

LEGAL PRACTICE ACT 2003

LEGAL PRACTITIONERS (SUPREME COURT) (CONTENTIOUS BUSINESS) REPORT 2004

Made by the Legal Costs Committee under section 214 of the Act.

PART 1 - PRELIMINARY

Citation

1. (1) This report may be cited as the *Legal Practitioners (Supreme Court) (Contentious Business) Report 2004*.
- (2) The determination set out in the Schedule to this report is referred to in this report as the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2004*.

PART 2 - NOTICE AND INQUIRIES

Notice under section 213 of the Act

2. The Legal Costs Committee has complied with the notice provisions of section 213 of the Act.

Inquiries and submissions under section 213 of the Act

3. Before making the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2004*, the Legal Costs Committee -
 - (a) reviewed all submissions received as a result of the notice given under section 213 of the Act;
 - (b) reviewed the operation of the time based system of calculating costs;
 - (c) reviewed the impact of movements in the Consumer Price and Wage Cost Indices for the financial year ending June 2002, and for the September 2003, December 2003 and March 2004 quarters;
 - (d) collated and reviewed the information gained from an electronic questionnaire distributed to legal practitioners in Western Australia; and
 - (e) distributed a questionnaire amongst a number of users of legal services and made that questionnaire available to the public electronically on the Committee's website.

PART 3 – REPORT OF THE COMMITTEE'S CONCLUSIONS

Maximum hourly and daily rates changed – 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 manner in which legal services are provided made it appropriate to continue to adopt the hourly and daily rates charged by practitioners as the basis for the rates used in the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2004*. There were no appropriate methodologies put to the Committee other than hourly and daily rates.
- (2) Having regard to the information gained as a result of the inquiries and submissions described in clause 3 and as a consequence of the proclamation of the *Legal Practice Act 2003*, the Legal Costs Committee determined it is appropriate to –

- (a) reorder the scale to better reflect the flow of litigation; and
- (b) amend terminology to reflect modern practice.

(3) It is the recommendation of the Legal Costs Committee as a result of the inquiries and submissions described in clause 3, having assessed market conditions and having considered the impact of relevant Australian Bureau of Statistics data, submissions from the legal profession, data provided by the Law Society of Western Australia, and the incidental administrative implications of the calculation of the Goods and Services Tax, that the hourly and daily rates referred to in subclause 4 (1) be varied from the hourly and daily rates used in the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2002*¹. Those rates are set out in the Table to clause 5 of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2004*.

(4) 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 *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2004*.

(5) 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 Practice Act 2003*.

1. [Published in Gazette 10 May 2002 pp.2448 - 54]

Ted Sharp, Chairman
Michael McPhee, Deputy Chairman
Janine Freeman, Member
Angela Gaffney, Member
Clare Thompson, Member
Marcus Cocker, Member

SCHEDULE

LEGAL PRACTICE ACT 2003

LEGAL PRACTITIONERS (SUPREME COURT) (CONTENTIOUS BUSINESS) DETERMINATION 2004

Made by the Legal Costs Committee under section 210 of the Act.

Citation

1. This determination may be cited as the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2004*.

Commencement

2. This determination comes into operation on 1 July 2004.

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 *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2002* or any successive determination of that scale applies.

(2) This determination does not apply to the remuneration of practitioners based on a written agreement as to costs under the *Legal Practice Act 2003*.

(3) This determination does not apply to the remuneration of practitioners based on costs incurred before 1 July 2004.

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.

Maximum 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, inclusive of GST, 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 4 of the *Legal Practitioners (Supreme Court) (Contentious Business) Report 2004*.

Table

Fee Earner	Maximum allowable hourly and daily rates
Senior Practitioner (admitted for more than 5 years) (SP) ^α - hourly rate	\$341
Junior Practitioner (admitted for less than 5 years) (JP) ^α - hourly rate	\$231
Clerk/Paralegal (C/PL) - hourly rate	\$165
Counsel fees charged as a disbursement to practitioners or charged by in-house counsel:	
Counsel (C)* - hourly rate	\$264
- daily rate	\$2893
Senior Counsel (SC)† - hourly rate	\$473
- daily rate	\$4411

^α The reference to Junior Practitioner or to Senior Practitioner in this Determination includes all legal practitioners even if the services were rendered in another State or Territory. Where a local 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.

