

LEGAL PRACTITIONERS ACT 1893

**LEGAL PRACTITIONERS (SUPREME COURT) (CONTENTIOUS BUSINESS)
REPORT 1999**

Made by the Legal Costs Committee under section 58ZA of the Act.

PART 1 - PRELIMINARY

Citation

1. (1) This report may be cited as the *Legal Practitioners (Supreme Court) (Contentious Business) Report 1999*.
- (2) The determination set out in the Schedule to this report is referred to in this report as the *Supreme Court (Contentious Business) Determination 1999*.

PART 2 - NOTICE AND INQUIRIES

Notice under section 58Y of the Act

2. The Legal Costs Committee has complied with the notice provisions of section 58Y of the Act.

Inquiries and submissions under section 58Y of the Act

3. Before making the *Supreme Court (Contentious Business) Determination 1999*, the Legal Costs Committee -
 - (a) reviewed all submissions received as a result of the notice given under section 58Y of the Act;
 - (b) conducted oral hearings with interested parties including Registrars from the Supreme Court and the District Court; and
 - (c) reviewed the operation of the time based system of calculating costs.

PART 3 – REPORT OF THE COMMITTEE’S CONCLUSIONS

Hourly and daily rates unchanged – scale of costs amended

4. (1) The information gained as a result of the inquiries and submissions described in clause 3 satisfied the Legal Costs Committee that the existence of competition for the supply of legal services made it appropriate to continue to adopt the hourly and daily rates charged by practitioners as the basis for the rates used in the *Supreme Court (Contentious Business) Determination 1999*.
- (2) It is the recommendation of the Legal Costs Committee as a result of the inquiries and submissions described in clause 3 that the hourly and daily rates referred to in subclause (1) are not varied from the hourly and daily rates used in the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 1996**. Those rates are set out in the Table to clause 5 of the *Supreme Court (Contentious Business) Determination 1999*.
- (3) It is the recommendation of the Legal Costs Committee as a result of the inquiries and submissions

described in clause 3 that the scale of costs be varied in the manner set out in the Table to clause 6 of the *Supreme Court (Contentious Business) Determination 1999*.

(4) The recommendations of the Legal Costs Committee are not intended to override the entitlement of a practitioner to make a written agreement as to costs with a client under the *Legal Practitioners Act 1893*.

**[Published in Gazette 20 December 1996 pp. 7077-87].*

Ted Sharp, Chairman
Chris Pullin QC, Deputy Chairman
Angela Gaffney, Member
Jill Vander Wal, Member
Janet Davidson, Member
Patrick Coward, Member

SCHEDULE

LEGAL PRACTITIONERS ACT 1893

SUPREME COURT (CONTENTIOUS BUSINESS) DETERMINATION 1999

Made by the Legal Costs Committee under section 58W of the Act.

Citation

1. This determination may be cited as the *Supreme Court (Contentious Business) Determination 1999*.

Commencement

2. This determination comes into operation on 1 July 1999.

Application

3. (1) This determination applies to the remuneration of practitioners in respect of contentious business carried out by practitioners in or for the purposes of proceedings before -

- (a) the Supreme Court; and
- (b) the District Court other than contentious business to which the *District Court Appeals (Contentious Business) Determination 1999* applies.

(2) This determination does not apply to the remuneration of practitioners based on a written agreement as to costs under the *Legal Practitioners Act 1893*.

(3) This determination does not apply to the remuneration of practitioners based on costs incurred before 1 July 1999.

Application of O.66, r11(3), r12, r13, r18, r19, r20(3), r21 and r23 of the *Rules of the Supreme Court*

4. In the circumstances set out in Order 66, rules 11(3), 12, 13, 18, 19, 20(3), 21 and 23 of the *Rules of the Supreme Court*, the Committee determines that the Court or the Taxing Officer, as the case may be, has the power to make the orders and allowances referred to in those rules.

Hourly and daily rates

5. (1) The hourly and daily rates set out in the Table to this clause are the maximum hourly and daily rates which the Legal Costs Committee determines shall be used to calculate the dollar amounts in the scale of costs set out in the Table to clause 6. Each item in the scale of costs specifies a dollar amount with reference to the fee earner.

