality, with a limitation of three areas of medical speciality overall. A report that contains observations from more than one area of medical speciality is to be taken to be one report from each of the specialities utilised within the report. Refer to the Arbitration Rules for more information.

12 Allowance for non-attendance

- (1) An allowance can be made for attendance by a legal practitioner or authorised agent in circumstances where, through no fault of the legal practitioner or authorised agent, their client failed to attend a conciliation conference, arbitration hearing or other proceeding before a dispute resolution authority.

13 Limitations with regard to exceeding the scale of costs

- (1) The limitation in the Act with regard to legal practitioners and authorised agents not exceeding the scale is only intended to apply to work done within this jurisdiction.
- (2) This costs scale does not apply to proceedings before the District Court or Supreme Court. Legal practitioners are entitled to recover an amount determined in accordance with the scale of costs applicable to those courts.
- (3) Advice and services provided by a legal practitioner in relation to Part 7, common law proceedings in addition to or independent of this Act are not covered by this Costs Determination (see section 408 of the Act).
- (4) Regard should be had to section 428 of the Act when providing advice or representation to a client in relation to an action for damages independent of this Act.
- (5) A legal practitioner cannot make any agreement, for appearing or acting on behalf of a person, where they will receive greater reward than is provided for by any legal costs determination (as defined in the *Legal Profession Uniform Law Application Act 2022*). In any case, agreements made contrary to section 428 of the Act are void.

13 Interpretation of item descriptions

- (1) In interpreting item descriptors as set out in the Table to clause 8, regard should be had for the procedural requirements set out in the —
 - (a) *Workers Compensation and Injury Management Act 2023*;
 - (b) *Workers Compensation and Injury Management Regulations 2024*;

- (c) *Workers Compensation and Injury Management Conciliation Rules 2024*; and
- (d) *Workers Compensation and Injury Management Arbitration Rules 2024*.

Made by the WorkCover WA Costs Committee on [date].

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