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LEGAL PRACTITIONERS ACT 1893

**LEGAL PRACTITIONERS
(LOCAL COURT)
(CONTENTIOUS BUSINESS)
DETERMINATION 1997**

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DETERMINATION 1997**

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

PART 1—PRELIMINARY

Citation

1. This determination may be cited as the *Legal Practitioners (Local Court) (Contentious Business) Determination 1997*.

Commencement

2. This determination comes into operation on 1 May 1997.

Application

3. This determination applies to contentious business in the Local Court in Western Australia.

Notice under section 58Y of the Act

4. The Committee has complied with section 58Y of the Act.

PART 2—INVESTIGATIONS CARRIED OUT BY THE COMMITTEE

5. Before making this determination the Committee took the following steps—

- (a) reviewed all submissions received following notice given under section 58Y of the Act, which included submissions from the Local Court, the Law Society of Western Australia, the profession and the public; and
- (b) ascertained the inflation factor according to the Consumer Price Index All Groups Index Numbers—Perth for the period December 1994 to December 1996 to be 7.3%.

PART 3—AMENDMENTS TO THE SCALE OF COSTS

6. In response to submissions and investigations amendments were made to—

- (a) various descriptive items in the Scale;
- (b) the estimated time allowed to perform some services described in the Scale;
- (c) delete “complex” and substitute “non-routine”;

- (d) insert an additional fixed item; and
- (e) delete items relating to disbursements.

PART 4 - EXPLANATION OF AMENDMENTS

Time based Scale of Costs

7. In 1994 the Committee determined that a time based Scale of Costs should be adopted for the Local Court.

Inflation adjustment

8. With the exception of the junior solicitor rate which has been set at \$150 per hour, the Committee determines that the hourly charge rates adopted in the 1994 Determination should be adjusted by the relevant inflation factor (Consumer Price Index All Groups Index Numbers - Perth) of 7.3 percent for the intervening period.

Hourly rates

9. The Committee determines that maximum rates for solicitors and clerks or para legals should be as follows—

Senior solicitor (admitted for more than 5 years)	\$215 per hour
Junior solicitor (admitted for less than 5 years)	\$150 per hour
Clerk or para legal (supervised by a solicitor)	\$65 per hour

These hourly rates are used in the Scale by applying the hourly rate to the time involved. So, in the case of item 12(a) Pre-trial conference in Division 2 non routine Scale, the time shown is 1-3 hours. The Scale amount in dollars is \$150-\$645. Dividing the time allowed for the item into the dollar amount reveals that the dollar amount has been calculated by allowing 1 hour at a junior solicitor's rate and 3 hours at the senior solicitor's rate. This allows the taxing officer a discretion depending on the particular facts of the case.

Routine and non routine Scales

10. In the 1994 Determination the Committee recognised that a significant volume of the work performed by solicitors in the Local Court is routine. Examples include debt collection and assessment of motor vehicle damages claims. To that end, the Committee decided that there should be a Scale for routine work, which provides where possible for a fixed amount by way of costs in relation to each item of work, to try to reduce the time spent in making submissions about costs and taxing costs.

The routine Scale applies unless—

- (a) subject to the Court, the parties agree; or
- (b) the Court makes an order in chambers or at trial,

that the non routine Scale applies.

No minimum charge

11. In no respect is the Scale to be seen as providing a minimum charge for any work other than the items referred to in clause 12. For example, item 13(a) in the non routine Scale Division 1 provides for a range of \$450 to \$750 for the work involved. The figure of \$750 is a maximum, but on taxation less than \$450 might be allowed. Where there is a range of figures the purpose is to indicate to the taxing officer what reasonably may be expected in most cases.

Fixed items

12. Some items in the Scale have been fixed without any indication of how these items have been calculated. These items are 1(b), 3, 16(a) and 16(i). These have been fixed because the Court staff require a fixed figure when completing the Form of Summons, Entry of Judgment by Default, Judgment Summons, or the like.

Scale divisions

13. The Committee has adopted a Division providing a Scale of Costs for claims under \$3,000 and a Division providing a Scale for claims exceeding \$3,000 and up to the limit of the Local Court jurisdiction. The figure of \$3,000 was adopted because it corresponds with the jurisdictional limit of the Small Disputes Division of the Local Court. In each of these Divisions there is a routine and a non routine Scale.

