

## LEGAL PRACTICE ACT 2003

### LEGAL PRACTITIONERS (MAGISTRATES COURT) (CIVIL JURISDICTION) REPORT 2005

Made by the Legal Costs Committee under section 214 of the Act.

#### PART 1 – PRELIMINARY

##### Citation

1. (1) This report may be cited as the *Legal Practitioners (Magistrates Court) (Civil Jurisdiction) Report 2005*.
- (2) The determination set out in the Schedule to this report is referred to in this report as the *Legal Practitioners (Magistrates Court) (Civil Jurisdiction) Determination 2005*.

#### PART 2 – NOTICE AND INQUIRIES

##### Notice under section 213 of the Act

2. The Legal Costs Committee has complied with the notice provisions of section 213 of the Act.

##### Inquiries and submissions under section 213 of the Act

3. Before making the *Legal Practitioners (Magistrates Court) (Civil Jurisdiction) Determination 2005* the Legal Costs Committee -
  - (a) reviewed all submissions received as a result of the notice given under section 213 of the Act;
  - (b) consulted with the Court;
  - (c) consulted with the Magistrates Association of Western Australia, Law Society of Western Australia (Inc.), the Western Australian Bar Association Inc, the Criminal Lawyers Association of Western Australia and the Legal Aid Commission of Western Australia;
  - (d) reviewed the *Legal Practitioners (Local Court) (Contentious Business) Determination 2005*<sup>1</sup>; and
  - (e) had regard to relevant provisions of the *Magistrates Court Act 2004* and the *Magistrates Court (Civil Proceedings) Act 2004* which are proclaimed to commence on 1 May 2005<sup>2</sup>.

<sup>1</sup> [Published in Gazette 1 March 2005 pp.865 - 873].

<sup>2</sup> [see s. 2 and Gazette 31 Dec 2004 p. 7127].

### PART 3 – REPORT OF COMMITTEE’S CONCLUSIONS

#### Hourly rates and scale of costs established

4. (1) The information gained as a result of the inquiries and submissions described in clause 3 satisfied the Legal Costs Committee that having regard to the impending commencement of the *Magistrates Court Act 2004* and the *Magistrates Court (Civil Proceedings) Act 2004*, it is appropriate to determine hourly and daily rates and a scale of costs for legal work applicable to civil proceedings in the Magistrates Court.

(2) It is the recommendation of the Legal Costs Committee as a result of the inquiries and submissions described in clause 3, having assessed market conditions and having considered submissions, data provided by the Law Society of Western Australia, the incidental administrative implications of the calculation of the GST and the implications of the extension of the civil jurisdiction of the Magistrates Court which is approximately double that previously applicable to the Local Court, that the appropriate hourly and daily rates referred to in subclause 4 (1) are the rates set out in the Table to clause 8 of the *Legal Practitioners (Magistrates Court) (Civil Jurisdiction) Determination 2005*.

(3) Having regard to the information gained as a result of the inquiries and submissions described in clause 3 and as a consequence of the proclamation of the *Magistrates Court Act 2004* and the *Magistrates Court (Civil Proceedings) Act 2004*, the Legal Costs Committee has concluded it is appropriate to –

- (a) order the scale to reflect the procedures to be adopted by the Magistrates Court and the flow of litigation;
- (b) not adopt a division of work between small claims and other claims up to the jurisdictional limit, and between routine and non-routine matters in relation to each class of claims, that had been introduced under the *Legal Practitioners (Local Court) (Contentious Business) Determination 1997\** in relation to the Local Court;
- (c) maintain consistency where practicable with the format of the costs determination applicable to the Supreme Court of Western Australia; and
- (d) provide for hourly and daily rates applicable to Counsel and Senior Counsel.

(4) The Legal Costs Committee intends, because the scale sets maximum hourly and daily rates and amounts and allowances that must not be exceeded, that the hourly and daily rates and scale of costs will also apply in circumstances requiring the determination of allowable and other costs in the minor cases procedure of the Magistrates Court.

