

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (SOLICITORS COSTS) REPORT 2015

Made by the Legal Costs Committee under Division 5 of Part 10 of the *Legal Profession Act 2008* (Act).

PART 1 – PRELIMINARY

1. Citation

- (1) This Report may be cited as the *Legal Profession (Solicitors Costs) Report 2015*.
- (2) The determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (Solicitors Costs) Determination 2015*.
- (3) The citation for this Report (compared to previous Reports) has been amended to be consistent with the title of the Act.

PART 2 – NOTICE AND INQUIRIES

2. Notice under section 278 of the Act

The Legal Costs Committee has complied with the notice provisions of section 278 of the Act.

3. Inquiries and submissions under section 277 of the Act

Before making the *Legal Profession (Solicitors Costs) Determination 2015*, the Legal Costs Committee:

- (a) reviewed the submission of the Law Society of Western Australia Inc received as a result of the notice given under section 277 of the Act;
- (b) reviewed the impact of movements in the Consumer Price and Wage Price Indices for the period between 1 July 2013 to 31 March 2015 (inclusive) as being an appropriate period given the time elapsed between the commencement of the previous Review and the commencement of this Review; and
- (c) consulted the Legal Profession Complaints Committee.

PART 3 – REPORT OF THE LEGAL COSTS COMMITTEE'S CONCLUSIONS

4. Maximum hourly rates changed – scale of costs amended

- (1) As a result of its inquiries and the submission described in clause 3, the Legal Costs Committee is satisfied it is appropriate to continue to adopt hourly rates charged by law practices as the basis for the rates used in the *Solicitors Costs Determination 2013*. It is also considered appropriate to retain a system of instruction fees as set out in items 1 to 5 of the Table to clause 6 of the *Solicitors Costs Determination 2013*.
- (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 4 (1) are varied from the hourly rates used in the *Solicitors Costs Determination 2013* ^{published in the Government Gazette on 18 June 2013 pp 2321-2326}. Those rates are set out in Item 7 of Table A of the *Legal Profession (Solicitors Costs) Determination 2015*.
- (3) The Legal Costs Committee has resolved that the base amounts in Item 5 of Table A should be increased by an amount of 5% or thereabouts to account for movements in the CPI Indices and to be divisible by 11 for GST purposes.
- (4) The recommendations of the Legal Costs Committee are not intended to override the entitlement of a law practice to make a written agreement as to costs with a client under the Act.

TED SHARP, Chairman
ANGELA GAFFNEY, Member
CLARE THOMPSON, Member
MARCUS COCKER, Member
JANICE DUDLEY, Member
MATTHEW CURWOOD, Member

Schedule

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (SOLICITORS COSTS) DETERMINATION 2015

Made by the Legal Costs Committee under section 275 of the *Legal Profession Act 2008* (Act).

1. Citation

(a) This Determination may be cited as the *Legal Profession (Solicitors Costs) Determination 2015*.

(b) The citation for this Determination (compared to previous Determinations) has been amended to be consistent with the title of the Act.

2. Commencement

This Determination comes into operation on 1 July 2015.

3. The *Solicitors Costs Determination 2013*

The determination cited as the *Solicitors Costs Determination 2013* published in the *Government Gazette* on 18 June 2013 pp 2321-2326 does not apply to business carried out by law practices after the commencement of this Determination.

4. Interpretation

In this Determination –

“**clause**” means a clause in this Determination;

“**document**” includes a document in electronic form;

“**instruction fee**” means the fee set out in the column headed ‘Amount’ in Table A, in relation to the matter specified next to that fee in Table A;

“**instructions**” in relation to items 1 to 5 includes the initial attendance when instructions are taken, and all subsequent attendances at which instructions are taken which ought properly to have been taken at the initial attendance;

“**item**” means an item in the Table A and “**items**” has a corresponding meaning;

“**mortgagee**” includes the grantee of a security and, in relation to a hire-purchase agreement, means the owner;

“**mortgagor**” includes the grantor of a security and, in relation to a hire-purchase agreement, means the hirer;

“**prepare**” includes considering searches, researching matters of law, negotiating, settling and drafting the provisions of and producing a document;

“**security**” includes a mortgage, hire-purchase agreement, debenture or charge or a bill of sale or assignment by way of security, or any other form of security granted by a person;

“**sheet**” means one side of a single A4 page, with no less than 25 lines of print with a minimum of a 10 point font;

“**Table A**” means Table A to this Determination.

5. Application

(1) This Determination applies to the maximum remuneration of law practices in respect of any work carried out by a law practice not being of a contentious nature and which is not governed by any other determination of the Legal Costs Committee under section 275 of the Act.

