

18 August 2025

Our ref: KB:LR

Dr James Popple
Chief Executive Officer
Law Council of Australia
Level 1, MODE3
24 Lonsdale Street
Braddon ACT 2612

By email: [REDACTED]

Dear Dr Popple

Joint Costs Advisory Committee Inquiry 2025

Thank you for the opportunity to provide input for the Law Council's submission to the Joint Costs Advisory Committee in relation to its 2025 Inquiry into Legal Practitioners' Scale of Costs.

The Queensland Law Society (QLS) supports the Law Council's proposed submission that the scales of costs across the federal courts have failed to keep pace with actual costs incurred by parties, and do not reflect the value of the intellectual work undertaken by lawyers, current charging practices, current market conditions and changes in the technology used by practitioners.

National Guide to Counsel's fees

QLS has previously submitted on the need to either increase the rates within the National Guide to Counsel's Fees (**Guide**) or to abolish the guide altogether. The QLS adopts this view due to the impact the out-of-date rates are having on costs assessments within the federal jurisdictions, particularly where costs are now being fixed in the Federal Court in accordance with Costs Practice Note (GPN- Costs). The practice is for the judges to refer this process to the registrar where their only reference point is the National Guide not market forces

The Guide has not been updated since 2013 and, similarly to the scales of costs, does not reflect the actual costs or market value of legal costs incurred; this means litigants who have a favourable costs order are still bearing a significant portion of those costs

It is also not in keeping with the approach taken to assessing costs under the *Federal Court Rules 2011* where "costs as between party and party" means only the costs that have been fairly and reasonably incurred by the party in the conduct of the litigation.¹ In a speech given by Justice Lander at the time these rules were made, it was noted by his Honour this definition would bring party and party costs closer to indemnity costs.

¹ *Federal Court Rules 2011* - Schedule 1 Dictionary

As stated, the Guide impacts the way costs are assessed and essentially fetters the discretion of the registrar or assessor. By way of example, the Registrar in *Australian Competition and Consumer Commission and Pacific National PTY Limited and Others (Pacific National)* (draft judgment **attached**) referenced *Hislop v Paltar Petroleum Limited (No 4)* [2017] FCA 1632 where Gleeson J did not consider the allowance for counsel's fees should be significantly in excess of the range in the Guide. The Registrar in *Pacific National* made some adjustment to Gleeson J's assessment to reflect the time that had passed since that decision but applied the same cost references from the Guide despite this assessment occurring in 2021.

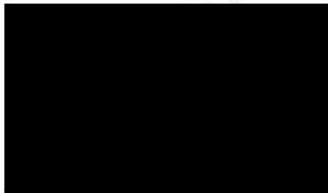
The Registrar allowed \$9,000 as the daily rate. Conversely, in a Queensland case – a jurisdiction where no guide exists, Muir J considered an appropriate range for counsel's daily rate was between \$5,000 - \$20,000.²

The matters in *Pacific National* were complex but the Registrar's decision was essentially fettered by the presence of this Guide,

Unless the Guide is updated and regularly reviewed going forward, it is the QLS position the Guide be abolished.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [REDACTED]

Yours faithfully



Genevieve Dee
President

² *Civil Mining & Construction Pty Ltd v Wiggins Island Coal Export Terminal Pty Ltd* [2024] QSC 28 at para 106