(5) The Legal Costs Committee intends that the determination shall apply to all civil proceedings dealt with in the Magistrates Court, including civil jurisdiction conferred on the Court by a written law, such as but not limited to the *Dividing Fences Act 1961* and the *Restraining Orders Act 1997*.

(6) 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 Practice Act 2003*.

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

TED SHARP, Chairman

MICHAEL McPHEE, Deputy Chairman

JANINE FREEMAN, Member

ANGELA GAFFNEY, Member

CLARE THOMPSON, Member

MARCUS COCKER, Member

## Schedule

### LEGAL PRACTICE ACT 2003

#### LEGAL PRACTITIONERS (MAGISTRATES COURT) (CIVIL JURISDICTION) DETERMINATION 2005

Made by the Legal Costs Committee under section 210 of the Act.

#### Citation

1. This determination may be cited as the *Legal Practitioners (Magistrates Court) (Civil Jurisdiction) Determination 2005*.

#### Commencement

2. This Determination comes into operation on 1 May 2005.

#### Application

3. (1) This Determination applies to the remuneration of practitioners in respect of business carried out by practitioners in or for the purposes of civil proceedings before the Magistrates Court.

(2) This Determination does not apply to the remuneration of practitioners based on costs incurred in respect of business carried out before the commencement of this determination.

(3) Nothing in this Determination applies to costs in proceedings transferred to the Magistrates Court pursuant to the *Courts Legislation Amendment and Repeal Act 2004* insofar as those costs relate to work undertaken prior to the date of transfer.

#### No minimum charge

4. 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 5. For example, item 2(b) provides for \$1430 for the work involved. The figure of \$1430 is a maximum, but on taxation less than \$1430 might be allowed. Where there is a set cost or time or level of fee earner indicated, the purpose is to indicate to the Assessing Officer what reasonably may be expected in most cases.

#### Fixed items

5. Some items in the Scale have been fixed without any indication of how these items have been calculated. These items are 14 and 15(c). These have been fixed because, based on past practices, the Court staff require a fixed figure when completing the form of Entry of Judgment by Default and the like.

#### Time estimates

6. 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 18(a), which relates to preparation for trial or getting up case for trial, the time indicated is that which can be expected in most cases. The hours referred to in the Scale will guide the Assessing Officer about the amount which should be allowed in a particular case.

## Settled proceedings

7. It is intended that item 18 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 assessment of costs.

## Hourly rates

8. (1) The hourly and daily rates set out in the Table to this clause are the maximum hourly and daily rates, inclusive of GST, 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 9. Except for certain items, each item in the Scale of Costs specifies a dollar amount with reference to the fee earner.

**Table to Clause 8**

Fee Earner			Maximum allowable hourly rates
Senior Practitioner (admitted for 5 years or more)	(SP) <sup>α</sup>	- hourly rate	\$286
Junior Practitioner (admitted for less than 5 years)	(JP) <sup>α</sup>	- hourly rate	\$198
Clerk/Paralegal	(C/PL)	- hourly rate	\$88
<b>Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel:</b>			
Counsel	(C)*	hourly rate	\$220
		daily rate	\$1540
Senior Counsel	(SC)†	hourly rate	\$363
		daily rate	\$2541

<sup>α</sup> The reference to Junior Practitioner or to Senior Practitioner in this Determination includes all legal practitioners even if the services were rendered in another State or Territory. Where a local practitioner has held an interstate practice certificate, the length of admission in that other jurisdiction is to be counted in assessing that practitioner's years of admission for the purposes of this Determination.

\* The reference to Counsel in this Determination means a practitioner acting as a barrister other than as Senior Counsel.

† The reference to Senior Counsel in this Determination includes reference to Queens Counsel or Senior Counsel appointed in Western Australia, or 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.