(2) This Determination does not apply to the remuneration of law practices based on a written agreement as to costs with a client under the Act.

(3) This Determination does not apply to the remuneration of law practices based on costs incurred before the commencement of this Determination.

6. Costs

Unless a law practice has made a written agreement as to costs with a client under the provisions of the Act, the costs payable by the client to the client's law practice shall not exceed an amount that is reasonable in the circumstances, that amount to be calculated on the basis of -

- (a) the instruction fees and other fees for specific items set out in items 1 to 6; and
- (b) the time reasonably taken to perform the work referred to in item 7, charged at an hourly rate that does not exceed the hourly rates set out in that item; or
- (c) where clause 14 applies, the skill, urgency or complexity required to perform the work, together with the time reasonably taken to do so.

7. Instruction fee when acting for both parties to a transaction

Subject to clauses 8 and 9, where a law practice lawfully acts for both parties to a transaction, the law practice is entitled to charge each party the relevant instruction fee relating to that transaction.

8. Instruction fees for related transactions

(1) Subject to this clause, where a law practice acts for either a buyer-mortgagor or for a seller-mortgagee, the law practice may charge either the instruction fee fixed in relation to the sale or the instruction fee fixed in relation to the security, but not both.

(2) Where a law practice acts for a seller in circumstances to which item 5 applies, and the consideration or part thereof is secured by a security prepared by the same law practice and executed by the buyer in favour of the seller, the law practice shall be entitled to charge in respect of the sale the fee set out in item 5 reduced by 20%, and for instructions in respect of the security the instruction fee calculated in accordance with item 3 on the basis of the sum secured.

(3) Where, in respect of one and the same transaction, a law practice lawfully acts for both a buyer-mortgagor and a seller-mortgagee -

- (a) if all the costs are to be paid by only one of the parties, the law practice is entitled to charge the instruction fee in relation to the sale, calculated on the basis that the law practice was acting for the buyer, but is not entitled to charge an instruction fee in relation to the security;
- (b) if each party is to pay their own instruction fee, the law practice is entitled to charge each party such an amount so that the aggregate of the amounts payable by each is no greater than the instruction fee in relation to the sale, calculated on the basis that the law practice was acting for the buyer.

(4) Where, in one and the same transaction, a law practice lawfully acts for both the seller and the buyer or for both the mortgagor and the mortgagee, the law practice is not entitled to charge in respect of the instructions any amount which is greater in the aggregate than the instruction fee in relation to the sale or the security, calculated on the basis that the law practice was acting for the buyer or the mortgagor, as the case may be.

(5) Where a law practice acts for the mortgagee on instructions to extend the term of the security, the law practice is entitled to charge, for instructions, an amount not exceeding 40% of the instruction fee that would be payable in relation to an original security for the same amount as that secured by the security as extended.

9. Instruction fees for leases

(1) Where a law practice lawfully acts for both the lessor and the lessee in respect of a lease or an extension of lease, the law practice is entitled to charge for instructions only the instruction fee set out in item 4 in relation to a lessor.

(2) For the purposes of calculating the instructions fees set out in item 4 -

- (a) where a term of a lease exceeds 12 years but does not exceed 26 years - the instruction fee shall be calculated on the basis of the rent payable during the first 12 years of the lease;
- (b) where the term of the lease exceeds 26 years - the instruction fee shall be calculated on the basis of the rent payable during the first 15 years of the lease,

and for this purpose the term “rent” –

- (c) includes any moneys payable as a premium for the granting of the lease;
- (d) does not include any moneys payable or reserved under or by the lease in respect of –
 - (i) rates and taxes whether by way of reimbursement of the lessor or otherwise; or
 - (ii) expenditure incurred by the lessor in the conduct or management of the lease and premises or of any other property of which the leased premises forms part.

10. Limitations on instruction fee in item 3

In relation to an instruction fee set out in item 3 –

- (a) any amount secured by an existing collateral security prepared by the same law practice within one year prior to the instructions shall be deducted from the amount to be secured before calculating the instruction fee; and
- (b) where the security is for an annuity and the term during which the annuity is to be paid is a period exceeding 12 years or for life - the instruction fee shall be calculated on the basis that the amount secured is 12 times either the annual payment or the average of the first 12 payments.

11. Uncompleted business

Where any business is not completed the instruction fee payable shall be such proportion of the relevant instruction fee payable under this Determination as is reasonable in the circumstances.

