

**Legal Practitioners (Local Court)
(Contentious Business) Determination
2002**

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THE TEXT OF THE LEGISLATION FOLLOWS

Legal Practitioners (Local Court) (Contentious Business) Determination 2002

CONTENTS

Part 1 — Preliminary	
1.	Citation 2
Part 2—Notice and Inquiries	
2.	Notice under section 58Y of the Act 3
3.	Inquiries and submissions under section 58Y of the Act 3
4.	3
Part 3 — Report of Committee’s Conclusions	
5.	Hourly rates changed—scale of costs amended 4
Schedule	
6	
1.	Citation 6
2.	Commencement 6
3.	Application 6
4.	<i>Legal Practitioners (Effect on Costs of a New Tax System) (Goods and Services Tax) Determination 2000 (GST Determination)</i> 6
5.	Routine and non routine scales 6
6.	No minimum charge 7
7.	Fixed items 7
8.	Scale divisions 7
9.	Time estimates 7

**Legal Practitioners (Local Court) (Contentious Business) Determination
2002**

Contents

10.	Settled procedures	8
11.	Independent counsel	8
12.	First trial date	8
13.	Hourly rates	8
14.	Scale of costs	9
	Notes	
	Compilation table	13

Western Australia

Legal Practitioners Act 1893

**Legal Practitioners (Local Court) (Contentious
Business) Determination 2002**

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

1. Citation

- (1) This report may be cited as the *Legal Practitioners (Local Court) (Contentious Business) Report 2002*.
- (2) The determination set out in the Schedule to this report is referred to in this report as the *Legal Practitioners (Local Court) Contentious Business) Determination 2002*.

Part 2—Notice and Inquiries

2. Notice under section 58Y of the Act

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

3. Inquiries and submissions under section 58Y of the Act

Before making the *Legal Practitioners (Local Court) (Contentious Business) Determination 2002* 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) reviewed the *Local Court (Contentious Business) Determination 2000* * including the operation of—
 - (i) the time based system of calculating costs; and
 - (ii) the use of routine and non routine scales.
- (e) reviewed the impact of movements in the Consumer Price Index for the financial years ending 30 June 1997 to 30 June 2002 (inclusive); and
- (f) had regard to the impact of the Goods and Services Tax on the level of fees charged by Practitioners.

[Published in Gazette 14 Apr 2000 p. 1905-13.]

4.

The Committee noted that there has been no increase in the maximum hourly and daily rates chargeable by practitioners for over 5 years.

Part 3 — Report of Committee's Conclusions

5. Hourly rates changed—scale of costs amended

- (1) The information gained as a result of the inquiries and submissions described in clause 3 satisfied the Legal Costs Committee that the existence of competition for the supply of legal services made it appropriate to adopt the hourly rates charged by practitioners as the basis for the rates used in *the Legal Practitioners (Local Court) (Contentious Business) Determination 2002* which have been generally rounded up or down to represent an increase of 16% inclusive of the Goods and Services Tax.
- (2) It is the recommendation of the Legal Costs Committee as a result of the inquiries and submissions described in clause 3 that the hourly rates referred to in subclause 5 (1) are varied from the hourly rates used in the *Legal Practitioners (Local Court) (Contentious Business) Determination 2000*. Those rates are set out in the Table to clause 13 of the *Legal Practitioners (Local Court) (Contentious Business) Determination 2002*.
- (3) It is the recommendation of the Legal Costs Committee as a result of the inquiries and submissions described in clause 3 that the scale of costs be varied in the manner set out in the Table to clause 14 of the *Legal Practitioners (Local Court) (Contentious Business) Determination 2002*.
- (4) It is the further recommendation of the Committee that given the amendments to the hourly rates and scale of costs in the manner set out in the Table to clauses 13 and 14 of the *Legal Practitioners (Local Court) (Contentious Business) Determination 2002* are inclusive of any provision for the Goods and Services Tax, that from and including the date of that determination coming into operation, the *Legal Practitioners (Effect on Costs of a New Tax System) (Goods and Services Tax) Determination 2000* as published in the Gazette on 15 September 2000 p5411 will no longer apply to the Legal

Practitioners (Local Court) (Contentious Business) hourly rates and scale of costs from that date.

- (5) 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*.

Schedule

LEGAL PRACTITIONERS ACT 1893

Legal Practitioners (Local Court) (Contentious Business) Determination 2002

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

1. Citation

This determination may be cited as the *Legal Practitioners (Local Court) (Contentious Business) Determination 2002*.

