



WESTERN  
AUSTRALIAN  
GOVERNMENT

**Gazette**



**PERTH, FRIDAY, 28 OCTOBER 1994 No. 154**

**SPECIAL**

PUBLISHED BY AUTHORITY G. L. DUFFIELD, GOVERNMENT PRINTER AT 3.45 PM

LEGAL PRACTITIONERS ACT 1893

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**LEGAL COSTS COMMITTEE  
DETERMINATION**

**LOCAL COURT SCALE 1994**



## LEGAL COSTS COMMITTEE

## DETERMINATION

## LOCAL COURT SCALE 1994

The Committee last made a Determination with respect to the Local Courts Scale on 28 March 1991, which Determination was published in the Government Gazette of 27 March 1991 at page 1283.

That Determination and earlier Determinations simply made adjustments by adjusting the Scale by a specified percentage. It is no longer satisfactory to adjust the Scale by a percentage, because the validity of the original basis for fixing each of the amounts specified in the Scale is not then examined.

In this Determination, the Committee has completely reviewed the whole Scale and all the descriptive items in it. It is now a Scale which recognises that solicitors, in providing their services, basically provide their services in accordance with time spent, and that being so the Costs Scales should be time-based. Some may criticise time costing as a basis for solicitors' fees, but the view of the Committee is that the only reasonable criticism which can be raised is if there is an abuse of this system. Time costing is abused if solicitors charge for more time than is reasonably necessary to perform the work at hand or at an excessive hourly rate. The Scale which is published in this Determination will prevent abuse by specifying what reasonable solicitors regard as the time reasonably necessary to perform the work involved and by specifying a reasonable hourly rate. The steps taken by the Committee before making this Determination were as follows:

1. To enquire of the Local Court itself and from a sample of solicitors practising in the area, whether the items in the Scale correctly described the services performed by solicitors conducting Local Court litigation. This resulted in very little change to the descriptive items, although some changes do occur.
2. To enquire of a sample of solicitors practising in the area as to the time they estimate would be taken to perform the services so described in the Scale. The survey provided what the Committee considered to be a substantial degree of agreement about the amount of time which was necessary to perform each of the services.
3. The next task was to ascertain the hourly rate in dollar terms which should then be applied to the estimates of time. The Committee decided that if there is competition within the section of the profession which provides services in the Local Court, then market forces would determine that the hourly charge rates charged were reasonable. The Committee was satisfied that there were sufficient solicitors competing to provide the service of conducting litigation in the Local Court. The Committee considered, and decided, that there were many factors indicating the existence of workable competition. For example, the Committee was satisfied that there was no barrier to solicitors wishing to begin practice in the area, that large numbers of solicitors do provide their services in this area, that solicitors in competition with each other are independent, and that there was no evidence of any predatory or preclusive practices.

4. Once satisfied as to the existence of competition, then came the task of surveying a sample of solicitors to secure information about hourly charge rates charged within the profession. The survey covered a range of solicitors.

Based on the survey, the Committee is satisfied that reasonable maximum rates for solicitors and clerks or para legal were as follows:

Senior solicitor (admitted for more than 5 years)	\$200 per hour
Junior solicitor (admitted for less than 5 years)	\$130 per hour
Clerk or para legal (supervised by a solicitor)	\$60 per hour

These hourly rates are employed in making up 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 "Complex" Scale, the time shown is 1-3 hours. The Scale amount in dollars is \$130-\$600. 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 complexity of the case.

5. The Committee also decided after consultation with the Local Court that there should now be a recognition that much of the work performed by solicitors in the Local Court involves routine work. Examples include debt collection work and motor vehicle assessment of damages claims. To that end, it was decided that there should be a scale which, in relation to the routine work, provides for a fixed amount by way of costs in relation to each item of work, to try and cut down the time spent in making submissions about costs and taxing costs. The Committee intends, and determines, that in all cases, the routine scale is to apply unless the Court makes an order that the complex scale should apply. In a case where the Court makes an order that the complex Scale should apply then in no respect is the Scale to be seen as providing a minimum charge for any work. Thus, for example, Item 13(a) in the complex Scale Division 1 provides for a range of \$390 to \$650 for the work involved. The figure of \$650 is a maximum, but on taxation less than \$390 might be allowed. Where there is a range of figures the purpose is merely to indicate to the taxing officer what might reasonably be expected in most cases.
6. The other decision taken by the Committee was to reduce the number of scales based on the amount in issue. At present, there are four scales which relate to the amount in issue. The Committee has reduced the number of those scales to two so that there is a division providing a scale for 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 "complex" scale.

