

LEGAL PRACTICE ACT 2003

**LEGAL PRACTITIONERS (SUPREME COURT) (CONTENTIOUS BUSINESS)
REPORT 2006**

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 (Supreme Court) (Contentious Business) Report 2006*.

(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 2006*.

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 (Supreme Court) (Contentious Business) Determination 2006*, the Legal Costs Committee -

- (a) reviewed all submissions received as a result of the notice given under section 213 of the Act;
- (b) reviewed the operation of the time based system of calculating costs;
- (c) reviewed the impact of movements in the Consumer Price and Labour Price Indices for the financial year ending June 2005, and for the September 2005, December 2005 and March 2006 quarters;
- (d) collated and reviewed the information gained from an electronic questionnaire distributed to legal practitioners in Western Australia; and
- (e) distributed a questionnaire amongst a number of users of legal services and made that questionnaire available to the public electronically on the Committee's website.

PART 3 – REPORT OF THE COMMITTEE'S CONCLUSIONS

Maximum hourly and daily rates changed – scale of costs amended

4. (1) The information gained as a result of the inquiries and submissions described in clause 3 satisfied the Legal Costs Committee that the manner in which legal services are provided made it appropriate to continue 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 2006*. There were no appropriate methodologies put to the Committee other than hourly and daily rates.

(2) 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 *Legal Practice Act 2003*, the Legal Costs Committee determined it is appropriate to –

- (a) reorder the scale to better reflect the flow of litigation and changes to appeal procedures; and
- (b) amend terminology to reflect current practice.

(3) 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 the impact of relevant Australian Bureau of Statistics data, submissions from the legal profession, data provided by the Law Society of Western Australia, and the incidental administrative implications of the calculation of the Goods and Services Tax, that the hourly and daily rates referred to in subclause 4 (1) be varied from the hourly and daily rates used in the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2004*¹. Those rates are set out in the Table to clause 8 of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2006*.

(4) 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 9 of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2006*.

(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 Practice Act 2003* or any successor legislation.

1. [Published in Gazette 25 June 2004 pp.2315 -23]

Ted Sharp, Chairman
Michael McPhee, Deputy Chairman
Angela Gaffney, Member
Clare Thompson, Member
Marcus Cocker, Member
Janice Dudley, Member

SCHEDULE

LEGAL PRACTICE ACT 2003

LEGAL PRACTITIONERS (SUPREME COURT) (CONTENTIOUS BUSINESS) DETERMINATION 2006

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

Citation

1. This determination may be cited as the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2006*.

Commencement

2. This determination comes into operation on 1 July 2006.

Application

3. (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 2004* 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 Practice Act 2003* or any successor legislation.

(3) This determination does not apply to the remuneration of practitioners based on costs incurred before 1 July 2006.

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

4. 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.

Substantive changes to the Scale

5. (1) The practice of certification for second counsel or for Senior Counsel is no longer required by the Scale, which brings the practice in this State into line with other Australian jurisdictions. However, where fees are claimed for second counsel or for Senior Counsel, it is anticipated that the Taxing Officer shall consider whether the briefing of second counsel, or Senior Counsel, was reasonably necessary in the circumstances.

(2) When the only issue to be tried is assessment of damages, the Scale no longer provides for a maximum 75% of the Scale. The former practice was considered to have resulted in some inconsistencies and anomalies in application.

Single Judge Appeals and Appeals to the Court of Appeal

6. Item 22 of the Table to clause 9 is intended to apply to appeals to a single judge and to appeals to the Court of Appeal.

Proceedings by way of prerogative writ

7. Item 27 of the Table to clause 9 is intended to cover all necessary procedural steps involved in the handling of prerogative writs, both in respect of an application for a motion to show cause and return before the Court of Appeal.

Maximum hourly and daily 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. 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 4 of the *Legal Practitioners (Supreme Court) (Contentious Business) Report 2006*.

Table

Fee Earner		Maximum allowable hourly and daily rates
Senior Practitioner (admitted for more than 5 years)	(SP) ^α - hourly rate	\$363
Junior Practitioner (admitted for less than 5 years)	(JP) ^α - hourly rate	\$253
Clerk/Paralegal	(C/PL) - hourly rate	\$176
Counsel fees charged as a disbursement to practitioners or charged by in-house counsel:		
Counsel	(C)* - hourly rate	\$286
	- daily rate	\$3102
Senior Counsel	(SC)† - hourly rate	\$506
	- daily rate	\$4730

α 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.

Costs

9. (1) Subject to the provisions of subclause (2) and of the *Legal Practice Act 2003* 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 GST and 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 32 of the Table).

(2) Allowances made under item 32 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.	Writ: (a) Writ of summons, whether specially or generally endorsed, including instructions, but excluding Statement of Claim For each additional defendant	1.5 hours	SP	544
	(b) Statement of Claim	10 hours	SP	3,630
2.	Next friend or guardian <i>ad litem</i>	3 hours	JP	759
3.	Defence: (a) Memorandum of appearance	0.5 hours	C/PL	88
	(b) Defence	10 hours	SP	3,630
	(c) Counterclaim	10 hours	SP	3,630
4.	Reply and other pleadings: Reply (if necessary), defence to counterclaim, or any other pleading	10 hours	SP	3,630
5.	(a) Third party notice	2 hours	SP	726
	(b) Pleadings in third party proceedings	6 hours	SP	2,178
6.	(a) Requesting particulars of a pleading (where and to the extent necessary)	3 hours	JP	759
	(b) Giving particulars of a pleading	5 hours	JP	1,265
7.	Discovery: (a) Notice requiring discovery	0.33 hours	C/PL	58
	(b) Giving discovery of documents	10 hours	SP	3,630
8.	Inspection: Inspection of discovered documents whether by personal attendance or otherwise	per hour	SP	363