(2) The rates referred to in subclause (1) were ascertained in the manner set out in clause 7 of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 1996**

Table

Fee Earner		
Senior Practitioner (admitted for more than 5 years)		
(SP) - hourly rate		\$270
Junior Practitioner (admitted for less than 5 years)		
(JP) - hourly rate		\$180
Clerk/Paralegal	(C/PL) - hourly rate	\$130
Counsel fees charged as a disbursement to practitioners or charged by in-house counsel:		
Junior Counsel	(JC) - hourly rate	\$210
	- daily rate	\$2300
Queen=s Counsel	(QC)† - hourly rate	\$370
	- daily rate	\$3500

†The reference to a Queen’s Counsel in this determination includes reference to Senior Counsel appointed in any State or Territory in Australia and whose appointment is afforded recognition by the Chief Justice of the Supreme Court of Western Australia.

**[Published in Gazette 20 December 1996 pp. 7077-87]*

Costs

6. (1) Subject to the provisions of subclause (2) and of the *Legal Practitioners Act 1893* permitting a practitioner to make a written agreement as to costs with a client, the costs of or in relation to a party to an action or other proceeding (inclusive of counsel fees but exclusive of other disbursements) -

- (a) recoverable by one party from another party; or
- (b) payable by a party to that party=s own practitioner,

shall not exceed the amounts set out in the Table to this clause (except as otherwise provided in item 13A of the Table).

(2) Allowances made under item 13A of the Table to this clause are only to be awarded as between practitioner and client, or if costs are awarded on an indemnity basis and not between party and party unless the Court otherwise orders.

TABLE

SUPREME COURT SCALE OF COSTS

Item		Time	Fee Earner	\$
1.	(a) Writ of summons, generally endorsed , including instructions; or			400
	(b) Writ of summons with Statement of Claim indorsed, including instructions; and			670
	(c) For each additional defendant			50
2.	Next friend or guardian <i>ad litem</i>	3 hours	JP	540
3.	Entry of judgment without trial			130
4.	(a) Payment into or out of Court	2 hours	JP	360
	(b) Offer of compromise under O.24A	2 hours	SP	540
	(c) Acknowledgment of offer under O.24A			30
	(d) Acceptance of offer of compromise under O.24A	2 hours	SP	540
	(e) Notice of offer to consent to judgment	2 hours	SP	540
	(f) Other notices referred to or required by the Rules or procedures of the Court (including practice directions)			30
5.	Memorandum of Appearance	0.5 hours	C/PL	60
6.	Pleadings			
	(a) Statement of Claim	10 hours	SP	2,700
	(b) Defence	10 hours	SP	2,700
	(c) Counterclaim	10 hours	SP	2,700
	(d) Reply (if necessary), defence to counterclaim, or any other pleading	10 hours	SP	2,700

7.	(a) Third party notice	2 hours	SP	540
	(b) Pleadings in third party proceedings	6 hours	SP	1,620
8.	(a) Requesting particulars of a pleading (where and to the extent necessary)	3 hours	JP	540
	(b) Giving particulars of a pleading	5 hours	JP	900
9.	(a) Notice requiring discovery	0.33 hours	C/PL	30
	(b) Giving discovery of documents	10 hours	JP	1,800
	(c) Inspection and giving inspection - per hour		JP	180
10.	(a) Delivery of interrogatories	5 hours	SP	1,350
	(b) Answers to interrogatories	10 hours	JP	1,800
11.	Examination of witness before trial by counsel or practitioner, pursuant to order			An allowance in accordance with item 14(c) or (d)
12.	Application for and striking jury	1 hour	JP	180
13.	Getting up case for trial (subject to item 14(h)) (includes work reasonably and necessarily undertaken prior to commencement of proceedings)	100 hours	SP	27,000
13A	(a) Time reasonably spent by a practitioner on work requiring the skill of a practitioner (of the standing indicated) but not covered by any other item - per hour		SP/QC	270
			JP	180
	(b) Time reasonably spent by a practitioner, or by a clerk or paralegal of a practitioner, on work not covered by any other item or by paragraph (a) - per hour		C/PL	130
14.	Counsel fees:			
	(a) Fee on brief, i.e. first day of trial and preparation	3 days preparation; 1st day of trial	JC	9,200
	(b) Fee on brief for Queen=s Counsel, i.e. first day of trial and preparation (where two or more counsel are certified for)	3 days preparation; 1st day of trial	QC	14,000
	(c) Counsel fee for the second and each successive day of hearing		JC	2,300
	(d) Counsel fee for Queen=s Counsel for second		QC	3,500