Time estimates

14. The reason for stating the number of hours estimated to be necessary to perform each of the items of work described in the Scale is to provide guidance to the Court when dealing with the question of costs so that the Court has some idea how much time is reasonably necessary to perform work in most cases. For example, in item 13(a), which relates to preparation for trial or getting up case for trial, the routine Scale in Division 2 assumes that no more than 3 hours would be spent in preparation and getting up case for trial. If at the time judgment is given, the Magistrate or the Court is reasonably satisfied that the case did involve more than 3 hours by way of preparation, then the Magistrate or the Court may order that the costs be taxed on the non routine Scale. The hours referred to in the non routine Scale will guide the taxing officer about the amount which should be allowed in a particular case.

Settled procedures

15. It is intended that item 13 should apply even if there is no trial. Thus, if the case is settled before trial and the practitioner can demonstrate that preparation for trial was carried out, then costs may be recovered for that work.

Independent counsel

16. If independent counsel is not retained in the case, then this will be a factor to be considered by the taxing officer who might not then allow a full fee on brief under item 14(a), as well as a full getting up case allowance under item 13.

Disbursements

17. Items 32 and 33 of the Scale in the 1994 determination have been omitted following the decision of *Klahn v Talbot* (Supreme Court Library No. 950628) which found that the Legal Costs Committee does not have the power to make determinations in respect of disbursements. The Court retains jurisdiction in relation to any costs matters not transferred to the Legal Costs Committee and accordingly, the taxation officers may make allowances for disbursements until the relevant legislation is amended.

PART 5 - THE DETERMINATION

18. The above text and the Schedule constitute a determination made by the Legal Costs Committee under section 58W of the Act.

SCHEDULE

Subject to the provisions of the *Local Courts Act 1904* and to the *Legal Practitioners Act 1893* permitting a solicitor 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 in the Local Court (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 solicitor,

shall not exceed the amounts set out in the Scale of Costs.

LOCAL COURT SCALE OF COSTS 1997

ITEM		DIVISION 1 Not Exceeding \$3000				DIVISION 2 Exceeding \$3000			
		ROUTINE		NON ROUTINE		ROUTINE		NON ROUTINE	
		hours	S	hours	S	hours	S	hours	\$
1.	(a) Letter of demand issued prior to commencing proceedings	0.3	45	0.3	45	0.3	45	0.3	45
	(b) Summons (including endorsement)		70		70		120		120
2.	Appointment of legal representative for person under disability (next friend or guardian ad litem)	0.5	75	0.5	75	0.5	75	0.5	75
3.	Entry of Judgment by default		20		20		20		20
4.	Particulars of Claim (where required or by order)	0.5	75	1	150	0.5	75	1-2	150-430
5.	Particulars of defence	0.5	75	1	150	0.5	75	1-2	150-430
6.	Counterclaim	0.5	75	1	150	0.5	75	1-2	150-430
7.	Reply (where necessary)	0.5	75	0.5	75	0.5	75	0.5	107
8.	Notices of any kind required by the Act or the Rules and not otherwise specified in the Scale	0.3	45	0.3	45	0.3	45	0.3	45
9.	Payment into or out of court (including requisite notices)	0.5	75	0.5	75	0.5	75	0.5	75
10.	Application for trial or assessment of damages	0.2	30	0.2	30	0.2	30	0.2	30
11.	Examination of witness before trial pursuant to order	per hour	150	per hour	150	per hour	150	per hour	215
12.	(a) Pretrial conference (including necessary preparation, notices, correspondence, and briefing counsel): with appearance by solicitor	1	150	1-2	150-300	1	150	1-3	150-645
	with appearance by clerk	1	65	1-2	65-130	1	65	1-3	65-195
	(b) Attending callover	0.5	75	0.5	75	0.5	75	0.5	75

13.	<p>Preparation for trial which involves getting up case for trial and consists of all aspects not otherwise specified associated with preparing for trial including taking statements from and proofing witnesses, advice on evidence and law and delivering brief to counsel.</p> <p>Note: If the action terminates before trial or listing for trial, the Taxing Officer may allow remuneration under this item and may allow less than the amount or minimum amount stated in the column as the officer finds reasonable in the circumstances.</p>								
	(a) Where liability is an issue	2.5	375	3-5	450-750	3	450	4-20	600-4300
	(b) For an assessment of damages only	1.7	255	2-3	300-450	2	300	2-10	300-2150
	(c) Getting up case for rehearing or new trial	2.5	375	2.5-5	375-750	3	450	3-10	450-2150
14.	<p>Trial:</p> <p>(a) Fee on brief i.e., First day of trial (including mastering brief)</p> <p>(b) Each additional day</p> <p>Note: In relation to paragraphs (a) & (b) if (1) The trial lasts less than 2 hours; or (2) The trial does not commence and settles or adjourns on the day of trial, then the Taxing Officer shall allow such amount as is reasonable in the circumstances</p> <p>(c) Attending reserved decision in court</p>								
	(a) Fee on brief i.e., First day of trial (including mastering brief)	5	750	6-7	900-1050	6	900	7-10	1050-2150
	(b) Each additional day	5	750	5	750	5	750	5	750-1075
	(c) Attending reserved decision in court	1	150	1	150	1	150	1	150
15.	<p>(a) Proceedings in chambers (including preparation for hearing) with appearance by solicitor</p> <p>with appearance by clerk</p> <p>(b) Preparation and filing of affidavits of service of general interlocutory process</p>								
	(a) Proceedings in chambers (including preparation for hearing) with appearance by solicitor	1	150	1.2	180	1	150	2.5	375-537
	with appearance by clerk	1	65	1.2	78	1	65	2.5	162
	(b) Preparation and filing of affidavits of service of general interlocutory process	0.5	75	0.5	75	0.5	75	1	150