12. Services related to item 5

(1) The fees set out in item 5 are the remuneration payable in respect of acting on instructions for the completion by transfer of an executed contract for the sale of land registered under the *Transfer of Land Act 1893* and include the fees for all services usually performed in respect of the transaction and in particular –

- (a) the investigation of title;
- (b) enquiries of and advice to all rating and taxing authorities of change of ownership;
- (c) the adjustment of rates and taxes;
- (d) preparation, execution, stamping and the registration of the transfer; and
- (e) the arrangements for and attendances on settlement including the discharge of encumbrances,

but the remuneration does not include the fees for –

- (f) any service performed or rendered in respect of an amendment to the contract of sale;
 - (g) the perusal of any document other than the contract of sale;
 - (h) the preparation of any document other than the transfer;
 - (i) requisitions on title or answers thereto;
 - (j) correspondence or attendances as may be rendered necessary by the amendment to, or the preparation of, any document other than the transfer;
 - (k) correspondence or attendances not usually involved in respect of completion of the contract of sale including interpretation of or enforcement of the contract of sale; or
 - (l) any costs or expenses lawfully incurred due to the distance of the law practice from the place of settlement or from an office of the Western Australian Land Information Authority, established under the Western Australian Land Authority Act 1992 (WA).
- (2) Where a law practice acting on instructions to which item 5 applies is obliged to perform additional services which are not services to which item 5 applies, the law practice is entitled to charge for those additional services at the rate set out in item 7.

13. Preparing documents and copies for execution, photocopying, facsimile and electronic transmissions (item 6)

The fees set out in items 601 and 602 are fees in addition to time taken to prepare documents (including amendments to drafts or standard documents) and –

- (a) In the case of item 601, the fee is intended to recognise the cost to, and time taken by, a law practice in the preparation and maintenance of standard precedents - by way of example, a standard office lease, shop lease, assignment of lease, extension of lease and mortgage; and
- (b) in the case of item 602, the fee is intended to recognise the cost to, and time taken by, a law practice in the preparation, availability and maintenance of a document which is not a standard precedent within item 601, and the skill, cost of preparation and maintenance of having such a document available.

14. Complex matters, and matters involving a high degree of skill or urgency

Where a law practice acts on instructions or performs a service in respect of a matter –

- (a) in relation to which a fee or rate of remuneration is set out under items 1 to 6, that is complex, or involves a high degree of skill or urgency; or
- (b) that is not referred to in any of items 1 to 6,

then, notwithstanding the rates in item 7, the law practice is entitled to charge a fee, or charge at a rate (as the case requires) that is greater than one that is set out in an item, if it is reasonable in the circumstances.

15. Travel

The Legal Costs Committee has given further consideration to the fees charged by law practices for travel, including time spent travelling by law practices in regional and remote regions of Western Australia.

As a result of its inquiries described in clause 3 of the Legal Profession (Solicitors Costs) Report 2015, the Legal Costs Committee has resolved to change the maximum hourly rates for travelling time under item 704.

In reaching its decision the Legal Costs Committee has considered amendments made to the Law Society of Western Australia's Standard Costs Agreement which contains a provision that a law practice will charge travel at 50% of the agreed hourly rates.

The Legal Costs Committee has also considered an informal policy of the Legal Profession Complaints Committee that travel should not ordinarily be charged at a rate of more than 50% of a law practice's normal hourly charge-out rate.

Whilst the Legal Costs Committee recognises that during a travel period a law practice may not necessarily utilise legal skill and knowledge, there is a recognition of a loss of opportunity for the time spent travelling.

The Legal Costs Committee notes that, having regard to the above:

- (a) it is the responsibility of a law practice to allocate the cost of time spent on travel fairly and reasonably where the travel is necessary to service more than one client on the day of travel; and
- (b) whilst nothing contained in this Determination prevents a law practice from charging time spent on a client matter or client matters in the course of travel (air travel by way of example), the law practice is not entitled to charge a client or clients for both time spent on a client matter (regardless of whether that time relates to the client for whom the travel is being undertaken) and the amount allowed under item 704.

16. Effect on costs of Goods and Services Tax (GST)

The hourly rates and the calculation of fees under each of the items in Table A are inclusive of GST. If any amount calculated under items 1 to 4 is not divisible by 11, it should be rounded up to the next highest amount which is divisible by 11.