2. Commencement

This determination comes into operation on 1 November 2002.

3. Application

- (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.

4. *Legal Practitioners (Effect on Costs of a New Tax System) (Goods and Services Tax) Determination 2000 (GST Determination)*

From and including the date of commencement of this determination, the GST Determination insofar as it affects the hourly rates described in clause 13 and the calculation of fees under each of the items in the table to clause 14, the GST Determination will cease to be of any further force or effect.

5. Routine and non routine scales

- (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 determines at any time,

that the non routine scale applies.

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

6. No minimum charge

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 7. For example, item 13(a) in the non routine Scale Division 1 provides for a range of \$525 to \$875 for the work involved. The figure of \$875 is a maximum, but on taxation less than \$525 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.

7. Fixed items

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.

8. Scale divisions

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.

9. Time estimates

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.

10. Settled procedures

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.

11. Independent counsel

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(b), as well as a full getting up case allowance under item 13.

12. First trial date

A new item 14(a) has been included to address costs associated with the Local Court requirement upon entry for trial to list a date prior to the date listed for trial.

13. Hourly rates

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 14.

Table to Clause 13

Fee Earner	Maximum allowable hourly rates
Practitioner (admitted for more than 5 years) (SP)	—hourly rate \$250
Junior Practitioner (admitted for less than 5 years)	

Clerk/Paralegal (JP) —hourly rate \$175
 (CPL) —hourly rate \$75

14. Scale of costs

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.

Table to Clause 14

LOCAL COURT SCALE OF COSTS 2002

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	52	0.3	52	0.3	52	0.3	52
	(b) Summons (including endorsement)		81		81		139		139
2.	Appointment of legal representative for person under disability (next friend or guardian ad litem)	0.5	87	0.5	87	0.5	87	0.5	87
3.	Entry of Judgment by default		23		23		23		23
4.	Particulars of Claim (where required or by order)	0.5	87	1	175	0.5	87	1-2	175-500
5.	Particulars of defence	0.5	87	1	175	0.5	87	1-2	175-500
6.	Counterclaim	0.5	87	1	175	0.5	87	1-2	175-500
7.	Reply (where necessary)	0.5	87	0.5	87	0.5	87	0.5	125
8.	Notices of any kind required by the Act or the Rules and not otherwise specified in the Scale	0.3	52	0.3	52	0.3	52	0.3	52
9.	Payment into or out of court (including requisite notices)	0.5	87	0.5	87	0.5	87	0.5	87
10.	Application for trial or assessment of damages	0.2	35	0.2	35	0.2	35	0.2	35
11.	Examination of witness before trial pursuant to order	per hour	175	per hour	175	per hour	175	per hour	250

Legal Practitioners (Local Court) (Contentious Business) Determination 2002

ITEM		DIVISION 1 Not Exceeding \$3000				DIVISION 2 Exceeding \$3000				
		ROUTINE		NON ROUTINE		ROUTINE		NON ROUTINE		
		hours	\$	hours	\$	hours	\$	hours	\$	
12.	(a) Pretrial conference (including necessary preparation, notices, correspondence, and briefing counsel)— with appearance by solicitor	1	175	1-2	175-350	1	175	1-3	175-750	
		1	75	1-2	75-150	1	75	1-3	75-225	
	(b) Attending callover	0.5	87	0.5	87	0.5	87	0.5	87	
	(c) Attending informal conferences where reasonably held after commencement of proceedings	per hour	175	per hour	175	per hour	175	per hour	175	
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	437	3-5	525-875	3	525	4-20	700-5000
		(b) For an assessment of damages only	1.7	298	2-3	350-525	2	350	2-10	350-2500
		(c) Getting up case for rehearing or new trial	2.5	437	2.5-5	437-875	3	525	3-10	525-2500
14.	Trial—									
		(a) First Trial Date	1-2	175-350	1-2	175-500	1-2	175-350	1-2	175-500
		(b) Fee on brief i.e., First day of trial (including mastering brief)	5	875	6-7	1050-1225	6	1050	7-15	1225-3750
	(c) Each additional day	5	875	5	875	5	875	5	875-1250	
	Note: In relation to paragraphs (b) and (c) 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									
	(d) Attending reserved decision in court	1	175	1	175	1	175	1	175	
15.	(a) Proceedings in chambers (including preparation for hearing)									
		(i) without an appearance	0.5	87	0.5	87	0.5	87	0.5	87
		(ii) for each appearance by solicitor	1	175	1.2	210	1	175	5	875-1250
	(iii) for each appearance by clerk	1	75	1.2	90	1	75	5	375	
	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									

