

WESTERN
AUSTRALIAN
GOVERNMENT
Gazette

1905



PERTH, FRIDAY, 14 APRIL 2000 No. 69

SPECIAL

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 3.45 PM

LEGAL PRACTITIONERS ACT 1893

**LEGAL PRACTITIONERS
(LOCAL COURT)
(CONTENTIOUS BUSINESS)
DETERMINATION 2000**

**LEGAL PRACTITIONERS
(PETTY SESSIONS)
(CONTENTIOUS BUSINESS)
DETERMINATION 2000**

LEGAL PRACTITIONERS ACT 1893**LEGAL PRACTITIONERS (LOCAL COURT) (CONTENTIOUS BUSINESS)
REPORT 2000**

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

PART 1—PRELIMINARY**Citation**

1. (1) This report may be cited as the *Legal Practitioners (Local Court) (Contentious Business) Report 2000*.

(2) The determination set out in the Schedule to this report is referred to in this report as the *Local Court (Contentious Business) Determination 2000*.

PART 2—NOTICE AND INQUIRIES**Notice under section 58Y of the Act**

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

Inquiries and submissions under section 58Y of the Act

3. (1) Before making the *Local Court (Contentious Business) Determination 2000* the Legal Costs Committee—

- (a) reviewed all submissions received as a result of the notice given under section 58Y of the Act;
- (b) consulted with the Court;
- (c) consulted with the Law Society of Western Australia (Inc.); and
- (d) reviewed the *Legal Practitioners (Local Court) (Contentious Business) Determination 1997** including the operation of—
 - (i) the time based system of calculating costs; and
 - (ii) the use of routine and non routine scales.

*[Published in Gazette 25 March 1997 pp. 1607-16].

PART 3—REPORT OF COMMITTEE'S CONCLUSIONS**Hourly and daily rates unchanged—scale of costs amended**

4. (1) It is the recommendation of the Legal Costs Committee, after reviewing the information gained as a result of the inquiries and submissions described in clause 3, that the hourly rates charged by practitioners under the *Legal Practitioners (Local Court) (Contentious Business) Determination 1997** should continue to be adopted as the basis for costs for the supply of legal services covered under the *Local Court (Contentious Business) Determination 2000*.

(2) The hourly rates referred to in subclause (1) are set out in the Table to clause 11 of the *Local Court (Contentious Business) Determination 2000*.

(3) It is the recommendation of the Legal Costs Committee as a result of inquiries and submissions described in clause 3 that the scale of costs be varied in the manner set out in the Table to clause 12 of the *Local Court (Contentious Business) Determination 2000*.

(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 Practitioners Act 1893*.

*[Published in Gazette 25 March 1997 pp. 1607-16].

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

Schedule

LEGAL PRACTITIONERS ACT 1893

LOCAL COURT (CONTENTIOUS BUSINESS) DETERMINATION 2000

Made by the Legal Costs committee under section 58W of the Act

Citation

1. This determination may be cited as the *Local Court (Contentious Business) Determination 2000*.

Commencement

2. This determination comes into operation on 1 May 2000.

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 the Local Court.

(2) This determination does not apply to the remuneration of practitioners based on costs incurred in respect of instructions taken before the commencement of this determination.

Routine and non routine scales

4. (1) The Legal Costs Committee determines that the division of work into routine and non routine matters introduced under the *Legal Practitioners (Local Court) (Contentious Business) Determination 1997** should continue to be adopted.

(2) The routine scale applies unless—

(a) the parties agree; or

(b) a Magistrate or Taxing Officer determines at any time,

that the non routine scale applies.

No minimum charge

5. 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 6. 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

6. 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

7. 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

8. 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

9. 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 and allowed on taxation.

Independent counsel

10. 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.

Hourly rates

11. The hourly rates set out in the Table to this clause are the maximum hourly 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 12.

Table to Clause 11

Fee Earner	Rates
Practitioner (admitted for more than 5 years) (SP)	— hourly rate \$215
Junior Practitioner (admitted for less than 5 years) (JP)	— hourly rate \$150
Clerk/Paralegal (CPL)	— hourly rate \$65

Scale of costs

12. Unless a practitioner has made a written agreement as to costs with a client under the provision of section 59 of the *Legal Practitioners Act 1893*, 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 from one party by 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.