Table A**ITEM 1 – INSTRUCTION TO ACT ON A SALE OR OTHER DISPOSITION
FOR VALUABLE CONSIDERATION OF PROPERTY**

| Ref | Party | Consideration (\$) | Maximum Amount (as a %) |
|-----|--------|---------------------|-------------------------------|
| 101 | Buyer | 1 – 100,000 | 0.45% |
| | | 100,001 – 7,500,000 | 0.25% |
| | | 7,500,001 or more | 0.03% |
| 102 | Seller | 1 – 100,000 | 0.35% |
| | | 100,001 – 7,500,000 | 0.17% |
| | | 7,500,001 or more | 0.02% |

**ITEM 2 – INSTRUCTIONS TO ACT ON A GIFT OF REAL OR PERSONAL
PROPERTY OR BOTH WHERE VALUE ASCERTAINABLE**

| Ref | Party | Value (\$) | Maximum Amount (as a %) |
|-----|-------|---------------------|-------------------------------|
| 201 | Donor | 1 – 100,000 | 0.45% |
| | | 100,001 – 7,500,000 | 0.25% |
| | | 7,500,001 or more | 0.03% |
| 202 | Donee | 1 – 100,000 | 0.35% |
| | | 100,001 – 7,500,000 | 0.17% |
| | | 7,500,001 or more | 0.02% |

ITEM 3 – INSTRUCTIONS TO ACT ON SECURITY

| Ref | Party | Consideration (\$) | Maximum Amount (as a %) |
|-----|-----------|---------------------|-------------------------------|
| 301 | Mortgagee | 1 – 100,000 | 0.45% |
| | | 100,001 – 7,500,000 | 0.25% |
| | | 7,500,001 or more | 0.03% |
| 302 | Mortgagor | 1 – 100,000 | 0.23% |
| | | 100,001 – 7,500,000 | 0.13% |
| | | 7,500,001 or more | 0.013% |

ITEM 4 – INSTRUCTIONS TO ACT ON A LEASE, SUB-LEASE, ASSIGNMENT OF LEASE OR EXTENSION OF LEASE OF PROPERTY (REAL OR PERSONAL OR BOTH)

| Ref | Party | Consideration (\$) | Maximum Amount (as a %) |
|-----|-------------------|--------------------|-------------------------|
| 401 | Lessor/Sub-Lessor | 1 – 20,000 | 0.80% |
| | | 20,001 or more | 0.40% |
| 402 | Lessee/Sub-Lessee | 1 – 20,000 | 0.40% |
| | | 20,001 or more | 0.20% |
| 403 | Assignor/Assignee | 1-20,000 | 0.40% |
| | | 20,001 or more | 0.20% |

ITEM 5 – THE SETTLEMENT OF A CONTRACT FOR THE SALE OF LAND UNDER THE *TRANSFER OF LAND ACT 1893*

| Ref | Party | Consideration (\$) | Maximum Amount or % |
|-----|---------|---------------------|--|
| 501 | Buyer* | 1-150,000 | \$ 990 |
| | | 150,001 – 500,000 | \$990 plus 0.22% of any amount in excess of \$150,000 |
| | | 500,001 – 1,000,000 | \$1760 plus 0.165% of any amount in excess of \$500,000 |
| | | 1,000,001 or more | \$2585 plus 0.11% of any amount in excess of \$1,000,000 |
| 502 | Seller* | 1-150,000 | \$671 |
| | | 150,001 – 500,000 | \$671 plus 0.143% of any amount in excess of \$150,000 |
| | | 500,001 – 1,000,000 | \$1171.50 plus 0.11% of any amount in excess of \$500,000 |
| | | 1,000,001 or more | \$1721.50 plus 0.077% of any amount in excess of \$1,000,000 |

*If the contract for sale is for a Strata Title, add \$77.00 if acting for the Seller, and \$132.00 if acting for the Buyer.

ITEM 6 –PREPARE DOCUMENTS AND COPIES FOR EXECUTION AND COPYING

| Ref | Description of task | Maximum Amount |
|---|---|-------------------|
| Preparation of documents | | |
| 601 | Documents which could economically be a standard precedent | \$11.00 per sheet |
| 602 | Documents which could not economically be a standard precedent | \$44.00 per sheet |
| All copies for execution and cost of binding | | |
| 603 | Each document for execution | \$5.50 per page |
| Copying (other than item 603) | | |
| 604 | Copies where reasonably necessary, including of documents for which allowance is otherwise made in this Determination | \$0.165 per page |

ITEM 7 – ATTENDANCES AND PERFORMANCE OF WORK WHERE ITEMS 1–6 DO NOT APPLY, AND TRAVEL

| Ref | Practitioner | Maximum Rate |
|-----|---|----------------|
| 701 | Practitioner (admitted 5 years or more) | \$484 per hour |
| 702 | Practitioner (admitted less than 5 years) | \$341 per hour |
| 703 | Clerk/Paralegal | \$231 per hour |

Note: The reference to practitioner in this Determination includes all Australian legal practitioners even if the services were rendered in another State or Territory. Where a local legal 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.

Travel

704 Time spent travelling by a law practice is to be charged at no more than one half of the rates contained in items 701 to 703, with a maximum of 8 hours in any one day.

Made by the Legal Costs Committee on 20 May 2015.