* The reference to Counsel in this determination means a practitioner acting as a barrister other than as Senior Counsel.

† The reference to Senior Counsel in this determination includes reference to Queens Counsel or Senior Counsel appointed in Western Australia, or 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.

Costs

6. (1) Subject to the provisions of subclause (2) and of the *Legal Practice Act 2003* 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 GST and 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 32 of the Table).

(2) Allowances made under item 32 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.	Writ:			
	(a) Writ of summons, whether specially or generally endorsed, including instructions, but excluding Statement of Claim;	1.5 hours	SP	511
	For each additional defendant			63
	(b) Statement of Claim	10 hours	SP	3,410
2.	Next friend or guardian <i>ad litem</i>	3 hours	JP	693
3.	Defence:			
	(a) Memorandum of appearance	0.5 hours	C/PL	82
	(a) Defence	10 hours	SP	3,410
	(b) Counterclaim	10 hours	SP	3,410
4.	Reply and other pleadings: Reply (if necessary), defence to counterclaim, or any other pleading	10 hours	SP	3,410
5.	(a) Third party notice	2 hours	SP	682
	(b) Pleadings in third party proceedings	6 hours	SP	2,046
6.	(a) Requesting particulars of a pleading (where and to the extent necessary)	3 hours	JP	693
	(b) Giving particulars of a pleading	5 hours	JP	1,155
7.	Discovery:			
	(a) Notice requiring discovery	0.33 hours	C/PL	55
	(b) Giving discovery of documents	10 hours	SP	3,410
8.	Inspection: Inspection and giving inspection	per hour	SP	341

9.	Interrogatories: (a) Delivery of interrogatories (b) Answers to interrogatories	5 hours 10 hours	SP SP	1,705 3,410
10.	Chambers: (a) Proceedings in Chambers other than proceedings to which item 11 applies (b) Attending on a reserved judgment in Chambers	2 days preparation; 1 day hearing per hour	C SP	8,679 341
11.	Motions and originating process: Originating motion, originating summons or originating application	2 days preparation; 1 day hearing and Getting up – 30 hours	C SP	18,909
12.	Motions in Court not otherwise provided for	1 day preparation ½ day hearing	C	4,339
13.	Callover: Attending at a callover	per hour	SP	341
14.	Entry of judgment without trial			165
15.	Offers of compromise, notices, practice directions, etc: (a) Payment into or out of Court (b) Offer of compromise under O.24A (c) Acknowledgment of offer under O.24A (d) Acceptance of offer of compromise under O.24A (e) Notice of offer to consent to judgment (f) Other notices and certificates referred to or required by the Rules or procedures of the Court (including practice directions)	2 hours 4 hours 4 hours 2 hours	JP SP SP SP	462 1,364 38 1,364 682 38
16.	Getting up: Getting up case for trial (subject to item 19(g)) (includes work reasonably and necessarily undertaken prior to commencement of proceedings)	100 hours	SP	34,100