16.	(a)	Judgment Summons (including all incidental attendances by solicitor or clerk)		100			100			100			100
	(b)	Bench/Chamber Warrant/Warrant to arrest witness	0.5	32	0.5	32	0.5	32	0.5	32	0.5	32	32
	(c)	Order of Commitment	0.5	32	0.5	32	0.5	32	0.5	32	0.5	32	32
	(d)	Consent Affidavit	0.5	32	0.5	32	0.5	32	0.5	32	0.5	32	32
	(e)	Application for fresh order by request in writing pursuant to O.23 R.8	0.5	32	0.5	32	0.5	32	0.5	32	0.5	32	32
	(f)	Issue of Certified Copy of Judgment	0.5	32	0.5	32	0.5	32	0.5	32	0.5	32	32
	(g)	Warrant of Execution, Possession, Delivery or Replevin	0.5	32	0.5	32	0.5	32	0.5	32	0.5	32	32
	(h)	Warrant of Execution where land involved	1	65	1	65	1	65	1	65	1	65	65
	(i)	Examination in Aid of Execution (including all incidental attendances by solicitor or clerk)		100		100		100		100		100	100
17.		Drawing up and serving interlocutory orders (where ordered or required)	0.5	32	0.5	32	0.5	32	0.5	32	0.5	75	75
18.		Third party notice and particulars	0.5	75	0.5	75	0.5	75	0.5	75	0.5	75	75
19.		Applications in court not otherwise provided for	0.5	75	0.5	75	1	150	1	150	1	215	215
20.	(a)	Delivery of interrogatories	0.5	75	1	150	0.5	75	1-3	150-645	1-3	150-645	150-645
	(b)	Answers to interrogatories	0.5	75	0.5	75	0.5	75	1-3	150-645	1-3	150-645	150-645
21.	(a)	Notice requiring discovery	0.3	19	0.5	32	0.3	19	0.5	75	0.5	75	75
	(b)	Giving discovery	0.5	75	1	150	0.5	75	1-2	150-430	1-2	150-430	150-430
	(c)	Inspection and giving inspection	0.5	75	1	150	0.5	75	1-2	150-430	1-2	150-430	150-430
22.		Interpleader proceedings (where uncontested)	0.5	75	0.7	105	0.8	120	1	150	1	150	150
23.		Application for garnishee order (where uncontested)	1.5	225	1.5	225	1.5	225	1.5	225	1.5	225	225
24.		Recovery of possession (undefended, including appearance)	2	300	2-2.5	300-375	2	300	2-2.5	300-375	2-2.5	300-375	300-375
25.		Drawing Bill of Costs, copies and service	0.5	32	1	150	0.6	90	1	150	1	150	150

26.	Attending on taxation of costs: with an appearance by solicitor	0.5	75	0.7	105	0.5	75	1	150
	with an appearance by clerk	0.5	32	0.7	45	0.5	32	1	65
27.	Attending on taxing accounts, inquiries	per hour	150	per hour	150	per hour	150	per hour	150
28.	Preparation of Judgments or Orders (where necessary)	0.5	32	1	150	0.5	32	1	150
29.	Registration of Judgments including those under the <i>Service and Execution of Process Act 1992</i>	0.7	105	0.7	105	0.7	105	0.7	105
30.	Affidavits justifying choice of Court	0.5	32	0.5	32	0.5	32	0.5	75
31.	Application for review of taxation of costs by Magistrate	0.5	75	0.7	105	0.5	75	0.7	105

Dated at Perth 18 March 1997

TED SHARP, Chairman
CHRIS PULLIN QC, Deputy Chairman
ANGELA GAFFNEY, Member
JILL VANDER WAL, Member
JASON BERRY, Member
PATRICK COWARD, Member

