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LEGAL PRACTITIONERS ACT 1893

**LEGAL PRACTITIONERS
(WORKERS'
COMPENSATION) (REVIEW
PROCEEDINGS AND
COMPENSATION
MAGISTRATE'S COURT)
DETERMINATION 1997**

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**LEGAL PRACTITIONERS (WORKERS' COMPENSATION)
(REVIEW PROCEEDINGS AND COMPENSATION
MAGISTRATE'S COURT) 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 (Workers' Compensation) (Review Proceedings and Compensation Magistrate's Court) Determination 1997*.

Commencement

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

Application

3. (1) Subject to subclause (2) this determination applies to contentious business carried out by practitioners in or for the purposes of proceedings before—

- (a) a review officer; or
- (b) a compensation magistrate's court,

within the meaning of the *Worker's Compensation and Rehabilitation Act 1981*.

(2) This determination does not apply to costs incurred with respect to the matters referred to in subclause (1) before 1 July 1997.

Notice under section 58Y of the Act

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

PART 2—REVIEW OF DETERMINATION**Review under section 58X of the Act**

5. The Committee has reviewed the previous determination¹ made on 16 May 1995.

¹[Published in the *Government Gazette* on 26 May 1995 at pp. 2083-90]

Inquiries carried out by the Committee

6. (1) As neither written nor oral submissions were received by the Committee from practitioners or members of the public in response to the notice under section 58Y of the Act, the Committee consulted with representatives from—

- (a) the Conciliation and Review Directorate, established in accordance with Division 1A of Part V of the *Workers' Compensation and Rehabilitation Act 1981*; and
- (b) the Law Society of Western Australia (Inc),

to facilitate the review and the making of the determination.

(2) The Committee was informed—

- (a) that, with respect to proceedings before a review officer—
 - (i) approximately 80% of all disputes are settled by conciliation and do not proceed to review;
 - (ii) either or both of the parties were legally represented in approximately 15% of the 335 cases reviewed during 1996;

- (iii) approximately 40% of the cases where both parties were legally represented dealt with the issue of liability, 25% dealt with pay levels and the balance dealt with other disputes relating to workers' compensation;
 - (iv) the length of a review varies from 1 hour to 7 days with the majority of cases lasting approximately one day; and
 - (v) orders for costs are rarely made (approximately 5 or 6 times since the Directorate was established); and
 - (b) that, with respect to proceedings in a compensation magistrate's court—
 - (i) approximately 90 appeals were heard in a period of 12 months;
 - (ii) the length of an appeal varies from approximately several hours to one day; and
 - (iii) orders for costs are routinely made.
- (3) The Committee was not requested to amend the description of any of the items in the Schedules.

PART 3—DETERMINATION BY COMMITTEE

Hourly rates

7. (1) The Committee reviewed the information referred to in clause 6 and determined that—

- (a) in view of the flexibility afforded by the estimated times described in the Schedules; and
- (b) the provision in each Schedule allowing a practitioner to charge costs which exceed the maximum amounts set out in the Scales,

the appropriate hourly rates were comparable with those of the Local Court.

(2) The rates set out in the Table to this subclause are identical to those set out in the *Legal Practitioners (Local Court) (Contentious Business) Determination 1997*.²

TABLE

Senior solicitor (admitted for more than 5 years) ("SP")	\$215 per hour
Junior solicitor (admitted for less than 5 years) ("JP")	\$150 per hour
Articled Clerk or para legal (supervised by a solicitor) ("A/P")	\$65 per hour

²[Published in the Government Gazette on 25 March 1997 at pp. 1607-16]

Time based Scales of Costs

8. (1) In 1995 the Committee determined that time based Scales of Costs should be adopted with respect to proceedings before—

- (a) a review officer; and
- (b) a compensation magistrate's court.

(2) The Committee determines that the Scales of Costs shall continue to be time based.

Disbursements

9. Items 8 and 9 and items 9 and 10 of Schedules 1 and 2 respectively in the previous determination³ have been omitted following the decision of *Klahn v Talbot* (Supreme Court Library No. 950628) which has been interpreted as meaning 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.

³[Published in the Government Gazette on 26 May 1995 at pp. 2083-90].

PART 4—THE SCHEDULES**Schedule 1**

10. Schedule 1 has effect with respect to proceedings before a review officer.

Schedule 2

11. Schedule 2 has effect with respect to proceedings before a compensation magistrate's court.

SCHEDULE 1**REVIEW PROCEEDINGS COSTS SCALE****Maximum amounts**

1. Subject to clause 2 of the Schedule, the costs payable to a practitioner for each item described in column 2 of the Schedule must not exceed the maximum amount opposite and corresponding to that item set out in column 5 of the Schedule.

Provision for complex matters

2. Where any matter in relation to which remuneration is prescribed under items 1-6 of the Schedule is unusually complex, a practitioner is entitled to charge the remuneration which is reasonable in the circumstances.