*[Published in Gazette 25 March 1997 pp. 1607-16].

Table to Clause 12**LOCAL COURT SCALE OF COSTS 2000**

ITEM		DIVISION 1 Not Exceeding \$3000				DIVISION 2 Exceeding \$3000			
		ROUTINE		NON ROUTINE		ROUTINE		NON ROUTINE	
		hours	\$	hours	\$	hours	\$	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

ITEM		DIVISION 1 Not Exceeding \$3000				DIVISION 2 Exceeding \$3000			
		ROUTINE		NON ROUTINE		ROUTINE		NON ROUTINE	
		hours	\$	hours	\$	hours	\$	hours	\$
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.	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. 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.								
	(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.	Trial:								
	(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

ITEM		DIVISION 1 Not Exceeding \$3000				DIVISION 2 Exceeding \$3000			
		ROUTINE		NON ROUTINE		ROUTINE		NON ROUTINE	
		hours	\$	hours	\$	hours	\$	hours	\$
	Note: In relation to paragraphs (a) and (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 (c) Attending reserved decision in court	1	150	1	150	1	150	1	150
15.	(a) Proceedings in chambers (including preparation for hearing) (i) without an appearance (ii) for each appearance by solicitor (iii) for each appearance by clerk Note: In relation to paragraph (a) if the proceedings in chambers do not commence and settle or adjourn on the day of the hearing then the Taxing Officer shall allow such amount as is reasonable in the circumstances (b) Preparation and filing of affidavits of service of general interlocutory process	0.5	75	0.5	75	0.5	75	0.5	75
		1	150	1.2	180	1	150	2.5	375-537
		1	65	1.2	78	1	65	2.5	162
		0.5	75	0.5	75	0.5	75	1	150
16.	(a) Judgment Summons (including all incidental attendances by solicitor or clerk) (b) Bench/Chamber Warrant/Warrant to arrest witness (c) Order of Commitment (d) Consent Affidavit (e) Application for fresh order by request in writing pursuant to 0.23 R.8 (f) Issue of Certified Copy of Judgment (g) Warrant of Execution, Possession, Delivery or Replevin (h) Warrant of Execution where land involved (i) Examination in Aid of Execution (including all incidental attendances by solicitor or clerk)		100		100		100		100
		0.5	32	0.5	32	0.5	32	0.5	32
		0.5	32	0.5	32	0.5	32	0.5	32
		0.5	32	0.5	32	0.5	32	0.5	32
		0.5	32	0.5	32	0.5	32	0.5	32
		0.5	32	0.5	32	0.5	32	0.5	32
		1	65	1	65	1	65	1	65
			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	75

ITEM		DIVISION 1 Not Exceeding \$3000				DIVISION 2 Exceeding \$3000			
		ROUTINE		NON ROUTINE		ROUTINE		NON ROUTINE	
		hours	\$	hours	\$	hours	\$	hours	\$
18.	Third party notice and particulars	0.5	75	0.5	75	0.5	75	0.5	75
19.	Applications in court or chambers not otherwise provided for	0.5	75	0.5	75	1	150	1	215
20.	(a) Delivery of interrogatories	0.5	75	1	150	0.5	75	1-3	150-645
	(b) Answers to interrogatories	0.5	75	0.5	75	0.5	75	1-3	150-645
21.	(a) Notice requiring discovery	0.3	19	0.5	32	0.3	19	0.5	75
	(b) Giving discovery	0.5	75	1	150	0.5	75	1-2	150-430
	(c) Inspection and giving inspection	0.5	75	1	150	0.5	75	1-2	150-430
22.	Interpleader proceedings (where uncontested)	0.5	75	0.7	105	0.8	120	1	150
23.	Application for garnishee order (where uncontested)	1.5	225	1.5	225	1.5	225	1.5	225
24.	Recovery of possession (undefended, including appearance)	2	300	2-2.5	300-375	2	300	2-2.5	300-375
25.	Drawing Bill of Costs, copies and service	0.5	32	1	150	0.6	90	1	150
26.	Attending on taxation of costs:								
	(a) with an appearance by solicitor	0.5	75	0.7	105	0.5	75	1	150
	(b) with an appearance by clerk	0.5	32	0.7	45	0.5	32	1	65
27.	Attending on taking 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
32.	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.								
33.	Allowances for Witnesses In fixing an allowance for witnesses, including the Plaintiff and Defendant, the Taxing Officer may have regard to the amount of salary, wages or income (if any) actually lost by the witness.								