**Scale of costs**

9. Unless a practitioner has made a written agreement as to costs with a client under the provisions of section 221 of the *Legal Practice Act 2003*, the costs of or in relation to a party to an action or other proceeding (inclusive of GST and 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 9

MAGISTRATES COURT CIVIL JURISDICTION SCALE OF COSTS 2005

Item		Time	Fee Earner	Maximum Amount \$
1.	Letter of demand issued prior to proceedings			55
2.	<b>Claim:</b> (a) Claim, including instructions, but excluding Statement of Claim;  For each additional defendant  (b) Entry of Statement of Claim (including particulars of claim, where necessary or by order)  (c) Lodging and service of claim including statutory declaration in support of claim (where required)	1.5 hours   5 hours  1 hour	SP   SP  SP	429  33 1430 286
3.	Appointment of litigation guardian	2 hours	JP	396
4.	<b>Response:</b> (a) Statement of defence  (b) Counterclaim  (c) Lodging and service of response including statutory declaration in support of response (where required)	5 hours  5 hours  1 hour	JP  JP  JP	990  990 198
5.	<b>Reply and other pleadings:</b> Reply (if necessary), objection to counterclaim, or any other pleading	5 hours	SP	1430
6.	(a) Third party notice  (b) Pleadings in third party proceedings	1 hour  3 hours	JP  JP	198  594
7.	(a) Requesting particulars of a pleading (where and to the extent necessary)  (b) Giving particulars of a pleading	1.5 hours  2.5 hours	JP  JP	297  495

Item		Time	Fee Earner	Maximum Amount \$
8.	<b>Disclosure:</b> (a) Notice requiring disclosure			33
	(b) Giving disclosure of documents	3 hours	JP	594
9.	<b>Inspection:</b> Inspection and giving inspection	per hour	JP	198
10.	<b>Interrogatories:</b> (a) Delivery of interrogatories	3 hours	SP	858
	(b) Answers to interrogatories	5 hours	SP	1430
11.	<b>Interpleaders:</b> Interpleader proceedings –			
	(a) where uncontested (b) where contested	1 hour	JP	198  An allowance in accordance with item 12.
12.	<b>Proceedings in chambers:</b> Proceedings in chambers (including preparation for hearing)			
	(a) without an appearance	1 hour	JP	198
	(b) for each appearance by practitioner	5 hours	SP	1430
	(c) for each appearance by clerk	3 hours	C/PL	264
	<i>Note: In relation to the above, if the proceedings in chambers do not commence and settle or adjourn on the day of the hearing then the Assessing Officer shall allow such amount as is reasonable in the circumstances</i>			
13.	Applications in court or chambers not otherwise provided for	1 hour	SP	286
14.	Entry of judgment by default ( <i>without trial</i> )			88

Item		Time	Fee Earner	Maximum Amount \$
15.	<b>Offers of settlement, notices, practice directions, applications, declarations, affidavits:</b> (a) Offers of settlement (b) Acceptance of offer of settlement (c) Other notices and certificates referred to or required by the Act, Rules or procedures of the Court (including practice directions) not otherwise specified in this Scale (d) Preparation and filing of affidavits and statutory declarations not otherwise provided for (e) Drawing and serving of interlocutory orders (where ordered or required) (f) Applications in court or chambers not otherwise provided for	2 hours    per hour   2 hours  1 hour	SP    SP   JP  JP	572    286   396  198
16.	<b>Getting up:</b> Preparation for trial (includes work reasonably and necessarily undertaken prior to commencement of proceedings)	30 hours	SP	8580
17.	Examination of witness before trial by a practitioner, pursuant to an order			An allowance in accordance with item 18 (c) or (d)