7. 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. By way of example, in item 13, which relates to preparation for trial or getting up case for trial, the routine scale in Division 2 assumes that 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 is likely to order that the costs be taxed on the complex scale. The hours referred to in the complex scale will guide the taxing officer about the amount which should be allowed in a particular case.
8. 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 can be recovered for that work.
9. 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.

In accordance with Section 58W of the **Legal Practitioners Act, 1893**, the Committee makes this Determination, which applies from 1 December 1994. The Schedule which contains the Scale forms part of this Determination.

Dated at Perth this 18th day of October 1994

John Syminton, Chairman.  
Chris Pullin Q.C., Member  
Angela Gaffney, Member.  
Jill Vander Wal, Member.  
Jason Berry, Member.  
Patrick Coward, Member.

## THE SCHEDULE

## THE LOCAL COURTS ACT 1904 (AS AMENDED)

## LOCAL COURT SCALE 1994

1. This costs scale constitutes a determination of the Legal Costs Committee under Section 58W of the Legal Practitioners Act 1893 (WA).
2. This scale applies on and after 1 December 1994.
3. This scale does not relate to costs incurred prior to 1 December 1994, which are governed by previous determinations and scales.
4. Subject to the provisions of the Local Courts Act 1904 (as amended) and to the provisions of the Legal Practitioners Act 1893 (WA) 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 (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 this scale.

ITEM		DIVISION 1 Not Exceeding \$3000				DIVISION 2 Exceeding \$3000			
		ROUTINE		COMPLEX		ROUTINE		COMPLEX	
		hours	\$	hours	\$	hours	\$	hours	\$
1.	(a) Letter of demand issued prior to commencing proceedings	0.3	39	0.3	39	0.3	39	0.3	39
	(b) Summons (including endorsement)	0.4	52	0.7	91	0.5	65	1	200
2.	Appointment of legal representative for person under disability (next friend or guardian ad litem).	0.5	65	0.5	65	0.5	65	0.5	65
3.	Entry of Judgment by default	0.3	18	0.3	18	0.3	18	0.3	18
4.	Particulars of Claim (where required or by order)	0.5	65	1	130	0.5	65	1-2	130-400
5.	Particulars of defence	0.5	65	1	130	0.5	65	1-2	130-400
6.	Counterclaim	0.5	65	1	130	0.5	65	1-2	130-400
7.	Reply (where necessary)	0.5	65	0.5	65	0.5	65	0.5	100
8.	Notices of any kind required by the Act or the Rules and not otherwise specified in the scale	0.3	39	0.3	39	0.3	39	0.3	39
9.	Payment into or out of court (including requisite notices)	0.5	65	0.5	65	0.5	65	0.5	65
10.	Application for trial or assessment of damages	0.2	26	0.2	26	0.2	26	0.2	26
11.	Examination of witness before trial pursuant to order	per hour	130	per hour	130	per hour	130	per hour	200
12.	(a) Pretrial conference (including necessary preparation, notices, correspondence, and briefing counsel):								
	with appearance by solicitor	1	130	1-2	130-260	1	130	1-3	130-600
	with appearance by clerk	1	60	1-2	60-120	1	60	1-3	60-180
	(b) Attending callover	0.5	65	0.5	65	0.5	65	0.5	65

ITEM		DIVISION 1 Not Exceeding \$3000				DIVISION 2 Exceeding \$3000			
		ROUTINE		COMPLEX		ROUTINE		COMPLEX	
		hours	\$	hours	\$	hours	\$	hours	\$
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	325	3-5	390-650	3	390	4-20	520-4000
	(b) For an assessment of damages only	1.7	221	2-3	260-390	2	260	2-10	260-2000
	(c) Getting up case for rehearing or new trial	2.5	325	2.5-5	325-650	3	390	3-10	390-2000
14.	Trial: (a) Fee on brief i.e., First day of trial (including mastering brief)	5	650	6-7	780-910	6	780	7-10	910-2000
	(b) Each additional day	5	650	5	650	5	650	5	650-1000
	Note: In relation to items 14(a) & 14(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	130	1	130	1	130	1	130
15.	(a) Proceedings in chambers (including preparation for hearing)								
	(1) without an appearance	0.4	52	0.4	52	0.4	52	0.4	52
	(2) with an appearance (in person or by telephone or video link): by solicitor	0.5	65	0.7	91	0.5	65	0.7-1.5	91-300
	by clerk	0.5	30	0.7	42	0.5	30	0.7-1.5	42-90
	(b) Preparation and filing of affidavits of service of general interlocutory process	0.5	65	0.5	65	0.5	65	1	130
16.	(a) Judgment Summons: with an appearance by solicitor	1	130	1	130	1	130	1	130
	with an appearance by clerk	1	60	1	60	1	60	1	60
	(b) Bench/Chamber Warrant/Warrant to arrest witness	0.5	30	0.5	30	0.5	30	0.5	30
	(c) Order of Commitment	0.5	30	0.5	30	0.5	30	0.5	30
	(d) Consent Affidavit	0.5	30	0.5	30	0.5	30	0.5	30
	(e) Application for fresh order by request in writing pursuant to 0.23 R.8	0.5	30	0.5	30	0.5	30	0.5	30
	(f) Issue of Certified Copy of Judgment	0.5	30	0.5	30	0.5	30	0.5	30
	(g) Warrant of Execution, Possession, Delivery or Replevin	0.5	30	0.5	30	0.5	30	0.5	30
	(h) Warrant of Execution where land involved	1	60	1	60	1	60	1	60
	(i) Examination in Aid of Execution: with an appearance by solicitor	1	130	1	130	1	130	1	130
	with an appearance by clerk	1	60	1	60	1	60	1	60