Made by the Legal Costs Committee on 11 April 2000.

LEGAL PRACTITIONERS ACT 1893**LEGAL PRACTITIONERS (PETTY SESSIONS) (CONTENTIOUS BUSINESS)
REPORT 2000**

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

PART 1—PRELIMINARY**Citation**

1. (1) This report may be cited as the *Legal Practitioners (Petty Sessions) (Contentious Business) Report 2000*.

(2) The determination set out in the Schedule to this report is referred to in this report as the *Petty Sessions (Contentious Business) Determination 2000*.

PART 2—NOTICE AND INQUIRIES**Notice under section 58Y of the Act**

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

Inquiries and submissions under section 58Y of the Act

3. Before making the *Petty Sessions (Contentious Business) Determination 2000* the Legal Costs Committee—

- (a) reviewed all submissions received as a result of the notice given under section 58Y of the Act;
- (b) consulted with the Court;
- (c) consulted with the Law Society of Western Australia (Inc.);
- (d) conducted a survey of the regulation of the remuneration of practitioners in respect of contentious business carried out by practitioners in courts of petty sessions in other jurisdictions within Australia.

PART 3—REPORT OF COMMITTEE'S CONCLUSIONS**Hourly rates introduced**

1. (1) The Legal Costs Committee noted that the jurisdiction of the Court of Petty Sessions covers a wide range of civil and criminal matters from the consideration of dividing fence disputes between land owners to offences against the provisions of Acts of Parliament, by-laws and regulations made pursuant to them.

(2) As a consequence of this position stated in sub-clause (1), the Legal Costs Committee considers it is appropriate for a general scale of fees based on hourly rates to be applied to the time reasonably taken to perform the services provided by a practitioner in, or for the purposes of contentious business in the Court of Petty Sessions.

(3) It is the recommendation of the Legal Costs Committee, after reviewing the information gained as a result of the inquiries and submissions described in clause 3, that the hourly rates charged by practitioners under the *Legal Practitioners (Local Court) (Contentious Business) Determination 2000* should be adopted as the basis for costs for the supply of legal services covered under the *Petty Sessions (Contentious Business) Determination 2000*.

(4) The hourly rates referred to in subclause (3) are set out in the Table to clause 4 of the *Petty Sessions (Contentious Business) Determination 2000*.

(5) The recommendations of the Legal Costs Committee are not intended to override the entitlements of a practitioner to make a written agreement as to costs with a client under the *Legal Practitioners Act 1893*.

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

Schedule

LEGAL PRACTITIONERS ACT 1893

PETTY SESSIONS (CONTENTIOUS BUSINESS) DETERMINATION 2000

Made by the Legal Costs committee under section 58W of the Act

Citation

1. This determination may be cited as the *Petty Sessions (Contentious Business) Determination 2000*.

Commencement

2. This determination comes into operation on 1 May 2000.

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 in a Court of Petty Sessions.

(2) This determination does not apply to the remuneration of practitioners based on costs incurred in respect of instructions taken before the commencement of this determination.

Hourly rates

4. The hourly rates set out in the Table to this clause are the maximum hourly rates which the Legal Costs Committee determines shall be used to calculate the remuneration of practitioners in respect of time reasonably taken to perform services in or for the purposes of contentious business carried out by practitioners for the purposes of proceedings before a Court of Petty Sessions.

Table

Fee Earner		Rates
Practitioner (admitted for more than 5 years) (SP)	— hourly rate	\$215
Junior Practitioner (admitted for less than 5 years) (JP)	— hourly rate	\$150
Clerk/Paralegal (CPL)	— hourly rate	\$65

Made by the Legal Costs Committee on 11 April 2000.