Item		Time	Fee Earner	Maximum Amount \$
18.	<p><b>Trial:</b></p> <p>(a) Fee on brief for Counsel ie first day of trial and preparation</p> <p>(b) Fee on brief for Senior Counsel ie first day of trial and preparation (where two or more Counsel are certified for)</p> <p>(c) Counsel fee for the second and each successive day of hearing</p> <p>(d) Counsel fee for Senior Counsel for second and each successive day of hearing (where two or more Counsel are certified for)</p> <p>(e) Instructing practitioner attending trial, where certified for</p> <p>(f) Clerk attending trial</p> <p>(g) Where the only issue to be tried is the assessment of damages, two thirds of the amounts prescribed by Items 16 and 18(a), (b) (c) and (d) shall be allowable, unless otherwise directed by the Court</p> <p><b>Note: In relation to paragraphs (a) - (g) if-</b>  <i>(1) The trial lasts less than 2 hours; or</i>  <i>(2) The trial does not commence and settles or adjourns on the day of the trial,</i>  <i>then the Assessing Officer shall allow such amount as is reasonable in the circumstances</i></p> <p>(h) Attending on reserved judgment</p>	<p>2 days preparation 1<sup>st</sup> day of trial</p> <p>2 days preparation 1<sup>st</sup> day of trial</p> <p>per hour</p> <p>per hour</p> <p>per hour</p>	<p>C</p> <p>SC</p> <p>C</p> <p>SC</p> <p>JP</p> <p>C/PL</p> <p>SP</p>	<p>4620</p> <p>7623</p> <p>1540</p> <p>2541</p> <p>198</p> <p>88</p> <p>286</p>
19.	<p>Pretrial, mediation, conferrals, or other conferences</p> <p>(a) Where required by an Act, order of the Court, by the <i>Rules</i> or by practice direction; and</p> <p>(b) Including informal conferences where reasonably held after commencement of proceedings</p>	<p>per hour</p>	<p>SP</p>	<p>286</p>
20.	<p><b>Judgments and orders:</b></p> <p>(a) Settling and extracting judgment or order</p> <p>(i) with appointment</p> <p>(ii) without appointment</p> <p>(b) Issue of certified copy of judgment or order</p>	<p>1 hour</p> <p>0.5 hours</p>	<p>JP</p> <p>C/PL</p>	<p>198</p> <p>143</p> <p>88</p>

Item		Time	Fee Earner	Maximum Amount \$
21.	<p><b>Enforcement</b> Application for:</p> <p>(a) Order for payment</p> <p>(b) Means inquiry</p> <p>(c) Property (seizure and sale) order</p> <p>(d) Property (seizure and delivery) order</p> <p>(e) Warrant to arrest</p> <p>(f) Earnings appropriation order</p> <p>(g) Debt appropriation order</p> <p>(h) Recovery of possession (undefended including appearance)</p> <p>(i) Leave to enforce</p> <p>(j) Suspension of enforcement order</p> <p>(k) An order under section 86 of the <i>Civil Judgments Enforcement Act 2004</i></p> <p>(l) A default inquiry under section 89 of the <i>Civil Judgments Enforcement Act 2004</i></p> <p>(m) In any other case</p>			Allowances calculated in accordance with item 12
22.	<p><b>Registration of judgments</b> Registration of judgments including those under <i>Service and Execution of Process Act 1992 (Cwlth)</i></p>	1 hour	JP	198
23.	<p><b>Assessment of costs including drawing bill:</b></p> <p>(a) Drawing bill of costs, copies and service</p> <p>(b) Making an objection to a bill</p> <p>(c) Assessment of costs (including the time spent in preparing for the assessment)</p> <p>(d) Application for review of assessment of costs by Magistrate</p>		SP	Such amounts as are reasonable in the circumstances

Item		Time	Fee Earner	Maximum Amount \$
24.	<b>Copying:</b> Photocopies where necessary, including of documents for which allowance is otherwise made in this determination	per page		1.00
25.	<b>Accounts and inquiries</b> Attending on taking accounts, inquiries		SP	Such amounts as are reasonable in the circumstances
26.	<b>Other work:</b> (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 or (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	SC SP C JP C/PL	363 286 220 198 88
27.	<b>Disbursements:</b> 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			
28.	<b>Allowances for witnesses:</b> A reasonable allowance for (a) witnesses called because of their professional, scientific or other special skill or knowledge;  (b) witnesses called other than those covered in paragraph (a). In fixing an allowance for witnesses under paragraph (b) including the Claimant and Defendant, the Assessing 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 26 April 2005.