

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

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THE TEXT OF THE LEGISLATION FOLLOWS

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

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Western Australia

Legal Practitioners Act 1893

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Part 1 — Preliminary

1. Citation

- (1) This report may be cited as the *Legal Practitioners (Supreme 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 (Supreme 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 (Supreme 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) conducted an oral hearing with representatives of the Law Society of Western Australia Inc and the Insurance Commission of Western Australia;
- (c) reviewed the operation of the time based system of calculating costs;
- (d) reviewed the impact of movements in the Consumer Price Index for the financial years ending 30 June 1997 to 30 June 2001 (inclusive);
- (e) had regard to the impact of the Goods and Services Tax on the level of fees charged by Practitioners; and
- (f) circulated a questionnaire amongst a number of legal firms known to actively practice in the Supreme Court and the District Court jurisdictions as well as members of the Independent Bars.

4. Maximum hourly and daily rates

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 The Committee's Conclusions

5. Maximum hourly and daily 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 and daily rates charged by practitioners as the basis for the rates used in the *Legal Practitioners (Supreme 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 and daily rates referred to in subclause 5 (1) are varied from the hourly and daily rates used in the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 1999*². Those rates are set out in the Table to clause 7 of the *Legal Practitioners (Supreme 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 7 of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2002*.
- (4) It is the further recommendation of the Committee that given the amendments to the scale of costs in the manner set out in the Table to clauses 6 and 7 of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2002* are inclusive of any provision for the Goods and Services Tax, 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 (Supreme Court) (Contentious Business) 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*.

¹ [Published in *Gazette* 20 December 1996 pp. 7077-87]

² [Published in *Gazette* 15 June 1999 pp. 2563-69]

Schedule

Legal Practitioners Act 1893

*Legal Practitioners (Supreme Court) (Contentious Business)
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Made by the Legal Costs Committee under section 58W of the Act.

1. Citation

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

2. Commencement

This determination comes into operation on 1 June 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 —
 - (a) the Supreme Court; and
 - (b) the District Court other than contentious business to which the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 1999* or any successive determination of that scale applies.
- (2) This determination does not apply to the remuneration of practitioners based on a written agreement as to costs under the *Legal Practitioners Act 1893*.
- (3) This determination does not apply to the remuneration of practitioners based on costs incurred before 1 June 2002.

4. Application of O.66, r11(3), r12, r13, r18, r19, r20(3), r21 and r23 of the Rules of the Supreme Court

In the circumstances set out in Order 66, rules 11(3), 12, 13, 18, 19, 20(3), 21 and 23 of the Rules of the Supreme Court, the Committee determines that the Court or the Taxing Officer, as the case may be,

has the power to make the orders and allowances referred to in those rules.

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

From and including 1 June 2002, the GST Determination insofar as it affects the hourly and daily rates described in clause 6 and the calculation of fees under each of the items in clause 7, the GST Determination will cease to be of any further force or effect.

6. Maximum hourly and daily rates

- (1) The hourly and daily rates set out in the Table to this clause are the maximum hourly and daily 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 7. Each item in the scale of costs specifies a dollar amount with reference to the fee earner.
- (2) The rates referred to in subclause (1) were ascertained in the manner set out in clause 5 of the *Legal Practitioners (Supreme Court) (Contentious Business) Report 2002*.

Table

Fee Earner	Maximum allowable hourly and daily rates
Senior Practitioner (admitted for more than 5 years)	
(SP) — hourly rate	\$313
Junior Practitioner (admitted for less than 5 years)	
(JP) — hourly rate	\$209
Clerk/Paralegal (C/PL) — hourly rate	\$151
Counsel fees charged as a disbursement to practitioners or charged by in-house counsel —	
Junior Counsel (JC) — hourly rate	\$244
— daily rate	\$2668
Senior Counsel (SC)† — hourly rate	\$429
— daily rate	\$4060

†The reference to a Senior Counsel in this determination includes reference to Queens

Counsel appointed in any State or Territory in Australia and whose appointment is afforded recognition by the Chief Justice of the Supreme Court of Western Australia.

7. Costs

- (1) Subject to the provisions of subclause (2) and of the *Legal Practitioners Act 1893* permitting a practitioner 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 practitioner,

shall not exceed the amounts set out in the Table to this clause (except as otherwise provided in item 13A of the Table).

- (2) Allowances made under item 13A of the Table to this clause are only to be awarded as between practitioner and client, or if costs are awarded on an indemnity basis and not between party and party unless the Court otherwise orders.

Table

Supreme Court Scale Of Costs

Item		Time	Fee Earner	\$
1.	(a) Writ of summons, generally endorsed, including instructions; or			464
	(b) Writ of summons with Statement of Claim indorsed, including instructions; and			777
	(c) For each additional defendant			58
2.	Next friend or guardian <i>ad litem</i>	3 hours	JP	627
3.	Entry of judgment without trial			151
4.	(a) Payment into or out of Court	2 hours	JP	418
	(b) Offer of compromise under O.24A	2 hours	SP	626