Legal Practitioners (Local Court) (Contentious Business) Determination 2002

ITEM		DIVISION 1 Not Exceeding \$3000				DIVISION 2 Exceeding \$3000			
		ROUTINE		NON ROUTINE		ROUTINE		NON ROUTINE	
		hours	\$	hours	\$	hours	\$	hours	\$
	(b) Preparation and filing of affidavits of service of general interlocutory process	0.5	87	0.5	87	0.5	87	1	175
16.	(a) Judgment Summons (including all incidental attendances by solicitor or clerk)		116		116		116		116
	(b) Bench/Chamber Warrant/Warrant to arrest witness	0.5	37	0.5	37	0.5	37	0.5	37
	(c) Order of Commitment	0.5	37	0.5	37	0.5	37	0.5	37
	(d) Consent Affidavit	0.5	37	0.5	37	0.5	37	0.5	37
	(e) Application for fresh order by request in writing pursuant to 0.23 R.8	0.5	37	0.5	37	0.5	37	0.5	37
	(f) Issue of Certified Copy of Judgment	0.5	37	0.5	37	0.5	37	0.5	37
	(g) Warrant of Execution, Possession, Delivery or Replevin	0.5	37	0.5	37	0.5	37	0.5	37
	(h) Warrant of Execution where land involved	1	75	1	75	1	75	1	75
	(i) Examination in Aid of Execution (including all incidental attendances by solicitor or clerk)		116		116		116		116
17.	Drawing up and serving interlocutory orders (where ordered or required)	0.5	37	0.5	37	0.5	37	0.5	87
18.	Third party notice and particulars	0.5	87	0.5	87	0.5	87	0.5	87
19.	Applications in court or chambers not otherwise provided for	0.5	87	0.5	87	1	175	1	250
20.	(a) Delivery of interrogatories	0.5	87	1	175	0.5	87	1-3	175-750
	(b) Answers to interrogatories	0.5	87	0.5	87	0.5	87	1-3	175-750
21.	(a) Notice requiring discovery	0.3	22	0.5	37	0.3	22	0.5	87
	(b) Giving discovery	0.5	87	1	175	0.5	87	1-2	175-500
	(c) Inspection and giving inspection	0.5	87	1	175	0.5	87	1-2	175-500
22.	Interpleader proceedings (where uncontested)	0.5	87	0.7	122	0.8	140	1	175
23.	Application for garnishee order (where uncontested)	1.5	262	1.5	262	1.5	262	1.5	262
24.	Recovery of possession (undefended, including appearance)	2	350	2-2.5	350-437	2	350	2-2.5	350-437
25.	Drawing Bill of Costs, copies and service	0.5	37	1	175	0.6	105	1	175
26.	Attending on taxation of costs—								
	(a) with an appearance by solicitor	0.5	87	0.7	122	0.5	87	1-2	175-350
	(b) with an appearance by clerk	0.5	37	0.7	52	0.5	37	1-2	75-150
27.	Attending on taking accounts, inquiries	per hour	175	per hour	175	per hour	175	per hour	175
28.	Preparation of Judgments or Orders (where necessary)	0.5	37	1	175	0.5	37	1	175
29.	Registration of Judgments including those under the Service and Execution of Process Act 1992	0.7	122	0.7	122	0.7	122	0.7	122
30.	Affidavits justifying choice of Court	0.5	37	0.5	37	0.5	37	0.5	87

Legal Practitioners (Local Court) (Contentious Business) Determination 2002

ITEM		DIVISION 1 Not Exceeding \$3000				DIVISION 2 Exceeding \$3000			
		ROUTINE		NON ROUTINE		ROUTINE		NON ROUTINE	
		hours	\$	hours	\$	hours	\$	hours	\$
31.	Application for review of taxation of costs by Magistrate	0.5	87	0.7	122	0.5	87	0.7	122
32.	Photocopies where necessary— per page	\$0.50							
33.	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.								
34.	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.								

Notes

- ¹ This is a compilation of the *Legal Practitioners (Local Court) (Contentious Business) Determination 2002* as set out in the following Table.

Compilation table

Citation	Gazettal	Commencement
<i>Legal Practitioners (Local Court) (Contentious Business) Determination 2002</i>	24 Sep 2002 p.4751-7	1 Nov 2002 (see cl. 2)