17.	Examination of witness before trial by counsel or practitioner, pursuant to order			An allowance in accordance with item 19(c) or (d)
18.	Application for and striking jury	1 hour	JP	231
19.	<p>Trial: Counsel fees</p> <p>(a) Fee on brief, i.e. first day of trial and preparation</p> <p>(b) Fee on brief for Senior Counsel, i.e. first day of trial and preparation (where two or more counsel are certified for)</p> <p>(c) Counsel fee for the second and each successive day of hearing</p> <p>(d) Counsel fee for Senior Counsel for second and each successive day of hearing (where two or more counsel are certified for)</p> <p>(e) Solicitor attending trial</p> <p>(f) Clerk attending trial</p> <p>(g) Where the only issue tried is the assessment of damages, three quarters of the amounts prescribed by items 16, 19(a), (b) (c) and (d) shall be allowable, unless otherwise directed by the Court</p> <p>(h) Attending on reserved judgment</p>	<p>3 days preparation; 1st day of trial</p> <p>3 days preparation; 1st day of trial</p> <p>per hour</p> <p>per hour</p> <p>per hour</p>	<p>C</p> <p>SC</p> <p>C</p> <p>SC</p> <p>SP</p> <p>C/PL</p> <p>SP</p>	<p>11,572</p> <p>17,644</p> <p>2,893</p> <p>4,411</p> <p>341</p> <p>165</p> <p>341</p>
20.	<p>Re-trial or Re-hearing</p> <p>(a) Getting up case for re-trial or re-hearing</p> <p>(b) Re-trial or re-hearing</p>			Such amounts as are reasonable in the circumstances
21.	<p>(a) Special case, case stated (otherwise than by way of appeal) or trial of an issue (not covered by item 19(g))</p> <p>(b) For the second and each successive day of the trial or hearing</p>			Such amounts as are reasonable in the circumstances

22.	<p>Appeals (including appeals by way of case stated and applications for leave to appeal): Appeals to a member of the Court or to the Full Court (including appeals by way of case stated)</p> <p>(a) Notice of appeal, application for leave to appeal, motion for order <i>nisi</i> to review, and the like</p> <p>(b) Drawing and settling index</p> <p>(c) Getting up appeal for hearing</p> <p>(d) Counsel fee on hearing including preparation</p> <p>(e) Counsel fee for Senior Counsel including preparation (where two or more counsel are certified for)</p> <p>(f) Counsel fee for the second and each successive day of hearing</p> <p>(g) Counsel fee for Senior Counsel for the second and each successive day of hearing (where two or more counsel are certified for)</p> <p>(h) Attending on reserved decision</p>	<p>15 hours</p> <p>8 hours</p> <p>10 hours</p> <p>2 days preparation; 1 day hearing</p> <p>2 days preparation; 1 day hearing</p> <p>per hour</p>	<p>SP</p> <p>JP</p> <p>SP</p> <p>C</p> <p>SC</p> <p>C</p> <p>SC</p> <p>SP</p>	<p>5,115</p> <p>1,848</p> <p>3,410</p> <p>8,679</p> <p>13,233</p> <p>2,893</p> <p>4,411</p> <p>341</p>
23.	<p>Pretrial, mediation, conferrals, or other conferences</p> <p>(a) Where required by order of the Court, by the <i>Rules of the Supreme Court</i> or by practice direction; and</p> <p>(b) Including informal conferences where reasonably held after commencement of proceedings</p>	<p>per hour</p>	<p>SP</p>	<p>341</p>
24.	<p>Orders: Settling and extracting judgment or order</p> <p>(a) With appointment</p> <p>(b) Without appointment</p>	<p>2 hours</p> <p>0.75 hours</p>	<p>JP</p> <p>JP</p>	<p>462</p> <p>173</p>
25.	<p>Arbitration proceedings</p>			<p>The same costs as in an action</p>

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 amounts as are reasonable in the circumstances
27.	Proceedings by way of prerogative writ			Allowances calculated in accordance with item 22
28.	(a) Execution (b) If against land, an additional			252 252
29.	Taxing including drawing: (a) Drawing bill of costs, copies and service; and (b) Taxation of costs (including the time spent in preparing for the taxation)		SP	Such amounts as are reasonable in the circumstances
30.	Copying: Photocopies where necessary, including of documents for which allowance is otherwise made in this Determination -	per page		1.00
31.	Accounts and inquiries: Taking accounts; inquiries		SP	Such amounts as are reasonable in the circumstances
32.	Other work: (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 or (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	SC SP C JP C/PL	473 341 264 231 165

33.	<p>Disbursements:</p> <p>In addition to the fees and charges allowed under this determination</p> <ul style="list-style-type: none">(a) As between practitioner and client, a practitioner may charge and be allowed disbursements necessarily or reasonably incurred; and(b) As between party and party, a party may be allowed disbursements necessarily or reasonably incurred.
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Made by the Legal Costs Committee on 17 June 2004.