	and each successive day of hearing (where two or more counsel are certified for)			
	(e) Solicitor attending trial - per hour		SP	270
	(f) Clerk attending trial - per hour		C/PL	130
	(g) Attending on a reserved judgment or at a callover - per hour		SP	270
	(h) Where the only issue tried is the assessment of damages, three quarters of the amounts prescribed by items 13, 14(a), 14(b), 14(c) and 14(d) shall be allowable, unless otherwise directed by the Court			
15.	Settling and extracting judgment or order			
	(a) With appointment	2 hours	JP	360
	(b) Without appointment	0.75 hours	JP	135
16.	Drawing bill of costs, copies and service		SP	Such amounts as are reasonable in the circumstances
17.	Taking accounts; inquiries; taxation of costs; including the time spent in preparing for the taxation		SP	Such amounts as are reasonable in the circumstances
18.	Re-trial or Re-hearing			
	(a) Getting up case for re-trial or re-hearing			Such amounts as are reasonable in the circumstances
	(b) Re-trial or re-hearing			
19.	(a) Special case, case stated (otherwise than by way of appeal) or trial of an issue (not covered by item 14(h))			Such amounts as are reasonable in the circumstances
	(b) For the second and each successive day of the trial or hearing			
20.	Appeals to a member of the Court or to the Full Court (including appeals by way of case stated):			
	(a) Notice of appeal, motion for order <i>nisi</i> to review, and the like	15 hours	SP	4,050
	(b) Drawing and settling index	8 hours	JP	1,440
	(c) Getting up appeal for hearing	10 hours	SP	2,700

	(d) Counsel fee on hearing including preparation	2 days preparation; 1 day hearing	JC	6,900
	(e) Counsel fee for Queen=s Counsel including preparation (where two or more counsel are certified for)	2 days preparation; 1 day hearing	QC	10,500
	(f) Counsel fee for the second and each successive day of hearing		JC	2,300
	(g) Counsel fee for Queen=s Counsel for second and each successive day of hearing (where two or more counsel are certified for)		QC	3,500
	(h) Attending on reserved decision	2 hours	JP	360
21.	Originating motion, originating summons or originating application	2 days preparation; 1 day hearing; and Getting up – 30 hours	JC SP	15000
22.	Motions in Court not otherwise provided for	1 day preparation ½ day hearing	JC	3450
23.	Proceedings in Chambers other than proceedings to which item 21 applies	2 days preparation; 1 day hearing	JC	6900
24.	Pretrial, mediation or other conferences - required by order of the Court, by the <i>Rules of the Supreme Court</i> or by practice direction - per hour		SP	270
25.	Arbitration proceedings			The same costs as in an action.
26.	Proceedings, whether by action or otherwise, for the recovery of compensation for the taking or resumption of land or any other property by the Crown in right of the State or of the Commonwealth or by any other person, body or instrumentality pursuant to any statutory power			Such sum as is reasonable in the circumstances
27.	Proceedings by way of prerogative writ			Allowances calculated in accordance with item 20

28.	(a) Execution			200
	(b) If against land, an additional			200
29.	Photocopies where necessary - per page			0.80
30.	<p>Disbursements:</p> <p>In addition to the fees and charges allowed under this determination –</p> <p>(a) as between practitioner and client, a practitioner may charge and be allowed disbursements necessarily or reasonably incurred; and</p> <p>(b) as between party and party, a party may be allowed disbursements necessarily or reasonably incurred.</p>			

Dated at Perth 8 June 1999.