

LEGAL PRACTITIONERS ACT 1893

LEGAL PRACTITIONERS (WORKERS' COMPENSATION) (CONCILIATION PROCEEDINGS, REVIEW PROCEEDINGS AND COMPENSATION MAGISTRATE'S COURT) REPORT 2003

Made by the Legal Costs Committee under section 58ZA of the Act.

PART 1 - PRELIMINARY

Citation

1. (1) This report may be cited as the *Legal Practitioners (Workers' Compensation) (Conciliation Proceedings, Review Proceedings and Compensation Magistrate's Court) Report 2003*.

(2) The determination set out in the Schedule to this report is referred to in this report as the *Legal Practitioners (Workers' Compensation) (Conciliation Proceedings, Review Proceedings and Compensation Magistrate's Court) Determination 2003*.

PART 2 – NOTICE AND INQUIRIES

Notice under section 58Y of the Act

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

Review under section 58X of the Act

3. The Legal Costs Committee has reviewed the previous determination¹ made on 13 June 2000.

Inquiries and submissions under Section 58Y of the Act

4. (1) Before making the *Legal Practitioners (Workers' Compensation) (Conciliation Proceedings, Review Proceedings and Compensation Magistrate's Court) Determination 2003* the Legal Costs Committee –

- (a) reviewed all submissions received as a result of the notices given under section 58Y of the Act;
- (b) consulted with the Chief Magistrate of the Local Court;
- (c) consulted with the Conciliation and Review Directorate, established in accordance with Division 1A of Part V of the *Workers' Compensation and Rehabilitation Act 1981*;
- (d) consulted with the Law Society of Western Australia (Inc.);
- (e) considered the *Legal Practitioners (Local Court) (Contentious Business) Determination 2002*²;
- (f) reviewed the impact of movements in the Consumer Price Index for the financial years ending 30 June 1997 to 30 June 2002 (inclusive); and
- (g) had regard to the impact of the Goods and Services Tax on the level of fees charged by Practitioners.

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

¹[Published in the Government Gazette on 23 June 2000 at pp.3237 - 47]

²[Published in the Government Gazette on 24 September 2002 at pp 4749- 4757]

PART 3 – REPORT OF THE COMMITTEE’S CONCLUSIONS

Hourly and daily rates changed – scale of costs amended

6. (1) It is the recommendation of the Legal Costs Committee, after reviewing the information gained as a result of the inquiries and submissions described in clause 4, that the hourly rates charged by practitioners under the *Legal Practitioners (Local Court) (Contentious Business) Determination 2002* should be adopted as the basis for costs for the supply of legal services covered under the *Legal Practitioners (Workers’ Compensation) (Conciliation Proceedings, Review Proceedings and Compensation Magistrate’s Court) Determination 2003*.

(2) The hourly rates referred to in subclause (1) are set out in the Table to clause 4 of the *Legal Practitioners (Workers’ Compensation) (Conciliation Proceedings, Review Proceedings and Compensation Magistrate’s Court) Determination 2003*.

(3) It is the recommendation of the Legal Costs Committee as a result of inquiries and submissions described in clause 4 that the scale of costs be as set out in the Table to clause 4 of the *Legal Practitioners (Workers’ Compensation) (Conciliation Proceedings, Review Proceedings and Compensation Magistrate’s Court) Determination 2003*.

(4) It is the further recommendation of the Committee, given the amendments to the hourly rates and scale of costs in the manner set out in the Table to clause 4 and in the Schedules to clauses 7, 8 and 9 of the *Legal Practitioners (Workers’ Compensation) (Conciliation Proceedings, Review Proceedings and Compensation Magistrate’s Court) Determination 2003* 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 (Workers Compensation) (Conciliation Proceedings and Compensation Magistrate's Court) hourly rates and scale of costs from that date.

TED SHARP, Chairman
MICHAEL McPHEE, Deputy Chairman
JANINE FREEMAN, Member
ANGELA GAFFNEY, Member
CLARE THOMPSON, Member
MARCUS COCKER, Member

Schedule

LEGAL PRACTITIONERS ACT 1893

LEGAL PRACTITIONERS (WORKERS' COMPENSATION) (CONCILIATION PROCEEDINGS, REVIEW PROCEEDINGS AND COMPENSATION MAGISTRATE'S COURT) DETERMINATION 2003

Made by the Legal Costs Committee under section 58W of the Act.

PART 1 - PRELIMINARY

Citation

1. This determination may be cited as the *Legal Practitioners (Workers' Compensation) (Conciliation Proceedings, Review Proceedings and Compensation Magistrate's Court) Determination 2003*.

Commencement

2. This determination comes into operation on 1 March 2003.

Application

3. (1) Subject to subclause (2) this determination applies to contentious business carried out by practitioners in or for the purposes of proceedings before -

- (a) a conciliation officer; or
- (b) a review officer; or
- (c) a compensation magistrate's court,

within the meaning of the *Workers' Compensation and Rehabilitation Act 1981*.