ITEM		DIVISION 1 Not Exceeding \$3000				DIVISION 2 Exceeding \$3000			
		ROUTINE		COMPLEX		ROUTINE		COMPLEX	
		hours	\$	hours	\$	hours	\$	hours	\$
17.	Drawing up and serving interlocutory orders (where ordered or required)	0.5	30	0.5	30	0.5	30	0.5	65
18.	Third party notice and particulars	0.5	65	0.5	65	0.5	65	0.5	65
19.	Applications in court not otherwise provided for	0.5	65	0.5	65	1	130	1	200
20.	(a) Delivery of interrogatories	0.5	65	1	130	0.5	65	1-3	130-600
	(b) Answers to interrogatories	0.5	65	0.5	65	0.5	65	1-3	130-600
21.	(a) Notice requiring discovery	0.3	18	0.5	30	0.3	18	0.5	65
	(b) Giving discovery	0.5	65	1	130	0.5	65	1-2	130-400
	(c) Inspection and giving inspection	0.5	65	1	130	0.5	65	1-2	130-400
22.	Interpleader proceedings (where uncontested)	0.5	65	0.7	91	0.8	104	1	130
23.	Application for garnishee order (where uncontested)	1.5	195	1.5	195	1.5	195	1.5	195
24.	Recovery of possession (undefended, including appearance)	2	260	2-2.5	260-325	2	260	2-2.5	260-325
25.	Drawing Bill of Costs, copies and service	0.5	30	1	130	0.6	78	1	130
26.	Attending on taxation of costs: with an appearance by solicitor	0.5	65	0.7	91	0.5	65	1	130
	with an appearance by clerk	0.5	30	0.7	42	0.5	30	1	60
27.	Attending on taxing accounts, inquiries	per hour	130	per hour	130	per hour	130	per hour	130
28.	Preparation of Judgments or Orders (where necessary)	0.5	30	1	130	0.5	30	1	130
29.	Registration of judgments including those under the Service and Execution of Process Act 1992	0.7	91	0.7	91	0.7	91	0.7	91
30.	Affidavits justifying choice of Court	0.5	30	0.5	30	0.5	30	0.5	65
31.	Application for review of taxation of costs by Magistrate	0.5	65	0.7	91	0.5	65	0.7	91
32.	Service of any process or notice required under the Act or Rules within WA: Not exceeding Bailiff's Scale.  For service outside WA: A fair and reasonable amount as allowed by the Taxing Officer plus disbursements necessarily incurred.								
33.	Allowances for witnesses:  (a) Persons carrying on a profession or business as principals, a daily allowance not exceeding \$1000.  (b) Other persons, a daily allowance not exceeding \$200.  NOTE: (i) In fixing the allowance to be made under paragraphs (a) and (b) of this item, the Taxing Officer may have regard to the amount of salary or wages (if any) actually lost by the witness.  (ii) In addition to the above allowances, witnesses residing at a distance from the place of trial or hearing may be allowed reasonable travelling expenses actually paid, and a reasonable amount for maintenance or sustenance.  (iii) The Taxing Officer may also allow an amount that the Taxing Officer thinks has been reasonably and properly incurred and paid to witnesses for qualifying to give skilled evidence.  (iv) Except by special order of the trial magistrate no allowance shall be made to any expert witness for attendance at Court assisting or advising counsel or solicitor for a party during the trial.  (v) In the case of persons giving evidence as experts the allowance in the above scale may be increased in the discretion of the Taxing Officer								



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