

5 June 2024

Mr Chris White
Chief Executive Officer
WorkCover WA
2 Bedbrook Place
SHENTON PARK WA 6008

By email: consultation@workcover.wa.gov.au
CC: chris.white@workcover.wa.gov.au

Dear Mr White

**IMPLEMENTATION CONSULTATION PAPER 22: DRAFT COSTS DETERMINATION
PROPOSED BY COSTS COMMITTEE**

I refer to your email dated 15 May 2024, regarding the *Modernising of WA's Workers Compensation Laws: Proposed Costs Determination*. Thank you for the opportunity to provide a submission in relation to this matter and providing an extension to enable us to consult with our subject matter expert members.

As previously submitted by the Law Society in 2018, the Law Society has no criticism of the hourly rates, or the system of determining the maximum hourly rate charged according to a practitioner's seniority, in determining Costs Determinations in relation to disputes in the WorkCover WA Conciliation and Arbitration Services (CAS). Linking the relevant hourly rate, to those determined for the Magistrates Court, is appropriate and fair.

However, the Law Society has been concerned about the inadequacies of the 2018 Costs Determination since 2018 and welcomes the majority of changes proposed in the proposed 2024 Costs Determination.

The Law Society makes the following submissions:

1) Conciliation Costs

The Law Society considers that the current determination is inadequate in providing for costs for a reply to a conciliation application. Once a conciliation conference is listed, the conciliation officer will issue a listing notice requiring the parties to lodge all document they include to rely on 3 days prior to the conciliation conference. This routinely includes medical reports, statements and submissions. The Law Society proposes an amendment to item 2:

Preparation of and lodging an application or a reply to the Conciliation Service including relevant supporting documentation in approved form in accordance with the Conciliation Rules.
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+3

2) Directions hearings

The Law Society supports the reduction in hours where the directions hearing is held by telephone.

3) Interlocutory application

The Law Society does not support the reduction in hours for interlocutory applications.

Interlocutory applications require extensive written submissions and oral arguments. A comparison would be to a special appointment in the District Court - item 10 in the *Legal Profession (Supreme and District Courts) (Contentious Business) Report 2022*.

The Law Society proposes that there should be an increase to +4 hours.

Add for each interlocutory application	+4 hours
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4) Pre-arbitration mediation

The Law Society supports the specific item for pre-arbitration mediations and the +4 hours and the additional +2 hours for a subsequent conference.

5) Items 6 and 7

The Law Society supports the increase in hours for items 6 and item 7 as per the initial proposal.

The Law Society submits that there should also be an additional item under item 6 for preparation of submissions, lists of authorities and books of documents. Whilst the Law Society acknowledges that the Costs Committee have considered the submissions to be added to the catchall item 6, given the significant amount of other work to be included under the catchall item (i.e. drafting of statements, drafting supplementary statements, obtaining medical and vocational evidence, drafting agreed facts and all other necessary work) the Law Society considers that there should be a separate item for submissions, lists of authorities and books of documents.

Add preparation of submissions, list of authorities and book of documents	+10 hours
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There should be an additional item where an arbitrator orders that the parties provide written closing submissions. The Law Society proposes that under item 7 there should be:

Add for where written closing submissions are ordered	+10
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The Law Society's view is that the updated determination should be:

Conciliation service

2A	Preparation of and lodging an application or a reply to the Conciliation Service including relevant supporting documentation in approved form in accordance with the Conciliation Rules.	+3 hours
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Arbitration Service

6	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.	+30 hours
	Add for each additional directions hearing	+1 hours
	Add for each interlocutory application	+4 hours
	Add for the first pre-arbitration conference	+4 hours
	Add for each subsequent pre-arbitration conference	+2 hours
	Add preparation of submissions, list of authorities and books of documents.	+10 hours
7	Attendance at an arbitration hearing including briefing of counsel or instructing solicitor, on the day of the hearing in accordance with the Arbitration Rules.	+10 hours
	Add for each additional hearing day.	+7 hours
	Add written closing submissions	+10 hours

Thank you for the opportunity to provide this written submission.

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

Yours sincerely



Paula Wilkinson
President