

LEGAL PRACTICE ACT 2003

LEGAL PRACTITIONERS (SUPREME COURT) (CONTENTIOUS BUSINESS) REPORT 2008

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 2008*.
- (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 2008*.

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 2008*, the Legal Costs Committee:
 - (a) reviewed all submissions received as a result of the notice given under section 213 of the Act; and
 - (b) reviewed the impact of movements in the Consumer Price and Labour Price Indices for the financial year ending June 2007, and for the September 2007, December 2007 and March 2008 quarters.

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 2008*. There were no other appropriate methodologies put to the Committee as an alternative to hourly and daily rates.
- (2) It is the recommendation of the Legal Costs Committee that:
 - (a) as a result of the inquiries and submissions described in clause 3;
 - (b) having considered the impact of relevant Australian Bureau of Statistics data;
 - (c) having considered submissions and data from The Law Society of Western Australia and the Western Australian Bar Association; and
 - (d) the incidental administrative implications of the calculation of the Goods and Services Tax,

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 2006¹* as the basis for the recommended scale of costs which have been generally rounded up or down to represent an increase of 10% inclusive of the Goods and Services Tax and for administrative convenience, divisible by 11. Those rates are set out in the Table to clause 8 of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2008*.

(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 9 of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2008*.

(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 Practice Act 2003* or any successor legislation.

1 . [Published in Gazette 27 June 2006 pp.2334-2342]

TED SHARP, Chairman
ANGELA GAFFNEY, Member
CLARE THOMPSON, Member
MARCUS COCKER, Member
JANICE DUDLEY, Member

SCHEDULE

LEGAL PRACTICE ACT 2003

LEGAL PRACTITIONERS (SUPREME COURT) (CONTENTIOUS BUSINESS) DETERMINATION 2008

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 2008*.

Commencement

2. This Determination comes into operation on 1 July 2008.

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 2004* 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* or any successor legislation.

(3) This Determination does not apply to the remuneration of practitioners based on costs incurred before 1 July 2008.

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.

Senior Counsel Certificates

5. The practice of certification for second counsel or for Senior Counsel is no longer required by the Scale, which brings the practice in this State into line with other Australian jurisdictions. However, where fees are claimed for second counsel or for Senior Counsel, it is anticipated that the Taxing Officer shall consider whether the briefing of second counsel, or Senior Counsel, was reasonably necessary in the circumstances.

Single Judge Appeals and Appeals to the Court of Appeal

6. Item 22 of the Table to clause 9 is intended to apply to appeals to a single judge and to appeals to the Court of Appeal.

Proceedings by way of prerogative writ

7. Item 27 of the Table to clause 9 is intended to cover all necessary procedural steps involved in the handling of prerogative writs, both in respect of an application for a motion to show cause and return before the Court of Appeal.

Maximum hourly and daily rates

8. (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 9. 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 2008*.

(3) The daily rates set out in the table below are intended to cover all work done on a hearing or trial day, whether in or out of court, including preparation of written submissions and are not intended to be supplemented in any way by additional hourly charges given that the maximum number of hours allowed for the daily rate is 10 hours per day.

(4) The Legal Costs Committee acknowledges that the implementation of clause 8 (3) will result in a proportionally smaller increase for Counsel daily rates, and a proportionally larger increase for Senior Counsel daily rates, in contrast to a straight increase of 10% being applied as recommended in the *Legal Practitioners (Supreme Court) (Contentious Business) Report 2008*. The Legal Costs Committee considers that the anomaly of the Counsel daily rate being calculated at slightly more than 10 hours per day, and the Senior Counsel rate previously being calculated at slightly less than 10 hours per day, needs to be corrected and for that reason, the disproportionate increases in each of the two rates appear in this Determination.

Table

| Fee Earner | | Maximum allowable hourly and daily rates | |
|--|--------------------|---|------------------|
| Senior Practitioner (admitted for more than 5 years) | | | |
| (SP) ^α | hourly rate | \$396 | |
| Junior Practitioner (admitted for less than 5 years) | | | |
| (JP) ^α | hourly rate | \$275 | |
| Clerk/Paralegal | (C/PL) hourly rate | \$198 | |
| Counsel fees charged as a disbursement to practitioners or charged by in-house counsel: | | | |
| Counsel | (C)* | hourly rate daily rate | \$319 \$3,190 |
| Senior Counsel | (SC)† | hourly rate daily rate | \$561 \$5,610 |

^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

9. (1) Subject to the provisions of subclause (2) and of section 221 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 2008

| 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 | 594 |
| | For each additional defendant | | | 77 |
| | (b) Statement of Claim | 10 hours | SP | 3,960 |
| 2. | Next friend or guardian <i>ad litem</i> | 3 hours | JP | 825 |
| 3. | Defence: | | | |
| | (a) Memorandum of appearance | 0.5 hours | C/PL | 99 |
| | (b) Defence | 10 hours | SP | 3,960 |
| | (c) Counterclaim | 10 hours | SP | 3,960 |
| 4. | Reply and other pleadings: Reply (if necessary), defence to counterclaim, or any other pleading | 10 hours | SP | 3,960 |
| 5. | (a) Third party notice | 2 hours | SP | 792 |
| | (b) Pleadings in third party proceedings | 6 hours | SP | 2,376 |
| 6. | (a) Requesting particulars of a pleading (where and to the extent necessary) | 3 hours | JP | 825 |
| | (b) Giving particulars of a pleading | 5 hours | JP | 1,375 |
| 7. | Discovery: | | | |
| | (a) Notice requiring discovery | 0.33 hours | C/PL | 65 |
| | (b) Giving discovery of documents | 10 hours | SP | 3,960 |
| 8. | Inspection: Inspection of discovered documents whether by personal attendance or otherwise | per hour | SP | 396 |

