

G WESTERN
AUSTRALIAN
GOVERNMENT
Gazette

5411



PERTH, FRIDAY, 15 SEPTEMBER 2000 No. 195 SPECIAL

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

LEGAL PRACTITIONERS ACT 1893

**LEGAL PRACTITIONERS (EFFECT
ON COSTS OF A NEW TAX SYSTEM
(GOODS AND SERVICES TAX))
REPORT 2000**

**LEGAL PRACTITIONERS (EFFECT
ON COSTS OF A NEW TAX SYSTEM
(GOODS AND SERVICES TAX))
DETERMINATION 2000**

LEGAL PRACTITIONERS ACT 1893**LEGAL PRACTITIONERS (EFFECT ON COSTS OF A NEW TAX SYSTEM (GOODS AND SERVICES TAX)) 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 (Effect On Costs of A New Tax System (Goods and Services Tax)) Report 2000*.
- (2) The determination set out in the Schedule to this report is referred to in this report as the *Legal Practitioners (Effect On Costs of A New Tax System (Goods and Services Tax)) Determination 2000*.

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

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

Review under section 58X of the Act

3. The Legal Costs Committee has reviewed the determinations listed in the table to this Clause 3.

Table to Clause 3

Determination	Date of publication in the <i>Gazette</i>
Public Notaries Determination 1999	21 October 1999 pp 5147-49
Official Prosecutions (Defendants' Costs) Determination 1999	17 September 1999 p 4579
Supreme Court (Contentious Business) Determination 1999	15 June 1999 pp 2563-69
District Court Appeals (Contentious Business) Determination 1999	11 May 1999 pp 1901-02
Solicitors Costs Determination 1998	12 August 1998 pp 4385-89
Legal Practitioners (Workers' Compensation) (Conciliation Proceedings, Review Proceedings and Compensation Magistrate's Court) Determination 2000	23 June 2000 pp 3240-47
Legal Practitioners (Local Court) (Contentious Business) Determination 2000	14 April 2000 pp 1908-13
Legal Practitioners (Petty Sessions) (Contentious Business) Determination 2000	14 April 2000 p 1915
Solicitors Non-Contentious Probate Costs Determination 1998	12 August 1998 p 4384

Inquiries and submissions under Section 58Y of the Act

4. Before making the *Legal Practitioners (Effect On Costs of A New Tax System (Goods and Services Tax)) Determination 2000* the Legal Costs Committee—
 - (a) reviewed all submissions received as a result of the notices given under section 58Y of the Act;
 - (b) consulted with interested parties including Officers from the Supreme Court and the Law Society of Western Australia (Inc.)
 - (c) sought the advice of the Crown Solicitor's Office concerning the extent to which the Legal Costs Committee could review its determinations having regard to the impact of the Goods and Services Tax; and
 - (d) consulted with officers of the Ministry of Justice and other organisations concerning the availability of appropriate financial models on which to base any changes to the determinations.

PART 3—REPORT OF THE COMMITTEE'S CONCLUSIONS**Basis on which costs should be calculated and fixed**

5. (1) The Legal Costs Committee recognises from its inquiries, that the Goods and Services Tax will have a negative impact on the costs recoverable by practitioners in a number of cases.
- (2) The impact of the Goods and Services Tax will vary from practitioner to practitioner and no definitive and broad estimate of such impact in terms of percentage increase has been presented to the Legal Costs Committee by the closure of submissions sought by it as referred to in clause 2.
- (3) The Legal Costs Committee recognises that—
 - (a) it will be the responsibility of any practitioner on a taxation of his or her costs to provide evidence at taxation that any mark up on costs claimed on account of the Goods and Services Tax complies with the Code described below;

- (b) as a result of the matters outlined in paragraph (a) of this clause, inevitably taxation may be prolonged, at least in the short term;
- (c) as further and better evidence emerges on the impact of the Goods and Services Tax on legal costs, it may be necessary to conduct a further review of its determinations.

(4) As a consequence of the matters outlined in clause 4 and this clause 5, 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 4, that the basis on which costs should be calculated and fixed be such as to permit a practitioner to add on to the amount which is limited by a determination made by the Legal Costs Committee no more than is necessary to offset the consequences of the *New Tax System* changes (and no other changes). In determining an amount that may be added on regard shall be had to the guidelines referred to in the *New Tax System Price Exploitation Code*.

(5) "*New Tax System* changes" has the meaning given by the *New Tax System Price Exploitation Code* as applied by the *New Tax System Price Exploitation Code (Western Australia) Act 1999*.

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**LEGAL PRACTITIONERS (EFFECT ON COSTS OF A NEW TAX SYSTEM (GOODS AND SERVICES TAX)) DETERMINATION 2000**

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 (Effect On Costs of A New Tax System (Goods and Services Tax)) Determination 2000*.

Commencement

2. This determination shall take effect on and from the date of publication of the *Legal Practitioners (Effect On Costs of A New Tax System (Goods and Services Tax)) Report 2000* in the *Gazette*.

Application

3. (1) Subject to subclause (2) this determination applies to remuneration of practitioners in respect of any of the matters referred to in the determinations set out in the Table to this Clause 3.

Table to Clause 3

Determination	Date of publication in the <i>Gazette</i>
Public Notaries Determination 1999	21 October 1999 pp 5147-49
Official Prosecutions (Defendants' Costs) Determination 1999	17 September 1999 p 4579
Supreme Court (Contentious Business) Determination 1999	15 June 1999 pp 2563-69
District Court Appeals (Contentious Business) Determination 1999	11 May 1999 pp 1901-02
Solicitors Costs Determination 1998	12 August 1998 pp 4385-89
Legal Practitioners (Workers' Compensation) (Conciliation Proceedings, Review Proceedings and Compensation Magistrate's Court) Determination 2000	23 June 2000 pp 3240-47
Legal Practitioners (Local Court) (Contentious Business) Determination 2000	14 April 2000 pp 1908-13
Legal Practitioners (Petty Sessions) (Contentious Business) Determination 2000	14 April 2000 p 1915
Solicitors Non-Contentious Probate Costs Determination 1998	12 August 1998 p 4384

(2) This determination does not apply to the remuneration of practitioners based on a written agreement as to costs under section 59 of the *Legal Practitioners Act 1893*.

PART 2—DETERMINATION BY COMMITTEE**Adjustment of maximum remuneration for effect of GST**

4. (1) The Committee reviewed the information referred to in clause 4 of the *Legal Practitioners (Effect On Costs of A New Tax System (Goods and Services Tax)) Report 2000* and determined that where any of the determinations referred to in the Table to Clause 3 provides for a maximum remuneration, that maximum shall be read and construed to apply unless an excess is justifiable under sub-clause (2).

(2) If the remuneration which a practitioner may charge is limited by any of the determinations referred to in the Table to Clause 3, then the practitioner may add on to the amount which is so limited no more than is necessary to offset the consequences of the *New Tax System* changes (and no other changes). In determining an amount that may be added on regard shall be had to the guidelines referred to in the *New Tax System Price Exploitation Code*.

(3) "*New Tax System* changes" has the meaning given by the *New Tax System Price Exploitation Code* as applied by the *New Tax System Price Exploitation Code (Western Australia) Act 1999*.

Dated at Perth 12 September 2000.

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



2 0 0 0 0 0 1 9 5 6 6