



Western Australia

Legal Practitioners Act 1893

**Legal Practitioners (Supreme Court)
(Contentious Business) Determination 2002**

Legal Practitioners (Supreme Court) (Contentious Business) Determination 2002

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Part 1 — Preliminary

1. Citation

- (1) This report may be cited as the *Legal Practitioners (Supreme Court) (Contentious Business) Report 2002*.
- (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 2002*.

Part 2 — Notice And Inquiries

2. Notice under section 58Y of the Act

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

3. Inquiries and submissions under section 58Y of the Act

Before making the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2002*, the Legal Costs Committee —

- (a) reviewed all submissions received as a result of the notice given under section 58Y of the Act;
- (b) conducted an oral hearing with representatives of the Law Society of Western Australia Inc and the Insurance Commission of Western Australia;
- (c) reviewed the operation of the time based system of calculating costs;
- (d) reviewed the impact of movements in the Consumer Price Index for the financial years ending 30 June 1997 to 30 June 2001 (inclusive);
- (e) had regard to the impact of the Goods and Services Tax on the level of fees charged by Practitioners; and
- (f) circulated a questionnaire amongst a number of legal firms known to actively practice in the Supreme Court and the District Court jurisdictions as well as members of the Independent Bars.

4. Maximum hourly and daily rates

The Committee noted that there has been no increase in the maximum hourly and daily rates chargeable by practitioners for over 5 years.

Part 3 — Report Of The Committee's Conclusions

5. Maximum hourly and daily rates changed—scale of costs amended

- (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 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 2002* which have been generally rounded up or down to represent an increase of 16% inclusive of the Goods and Services Tax.
- (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 5 (1) are varied from the hourly and daily rates used in the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 1999*². Those rates are set out in the Table to clause 7 of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2002*.
- (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 7 of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2002*.
- (4) It is the further recommendation of the Committee that given the amendments to the scale of costs in the manner set out in the Table to clauses 6 and 7 of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2002* are inclusive of any provision for the Goods and Services Tax, from and including the date of that determination coming into operation, the *Legal Practitioners (Effect on Costs of a New Tax System) (Goods and Services Tax) Determination 2000* as published in the *Gazette* on 15 September 2000 p5411 will no longer apply

to the Legal Practitioners (Supreme Court) (Contentious Business) scale of costs from that date.

- (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 Practitioners Act 1893*.

¹ [Published: Gazette 20 Dec 1996 p. 7077-87]

² [Published: Gazette 15 Jun 1999 p. 2563-9]

Schedule

Legal Practitioners Act 1893

Legal Practitioners (Supreme Court) (Contentious Business) Determination 2002

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

1. Citation

This determination may be cited as the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2002*.

2. Commencement

This determination comes into operation on 1 June 2002.

3. Application

- (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 1999* 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 Practitioners Act 1893*.
- (3) This determination does not apply to the remuneration of practitioners based on costs incurred before 1 June 2002.

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

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.

5. Legal Practitioners (Effect on Costs of a New Tax System) (Goods and Services Tax) Determination 2000 (GST Determination)

From and including 1 June 2002, the GST Determination insofar as it affects the hourly and daily rates described in clause 6 and the calculation of fees under each of the items in clause 7, the GST Determination will cease to be of any further force or effect.

6. Maximum hourly and daily rates

- (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 7. 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 5 of the *Legal Practitioners (Supreme Court) (Contentious Business) Report 2002*.

Table

| Fee Earner | Maximum allowable hourly and daily rates |
|--|--|
| Senior Practitioner (admitted for more than 5 years) | |
| (SP) — hourly rate | \$313 |
| Junior Practitioner (admitted for less than 5 years) | |
| (JP) — hourly rate | \$209 |
| Clerk/Paralegal (C/PL) — hourly rate | \$151 |
| Counsel fees charged as a disbursement to practitioners or charged by in-house counsel — | |
| Junior Counsel (JC) — hourly rate | \$244 |
| — daily rate | \$2668 |
| Senior Counsel (SC)† — hourly rate | \$429 |
| — daily rate | \$4060 |

†The reference to a Senior Counsel in this determination includes reference to Queens 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.

7. Costs

(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 | | | 464 |
| | (b) Writ of summons with Statement of Claim indorsed, including instructions; and | | | 777 |
| | (c) For each additional defendant | | | 58 |
| 2. | Next friend or guardian <i>ad litem</i> | 3 hours | JP | 627 |
| 3. | Entry of judgment without trial | | | 151 |
| 4. | (a) Payment into or out of Court | 2 hours | JP | 418 |
| | (b) Offer of compromise under O.24A | 2 hours | SP | 626 |
| | (c) Acknowledgment of offer under O.24A | | | 35 |
| | (d) Acceptance of offer of compromise under O.24A | 2 hours | SP | 626 |
| | (e) Notice of offer to consent to judgment | 2 hours | SP | 626 |