| | | | | |
|-----|---|---|----------------------------------|--|
| 9. | Interrogatories: (a) Delivery of interrogatories (b) Answers to interrogatories | 5 hours 10 hours | SP SP | 1,980 3,960 |
| 10. | Chambers: (a) Proceedings in Chambers other than proceedings to which item 11 applies (b) Attending on a reserved judgment in Chambers (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders) (c) Consent Orders including conferral but excluding extraction | 2 days preparation; 1 day hearing per hour 1.5 hours | C SP JP | 9,570 396 418 |
| 11. | Motions and originating process: (a) Originating motion, originating summons or originating application (b) For 2 nd and each successive day of hearing | 2 days preparation; 1 day hearing and Getting up – 50 hours | C SP C | 29,370 3,190 |
| 12. | Proceedings in Court not otherwise provided for, including appeals from a Registrar | 2 days preparation ½ day hearing | C | 7,975 |
| 13. | Callover: Attending at a callover and all necessary preparation | per hour | SP | 396 |
| 14. | Entry of judgment without trial | | | 198 |
| 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 | 2 hours 4 hours 4 hours 2 hours | JP SP SP SP | 550 1,584 55 1,584 792 |

| | | | | |
|-----|---|---|------|---|
| | (f) Other notices and certificates referred to or required by the Rules or procedures of the Court (including practice directions) | | | 55 |
| 16. | Getting up: Getting up case for trial (includes work reasonably and necessarily undertaken prior to commencement of proceedings) | 100 hours | SP | 39,650 |
| 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 | 275 |
| 19. | Trial: Counsel fees | | | |
| | (a) Fee on brief, i.e. first day of trial and preparation | 3 days preparation; 1st day of trial | C | 12,760 |
| | (b) Fee on brief for Senior Counsel, i.e. first day of trial and preparation | 3 days preparation; 1st day of trial | SC | 22,440 |
| | (c) Counsel fee for the second and each successive day of hearing | | C | 3,190 |
| | (d) Counsel fee for Senior Counsel for second and each successive day of hearing | | SC | 5,610 |
| | (e) Solicitor attending trial | per hour | SP | 396 |
| | (f) Clerk attending trial | per hour | C/PL | 198 |
| | (g) Attending on reserved judgment (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders) | per hour | SP | 396 |
| 20. | 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 | | | |
| 21. | (a) Special case, case stated (otherwise than by way of appeal) or trial of an issue | | | Such amounts as |

| | (b) For the second and each successive day of the trial or hearing | | | are reasonable in the circumstances |
|-----|---|--------------------------------------|----|-------------------------------------|
| 22. | Appeals to the Court of Appeal and Single Judge Appeals (including appeals by way of case stated) | | | |
| | (a) Appeal Notice, Service Certificate, Notice of Respondent's Intention | 1 hour | SP | 396 |
| | (b) Appellant's Case, Respondent's Answer including relevant forms and all annexures | 40 hours | SC | 22,440 |
| | (c) Appellant's Reply to Notice of Contention, when required | 10 hours | SC | 5,160 |
| | (d) Settling appeal book indexes (including preparation) | 8 hours | JP | 2,200 |
| | (e) An application in an appeal, an interlocutory or directions hearing before a single Judge or Registrar | 10 hours | C | 3,190 |
| | (f) Getting up appeal for hearing | 10 hours | SP | 3,960 |
| | (g) Counsel fee on hearing (including preparation) | 2 days preparation; 1 day hearing | C | 9,570 |
| | (h) Counsel fee for Senior Counsel (including preparation) | 2 days preparation; 1 day hearing | SC | 16,830 |
| | (i) Counsel fee for the second and each successive day of hearing | | C | 3,190 |
| | (j) Counsel fee for Senior Counsel for the second and each successive day of hearing | | SC | 5,160 |
| | (k) Solicitor attending appeal | per hour | SP | 396 |
| | (l) Attending on reserved decision (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders) | per hour | SP | 396 |
| 23. | Pretrial, mediation, conferrals, or other conferences | | | |
| | (a) Where required by order of the Court, by the <i>Rules of the Supreme Court</i> or by practice direction; and | | | |

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|-----|--|--------------------------------------|----|---|
| | (b) Including informal conferences where reasonably held after commencement of proceedings | per hour | SP | 396 |
| 24. | Orders: Settling and extracting judgment or order | | | |
| | (a) With appointment | 2 hours | JP | 550 |
| | (b) Without appointment | 0.75 hours | JP | 209 |
| 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 amounts as are reasonable in the circumstances |
| 27. | Proceedings by way of prerogative writ | | | |
| | (a) Motion for order to show cause (including preparation and hearing) | 20 hours | SP | 7,920 |
| | (b) Getting up for hearing | 10 hours | SP | 3,960 |
| | (c) Counsel fee on hearing of application for order absolute (including preparation) | 2 days preparation; 1 day hearing | C | 9,570 |
| | (d) Counsel fee for Senior Counsel (including preparation) | 2 days preparation; 1 day hearing | SC | 16,830 |
| | (e) Counsel fee on the second and each successive day of hearing (including preparation) | | C | 3,990 |
| | (f) Counsel fee for Senior Counsel on the second and each successive day of hearing (including preparation) | | SC | 5,610 |
| | (g) Solicitor attending hearing | per hour | SP | 396 |
| | (h) Attending on reserved decision (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders) | per hour | SP | 396 |
| | | | | |

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|-----|---|----------|-----------------------------|---|
| 28. | (a) Execution | | | 275 |
| | (b) If against land, an additional | 3 hours | JP | 825 |
| 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 | 561 396 319 275 198 |
| 33. | Disbursements: In addition to the fees and charges allowed under this Determination (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. | | | |