(2) This determination does not apply to costs incurred with respect to the matters referred to in subclause (1) before the commencement of this determination.

PART 2 - DETERMINATION BY COMMITTEE

Hourly rates

4. (1) The Committee reviewed the information referred to in clause 4 of the *Legal Practitioners (Workers' Compensation) (Conciliation Proceedings, Review Proceedings and Compensation Magistrate's Court) Report 2003* and determined that-

- (a) in view of the flexibility afforded by the estimated times described in the Schedules; and
- (b) the provision in each Schedule allowing a practitioner to charge costs which do not exceed the maximum amounts set out in the Scales,

the appropriate hourly rates are comparable with those of the Local Court.

(2) The rates set out in the Table to this subclause are identical to those set out in the *Legal Practitioners (Local Court) (Contentious Business) Determination 2002*

Table to Clause 4

Fee Earner	Maximum allowable hourly rates
Practitioner (admitted for more than 5 years) ("SP")	\$250 per hour
Junior Practitioner (admitted for less than 5 years) ("JP")	\$175 per hour
Clerk or para legal (supervised by a practitioner) ("CPL")	\$75 per hour

Time based Scales of Costs

5. (1) In 1997 the Committee determined that time based Scales of Costs should continue to be adopted with respect to proceedings before -

- (a) a review officer; and
- (b) a compensation magistrate's court.

(2) The Committee determines that the Scales of Costs for the above proceedings and those before a conciliation officer shall continue to be time based.

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

6. From and including the date of commencement of this determination, the GST Determination insofar as it affects the hourly rates described in clause 4 and the calculation of fees under each of the items in the Schedules to clauses 7, 8 and 9, will cease to be of any further force or effect.

The Schedules

Schedule 1

7. Schedule 1 has effect with respect to proceedings before a conciliation officer.

Schedule 2

8. Schedule 2 has effect with respect to proceedings before a review officer.

Schedule 3

9. Schedule 3 has effect with respect to proceedings before a compensation magistrate's court.

Schedule 1

CONCILIATION PROCEEDINGS COSTS SCALE

Maximum amounts

1. Subject to clause 2 of this Schedule 1, the costs payable to a practitioner for each item described in column 2 of this Schedule 1 must not exceed the maximum amount opposite and corresponding to that item set out in column 5 of this Schedule 1.

Provision for complex matters

2. Where any matter in relation to which remuneration is prescribed under items 1 - 6 of this Schedule 1 is unusually complex, a practitioner is entitled to charge the remuneration which is reasonable in the circumstances.

Column 1	Column 2	Column 3	Column 4	Column 5
ITEM	DESCRIPTION	TIME HOURS	FEE EARNER	\$
1	Preparing and lodging application for conciliation (Form 1) including instructions.	1 - 2	CPL - SP	75 – 500
2	Preparing for conference which includes getting up case for conference and consists of all aspects not otherwise specified associated with preparing for the conference.	1 - 2	CPL - SP	75 – 500
3	Attendance at conciliation conference by practitioner, clerk or paralegal – per hour.		SP JP CPL	250 175 75
4	Any other time necessarily spent not included in any item in this scale – per hour.		SP JP CPL	250 175 75
5	Electronic communications and copying (a) For each communication electronically transmitted or received – irrespective of number of pages. (b) Photocopies where necessary – per page.			 5.00 0.50
6	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.			

Schedule 2

REVIEW PROCEEDINGS COSTS SCALE

Maximum amounts

1. Subject to clause 2 of this Schedule 2, the costs payable to a practitioner for each item described in column 2 of this Schedule 2 must not exceed the maximum amount opposite and corresponding to that item set out in column 5 of this Schedule 2.

Provision for complex matters

2. Where any matter in relation to which remuneration is prescribed under items 1 - 9 of this Schedule 2 is unusually complex, a practitioner is entitled to charge the remuneration which is reasonable in the circumstances.

Column 1	Column 2	Column 3	Column 4	Column 5
ITEM	DESCRIPTION	TIME HOURS	FEE EARNER	\$
1	Preparing and lodging application (Form 3) including instructions.	0.5 - 1	CPL - SP	38 – 250
2	Preliminary hearing in review including preparation for hearing.	1 - 3	CPL - SP	75 – 750
3	Particulars and discovery			
	(a) Providing particulars (where ordered).	0.5 - 2	CPL - SP	38 – 500
	(b) Giving discovery of documents (where ordered).	0.5 - 2	CPL - SP	38 – 500
4	Preparing for review hearing which includes getting up case for review hearing and consists of all aspects not otherwise specified associated with preparing for the review hearing, including taking statements from and proofing witnesses.	2 - 12	CPL - SP	150 – 3,000