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Item		Time	Fee Earner	\$
	(c) Acknowledgment of offer under O.24A			35
	(d) Acceptance of offer of compromise under O.24A	2 hours	SP	626
	(e) Notice of offer to consent to judgment	2 hours	SP	626
	(f) Other notices and certificates referred to or required by the Rules or procedures of the Court (including practice directions)			
5.	Memorandum of Appearance	0.5 hours	C/PL	75
6.	Pleadings			
	(a) Statement of Claim	10 hours	SP	3,130
	(b) Defence	10 hours	SP	3,130
	(c) Counterclaim	10 hours	SP	3,130
	(d) Reply (if necessary), defence to counterclaim, or any other pleading	10 hours	SP	3,130
7.	(a) Third party notice	2 hours	SP	626
	(b) Pleadings in third party proceedings	6 hours	SP	1,878
8.	(a) Requesting particulars of a pleading (where and to the extent necessary)	3 hours	JP	627
	(b) Giving particulars of a pleading	5 hours	JP	1,045
9.	(a) Notice requiring discovery	0.33 hours	C/PL	50
	(b) Giving discovery of documents	10 hours	JP	2,090
	(c) Inspection and giving inspection—per hour		JP	209
10.	(a) Delivery of interrogatories	5 hours	SP	1,565
	(b) Answers to interrogatories	10 hours	SP	3,130
11.	Examination of witness before trial by counsel or practitioner, pursuant to order			An allowance in accordance with item 14(c) or (d)

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Item		Time	Fee Earner	\$
12.	Application for and striking jury	1 hour	JP	209
13.	Getting up case for trial (subject to item 14(h)) (includes work reasonably and necessarily undertaken prior to commencement of proceedings)	100 hours	SP	31,300
13A	(a) Time reasonably spent by a practitioner on work requiring the skill of a practitioner (of the standing indicated) but not covered by any other item—per hour		SP/SC JC JP	313 244 209
	(b) Time reasonably spent by a practitioner, or by a clerk or paralegal of a practitioner, on work not covered by any other item or by paragraph (a)—per hour		C/PL	151
14.	Counsel fees—			
	(a) Fee on brief, i.e. first day of trial and preparation	3 days preparation; 1st day of trial	JC	10,672
	(b) Fee on brief for Senior Counsel, i.e. first day of trial and preparation (where two or more counsel are certified for)	3 days preparation; 1st day of trial	SC	16,240
	(c) Counsel fee for the second and each successive day of hearing		JC	2,668
	(d) Counsel fee for Senior Counsel for second and each successive day of hearing (where two or more counsel are certified for)		SC	4,060

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Item		Time	Fee Earner	\$
	(e) Solicitor attending trial— per hour		SP	313
	(f) Clerk attending trial—per hour		C/PL	151
	(g) Attending on a reserved judgment or at a callover—per hour		SP	313
	(h) Where the only issue tried is the assessment of damages, three quarters of the amounts prescribed by items 13, 14(a), 14(b), 14(c) and 14(d) shall be allowable, unless otherwise directed by the Court			
15.	Settling and extracting judgment or order			
	(a) With appointment	2 hours	JP	418
	(b) Without appointment	0.75 hours	JP	157
16.	Drawing bill of costs, copies and service		SP	Such amounts as are reasonable in the circumstances
17.	Taking accounts; inquiries; taxation of costs (including the time spent in preparing for the taxation)		SP	Such amounts as are reasonable in the circumstances
18.	Re-trial or Re-hearing			Such amounts as are reasonable in the circumstances
	(a) Getting up case for re-trial or re-hearing			
	(b) Re-trial or re-hearing			
19.	(a) Special case, case stated (otherwise than by way of appeal) or trial of an issue (not covered by item 14(h))			Such amounts as are reasonable in the circumstances
	(b) For the second and each successive day of the trial or hearing			

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Item		Time	Fee Earner	\$
20.	Appeals to a member of the Court or to the Full Court (including appeals by way of case stated)—			
	(a) Notice of appeal, motion for order <i>nisi</i> to review, and the like	15 hours	SP	4,695
	(b) Drawing and settling index	8 hours	JP	1,672
	(c) Getting up appeal for hearing	10 hours	SP	3,130
	(d) Counsel fee on hearing including preparation	2 days preparation; 1 day hearing	JC	8,004
	(e) Counsel fee for Senior Counsel including preparation (where two or more counsel are certified for)	2 days preparation; 1 day hearing	SC	12,180
	(f) Counsel fee for the second and each successive day of hearing		JC	2,668
	(g) Counsel fee for Senior Counsel for second and each successive day of hearing (where two or more counsel are certified for)		SC	4,060
	(h) Attending on reserved decision	2 hours	JP	418
21.	Originating motion, originating summons or originating application	2 days preparation; 1 day hearing; and Getting up—30 hours	JC SP	 17,400
22.	Motions in Court not otherwise provided for	1 day preparation ½ day hearing	JC	4,002

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Item		Time	Fee Earner	\$
23.	Proceedings in Chambers other than proceedings to which item 21 applies	2 days preparation; 1 day hearing	JC	8,004
24.	Pretrial, mediation or other conferences— (a) where required by order of the Court, by the <i>Rules of the Supreme Court</i> or by practice direction; and (b) including informal conferences where reasonably held after commencement of proceedings—per hour		SP	313
25.	Arbitration proceedings			The same costs as in an action.
26.	Proceedings, whether by action or otherwise, for the recovery of compensation for the taking or resumption of land or any other property by the Crown in right of the State or of the Commonwealth or by any other person, body or instrumentality pursuant to any statutory power			Such sum as is reasonable in the circumstances
27.	Proceedings by way of prerogative writ			Allowances calculated in accordance with item 20
28.	(a) Execution (b) If against land, an additional			232 232
29.	Photocopies where necessary— per page			0.95

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Item		Time	Fee Earner	\$
30.	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.			

[Correction in Gazette 25 Jun 2002 p.2991.]

Notes

- ¹ This is a compilation *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2002* and includes all amendments effected by the other Acts referred to in the following Table.

Table of Determinations

Determination	Gazettal	Commencement
<i>Legal Practitioners (Supreme Court) (Contentious Business) Determination 2002</i>	10 May 2002 p. 2448-54 (Correction in <i>Gazette</i> 25 Jun 2002 p.2991	1 Jun 2002