9.	Interrogatories: (a) Delivery of interrogatories (b) Answers to interrogatories	5 hours 10 hours	SP SP	1,815 3,630
10.	Chambers: (a) Proceedings in Chambers other than proceedings to which item 11 applies (b) Attending on a reserved judgment in Chambers (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders)	2 days preparation; 1 day hearing per hour	C SP	9,306 363
11.	Motions and originating process: Originating motion, originating summons or originating application	2 days preparation; 1 day hearing and Getting up – 50 hours	C SP	27,456
12.	Motions in Court not otherwise provided for	1 day preparation ½ day hearing	C	4,653
13.	Callover: Attending at a callover and all necessary preparation	per hour	SP	363
14.	Entry of judgment without trial			176
15.	Offers of compromise, notices, practice directions, etc: (a) Payment into or out of Court (b) Offer of compromise under O.24A (c) Acknowledgment of offer under O.24A (d) Acceptance of offer of compromise under O.24A (e) Notice of offer to consent to judgment (f) Other notices and certificates referred to or required by the Rules or procedures of the Court (including practice directions)	2 hours 4 hours 4 hours 2 hours	JP SP SP SP	506 1,452 44 1,452 726 44

16.	Getting up: Getting up case for trial (includes work reasonably and necessarily undertaken prior to commencement of proceedings)	100 hours	SP	36,300
17.	Examination of witness before trial by counsel or practitioner, pursuant to order			An allowance in accordance with item 19(c) or (d)
18.	Application for and striking jury	1 hour	JP	253
19.	Trial: Counsel fees			
	(a) Fee on brief, i.e. first day of trial and preparation	3 days preparation; 1st day of trial	C	12,408
	(b) Fee on brief for Senior Counsel, i.e. first day of trial and preparation	3 days preparation; 1st day of trial	SC	18,920
	(c) Counsel fee for the second and each successive day of hearing		C	3,102
	(d) Counsel fee for Senior Counsel for second and each successive day of hearing		SC	4,730
	(e) Solicitor attending trial	per hour	SP	363
	(f) Clerk attending trial	per hour	C/PL	176
	(g) Attending on reserved judgment (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders)	per hour	SP	363
20.	Re-trial or Re-hearing			
	(a) Getting up case for re-trial or re-hearing			Such amounts as are reasonable in the circumstances
	(b) Re-trial or re-hearing			
21.	(a) Special case, case stated (otherwise than by way of appeal) or trial of an issue			Such amounts as are reasonable in the circumstances
	(b) For the second and each successive day of the trial or hearing			

22.	Appeals to the Court of Appeal and Single Judge Appeals (including appeals by way of case stated) (a) Appeal Notice, Service Certificate, Notice of Respondent's Intention (b) Appellant's Case, Respondent's Answer including relevant forms and all annexures (c) Appellant's Reply to Notice of Contention, when required (d) Settling appeal book indexes (including preparation) (e) An application in an appeal, an interlocutory or directions hearing before a single Judge or Registrar (f) Getting up appeal for hearing (g) Counsel fee on hearing (including preparation) (h) Counsel fee for Senior Counsel (including preparation) (i) Counsel fee for the second and each successive day of hearing (j) Counsel fee for Senior Counsel for the second and each successive day of hearing (k) Solicitor attending appeal (l) Attending on reserved decision (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders)	1 hour 40 hours 10 hours 8 hours 10 hours 10 hours 2 days preparation; 1 day hearing 2 days preparation; 1 day hearing per hour per hour	SP SC SC JP C SP C SC C SC SP SP	363 20,240 5,060 2,024 2,860 3,630 9,306 14,190 3,102 4,730 363 363
23.	Pretrial, mediation, conferrals, 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	 363

24.	Orders: Settling and extracting judgment or order			
	(a) With appointment	2 hours	JP	506
	(b) Without appointment	0.75 hours	JP	190
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 amounts as are reasonable in the circumstances
27.	Proceedings by way of prerogative writ			
	(a) Motion for order to show cause (including preparation and hearing)	20 hours	SP	7,260
	(b) Getting up for hearing	10 hours	SP	3,630
	(c) Counsel fee on hearing of application for order absolute (including preparation)	2 days preparation; 1 day hearing	C	9,306
	(d) Counsel fee for Senior Counsel (including preparation)	2 days preparation; 1 day hearing	SC	14,190
	(e) Counsel fee on the second and each successive day of hearing (including preparation)		C	3,102
	(f) Counsel fee for Senior Counsel on the second and each successive day of hearing (including preparation)		SC	4,730
	(g) Solicitor attending hearing	per hour	SP	363
	(h) Attending on reserved decision (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders)	per hour	SP	363
28.	(a) Execution			264
	(b) If against land, an additional	3 hours	JP	759

29.	Taxing including drawing: (a) Drawing bill of costs, copies and service; and (b) Taxation of costs (including the time spent in preparing for the taxation)		SP	Such amounts as are reasonable in the circumstances
30.	Copying: Photocopies where necessary, including of documents for which allowance is otherwise made in this Determination -	per page		1.00
31.	Accounts and inquiries: Taking accounts; inquiries		SP	Such amounts as are reasonable in the circumstances
32.	Other work: (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	506 363 286 253 176
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.			

Made by the Legal Costs Committee on 20 June 2006.