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| Item | | Time | Fee Earner | \$ |
|------|--|------------|---------------|---|
| | (f) Other notices and certificates referred to or required by the Rules or procedures of the Court (including practice directions) | | | |
| 5. | Memorandum of Appearance | 0.5 hours | C/PL | 75 |
| 6. | Pleadings | | | |
| | (a) Statement of Claim | 10 hours | SP | 3,130 |
| | (b) Defence | 10 hours | SP | 3,130 |
| | (c) Counterclaim | 10 hours | SP | 3,130 |
| | (d) Reply (if necessary), defence to counterclaim, or any other pleading | 10 hours | SP | 3,130 |
| 7. | (a) Third party notice | 2 hours | SP | 626 |
| | (b) Pleadings in third party proceedings | 6 hours | SP | 1,878 |
| 8. | (a) Requesting particulars of a pleading (where and to the extent necessary) | 3 hours | JP | 627 |
| | (b) Giving particulars of a pleading | 5 hours | JP | 1,045 |
| 9. | (a) Notice requiring discovery | 0.33 hours | C/PL | 50 |
| | (b) Giving discovery of documents | 10 hours | JP | 2,090 |
| | (c) Inspection and giving inspection—per hour | | JP | 209 |
| 10. | (a) Delivery of interrogatories | 5 hours | SP | 1,565 |
| | (b) Answers to interrogatories | 10 hours | SP | 3,130 |
| 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 | 209 |
| 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 | 31,300 |

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| Item | | Time | Fee Earner | \$ |
|--|--|---|-------------------|-------------------|
| 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/SC JC JP | 313 244 209 |
| | (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 | 151 |
| 14. | Counsel fees— | | | |
| | (a) Fee on brief, i.e. first day of trial and preparation | 3 days preparation; 1st day of trial | JC | 10,672 |
| | (b) Fee on brief for Senior Counsel, i.e. first day of trial and preparation (where two or more counsel are certified for) | 3 days preparation; 1st day of trial | SC | 16,240 |
| | (c) Counsel fee for the second and each successive day of hearing | | JC | 2,668 |
| | (d) Counsel fee for Senior Counsel for second and each successive day of hearing (where two or more counsel are certified for) | | SC | 4,060 |
| | (e) Solicitor attending trial—per hour | | SP | 313 |
| | (f) Clerk attending trial—per hour | | C/PL | 151 |
| | (g) Attending on a reserved judgment or at a callover—per hour | | SP | 313 |
| (h) Where the only issue tried is the assessment of damages, three quarters of | | | | |

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| Item | | Time | Fee Earner | \$ |
|------|---|---------------------------------|----------------|---|
| | 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 (b) Without appointment | 2 hours 0.75 hours | JP JP | 418 157 |
| 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 (b) Re-trial or re-hearing | | | Such amounts as are reasonable in the circumstances |
| 19. | (a) Special case, case stated (otherwise than by way of appeal) or trial of an issue (not covered by item 14(h)) (b) For the second and each successive day of the trial or hearing | | | Such amounts as are reasonable in the circumstances |
| 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 (b) Drawing and settling index (c) Getting up appeal for hearing | 15 hours 8 hours 10 hours | SP JP SP | 4,695 1,672 3,130 |

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| Item | | Time | Fee Earner | \$ |
|------|---|--|------------|--------|
| | (d) Counsel fee on hearing including preparation | 2 days preparation; 1 day hearing | JC | 8,004 |
| | (e) Counsel fee for Senior Counsel including preparation (where two or more counsel are certified for) | 2 days preparation; 1 day hearing | SC | 12,180 |
| | (f) Counsel fee for the second and each successive day of hearing | | JC | 2,668 |
| | (g) Counsel fee for Senior Counsel for second and each successive day of hearing (where two or more counsel are certified for) | | SC | 4,060 |
| | (h) Attending on reserved decision | 2 hours | JP | 418 |
| 21. | Originating motion, originating summons or originating application | 2 days preparation; 1 day hearing; and Getting up—30 hours | JC SP | 17,400 |
| 22. | Motions in Court not otherwise provided for | 1 day preparation ½ day hearing | JC | 4,002 |
| 23. | Proceedings in Chambers other than proceedings to which item 21 applies | 2 days preparation; 1 day hearing | JC | 8,004 |
| 24. | Pretrial, mediation 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 (b) including informal | | SP | 313 |

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| Item | | Time | Fee Earner | \$ |
|------|---|------|---------------|--|
| | conferences where reasonably held after commencement of proceedings—per hour | | | |
| 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 (b) If against land, an additional | | | 232 232 |
| 29. | Photocopies where necessary— per page | | | 0.95 |
| 30. | 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. | | | |

[Schedule amended: Gazette 25 Jun 2002 p. 2991.]

Notes

¹ This is a compilation *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2002* and includes all amendments effected by the other Acts referred to in the following Table.

Compilation table

| Citation | Gazettal | Commencement |
|--|---|---------------------|
| <i>Legal Practitioners (Supreme Court) (Contentious Business) Determination 2002</i> | 10 May 2002 p. 2448-54 (Correction in <i>Gazette</i> 25 Jun 2002 p. 2991 | 1 Jun 2002 |