Column 1	Column 2	Column 3	Column 4	Column 5
ITEM	DESCRIPTION	TIME HOURS	FEE EARNER	\$
1	Preparing and lodging application (Form 3) including instructions.	1-2	JP-SP	150-430
2	Preliminary hearing in review including preparation for hearing.	1-3	JP-SP	150-645
3	Particulars and discovery:			
	(a) Providing particulars (where ordered).	0.5-2	JP-SP	75-430
	(b) Giving discovery of documents (where ordered).	0.5-2	JP-SP	75-430
4	Preparing for hearing which includes getting up case for review hearing and consists of all aspects not otherwise specified associated with preparing for the review hearing, including taking statements from and proofing witnesses.	2-12	A/P-SP	130-2580
5	Review hearing:			
	(a) Counsel fee on review hearing (includes preparation and first day of trial).	3-12	JP-SP	450-2580
	(b) Counsel fee for second and each successive day of review hearing.	2-8	JP-SP	300-1720
	Note: In relation to item (a) and item (b) if the review hearing—			
	(1) lasts less than 2 hours; or			
	(2) does not commence and is settled or adjourned on the day of the hearing,			
	then the amount which is applicable under items (a) and (b) will be the amount which is reasonable in the circumstances.			

Column 1	Column 2	Column 3	Column 4	Column 5
ITEM	DESCRIPTION	TIME HOURS	FEE EARNER	\$
	(c) Paralegal, articulated clerk or solicitor attending review hearing—per hour.		A/P JP	65 150
6	Any other time necessarily spent not included in any item in this Scale—per hour.	SP	A/P JP 215	65 150
7	Taxation and costs: (a) Drawing bill of costs, copies and service. (b) Attending taxation—per hour.	0.5-1	A/P-JP JP	32.50-150 150

SCHEDULE 2

COMPENSATION MAGISTRATE'S COURT COSTS SCALE

Maximum amounts

1. Subject to clause 2 of the Schedule, the costs payable to a practitioner for each item described in column 2 of the Schedule must not exceed the maximum amount opposite and corresponding to that item set out in column 5 of the Schedule.

Provision for complex matters

2. Where any matter in relation to which remuneration is prescribed under items 1—6 of the Schedule is unusually complex, a practitioner is entitled to charge the remuneration which is reasonable in the circumstances.

Column 1	Column 2	Column 3	Column 4	Column 5
ITEM	DESCRIPTION	TIME HOURS	FEE EARNER	\$
1	Initial attendance to take instructions including, where applicable, reviewing transcripts and preparation and lodgment of any Notice of Appeal	2-8	JP-SP	150-1720
2	Attendance at conference at court prior to trial (including pre-trial conference, directions hearing or preliminary hearing) and including preparation for the conference.	1-3	JP-SP	150-645
3	Particulars and discovery: (a) Providing discovery (where ordered). (b) Providing particulars (where ordered). (c) Preparing agreed statement of facts. In respect of items (b) and (c), the fee includes filing, service and all copies.	0.5-2 0.5-2 1-2	JP-SP JP-SP JP-SP	75-430 75-430 150-430
4	Preparing for hearing which involves getting up case for hearing and consists of all aspects not otherwise specified associated with preparing for the hearing, including, where applicable, taking statements from and proofing witnesses, advice on evidence and law and delivering brief to counsel.	2-10	A/P-SP	130-2150

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Column 1	Column 2	Column 3	Column 4	Column 5
ITEM	DESCRIPTION	TIME HOURS	FEE EARNER	\$
5	Trial or hearing (a) Counsel fee on trial or hearing (includes preparation and first day of trial) or hearing. (b) Counsel fee for second and each successive day of trial or hearing. (c) Counsel fee on trial or hearing for second counsel (if certified for)—an allowance not exceeding two-thirds of the amounts that would have been allowed under items (a) and (b) if counsel had appeared alone. Note: In relation to items (a), (b) and (c) if the trial or hearing— (1) lasts less than 2 hours; or (2) does not commence and is settled or adjourned on the day of trial, then the amount which is applicable under items (a), (b) and (c) will be the amount which is reasonable in the circumstances. (d) Paralegal, articled clerk or solicitor attending trial per hour. (e) Attending on a reserved judgment.	 3-12 2-8 1-2	 JP-SP JP-SP A/P-JP JP	 450-2580 300-1720 65-150 150-300
6	Any other time necessarily spent not included in any item in this Scale—per hour.		A/P JP SP	65 150 215
7	Issuing and arranging service of witness summons including copies.	0.5-1	A/P	32.50-65
8	Taxation and costs: (a) Preparing bill of costs including filing, service and copies. (b) Attending on taxation—per hour.	0.5-1	A/P JP	32.50-65 150

Dated at Perth 10 June 1997.

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



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