5	<p>Review hearing</p> <p>(a) Counsel fee on review hearing (includes preparation and first day of review hearing).</p> <p>(b) Counsel fee for second and each successive day of review hearing.</p> <p>Note: In relation to item (a) and item (b), if the review hearing -</p> <p>(1) lasts less than 2 hours; or</p> <p>(2) does not commence and is settled or adjourned on the day of the hearing,</p> <p>then the amount which is applicable under items (a) and (b) will be the amount which is reasonable in the circumstances.</p> <p>(c) Paralegal, clerk or practitioner attending review hearing - per hour.</p>	<p>3 - 12</p> <p>2 - 8</p>	<p>CPL – SP</p> <p>CPL – SP</p> <p>CPL JP</p>	<p>225 – 3,000</p> <p>150 – 2,000</p> <p>75 175</p>
6	Any other time necessarily spent not included in any item in this Scale - per hour.		CPL JP SP	75 175 250
7	<p>Taxation and costs</p> <p>(a) Preparing bill of costs, including filing, service and copies.</p> <p>(b) Attending taxation - per hour.</p>	0.5 - 1	CPL - JP CPL JP	38 - 175 75 175
8	<p>Electronic communications and copying</p> <p>(a) For each communication electronically transmitted or received – irrespective of number of pages.</p> <p>(b) For each photocopy – per page.</p>			<p>5.00</p> <p>0.50</p>
9	<p>Disbursements</p> <p>In addition to the fees and charges allowed under this determination –</p> <p>(a) as between practitioner and client, a practitioner may charge and be allowed disbursements necessarily or reasonably incurred; and</p> <p>(b) as between party and party, a party may be allowed disbursements necessarily or reasonably incurred.</p>			

Schedule 3

COMPENSATION MAGISTRATE'S COURT COSTS SCALE

Maximum amounts

1. Subject to clause 2 of this Schedule 3, the costs payable to a practitioner for each item described in column 2 of this Schedule 3 must not exceed the maximum amount opposite and corresponding to that item set out in column 5 of this Schedule 3.

Provision for complex matters

2. Where any matter in relation to which remuneration is prescribed under items 1 - 10 of this Schedule 3 is unusually complex, a practitioner is entitled to charge the remuneration which is reasonable in the circumstances.

Column 1	Column 2	Column 3	Column 4	Column 5
ITEM	DESCRIPTION	TIME HOURS	FEE EARNER	\$
1	Initial attendance to take instructions including, where applicable, reviewing transcripts and preparation and lodgement of any Notice of Appeal or preparation of a response to an appeal (as the case may be).	2 - 8	CPL – SP	150 – 2,000
2	Attendance at court prior to hearing (including pre-trial conference, directions hearing or preliminary hearing) and including preparation for the conference.	1 - 3	CPL - SP	75 - 750
3	Appearances in Chambers not otherwise dealt with – per hour.		CPL JP SP	75 175 250
4	Particulars and discovery (a) Providing discovery (where ordered). (b) Providing particulars (where ordered). (c) Preparing agreed statement of facts. In respect of items (b) and (c), the fee includes filing, service and all copies.	0.5 - 2 0.5 - 2 0.5 - 2	CPL – SP CPL – SP CPL – SP	38 - 500 38 - 500 38 - 500
5	Preparing for hearing which involves getting up case for hearing and consists of all aspects not otherwise specified associated with preparing for the hearing, including, where applicable, taking statements from and proofing witnesses, advice on evidence and law and delivering brief to counsel, and includes Chambers applications to strike out an appeal, for a stay, for an extension of time in which to appeal, for an expedited hearing date or to enforce orders of the Court.	2 - 10	CPL - SP	150 – 2,500

6	Hearing			
	(a) Counsel fee on hearing (includes preparation and first day of hearing).	3 - 12	CPL – SP	225 – 3,000
	(b) Counsel fee for second and each successive day of hearing.	2 - 8	CPL - SP	150 – 2,000
	(c) Counsel fee on hearing for second counsel (if certified for) - an allowance not exceeding two-thirds of the amounts that would have been allowed under items (a) and (b) if counsel had appeared alone.			
	Note: In relation to items (a), (b) and (c) if the hearing - (1) lasts less than 2 hours; or (2) does not commence and is settled or adjourned on the day of hearing, then the amount which is applicable under items (a), (b) and (c), will be the amount which is reasonable in the circumstances. (d) Paralegal, clerk or practitioner attending hearing - per hour.			
		CPL JP SP	75 175 250	
(e) Attending on a reserved judgment.	1 - 2	CPL - SP	75 - 500	
7	Any other time necessarily spent not included in any item in this Scale - per hour.		CPL JP SP	75 175 250
8	Issuing and arranging service of witness summons including copies.	0.5 - 1	CPL	38 - 75
9	Taxation of costs			
	(a) Preparing bill of costs, including filing, service and copies.	0.5 - 1	CPL - JP	38 - 175
	(b) Attending on taxation - per hour.		JP	175

10	Electronic communications and copying (a) For each communication electronically transmitted or received – irrespective of number of pages. (b) For each photocopy – per page.			5.00 0.50
11	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.			

Dated at Perth 21 January 2003

TED SHARP, Chairman
MICHAEL McPHEE, Deputy Chairman
JANINE FREEMAN, Member
ANGELA GAFFNEY, Member
CLARE THOMPSON, Member
MARCUS COCKER, Member