

## LEGAL PRACTICE ACT 2003

### LEGAL PRACTITIONERS (LOCAL COURT) (CONTENTIOUS BUSINESS) 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 (Local Court) (Contentious Business) Report 2005*.
- (2) The determination set out in the Schedule to this report is referred to in this report as the *Legal Practitioners (Local Court) (Contentious Business) 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 (Local Court) (Contentious Business) 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 Law Society of Western Australia (Inc.);
  - (d) reviewed the *Legal Practitioners (Local Court) (Contentious Business) Determination 2002*<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 1 May 2005<sup>2</sup>.

<sup>1</sup> [Published in Gazette 24 Sept 2002 pp. 4749-57].

<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 unchanged

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*, amendment to the rates used in the *Legal Practitioners (Local Court) (Contentious Business) Determination 2002* is not warranted.
  
- (2) It is the recommendation of the Legal Costs Committee that the hourly rates and scale of costs used in the *Legal Practitioners (Local Court) (Contentious Business) Determination 2002* be adopted as the basis for fixing costs in the *Legal Practitioners (Local Court) (Contentious Business) Determination 2005*. Those rates and scales are set out in the Tables to clauses 12 and 13 of the *Legal Practitioners (Local Court) (Contentious Business) Determination 2005*.
  
- (3) 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*.

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 (LOCAL COURT) (CONTENTIOUS BUSINESS) 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 (Local Court) (Contentious Business) Determination 2005*.

#### Commencement

2. This determination comes into operation on 1 March 2005.

#### 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 the Local 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.

#### Routine and non routine scales

4. (1) The Legal Costs Committee determines that the division of work into routine and non routine matters introduced under the *Legal Practitioners (Local Court) (Contentious Business) Determination 1997\** should continue to be adopted.

(2) The routine scale applies unless –

- (a) the parties agree; or
- (b) a Magistrate determines at any time,

that the non routine scale applies.

#### No minimum charge

5. 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 6. For example, item 13(a) in the non routine Scale Division 1 provides for a range of \$525 to \$875 for the work involved. The figure of \$875 is a maximum, but on taxation less than \$525 might be allowed. Where there is a range of figures the purpose is to indicate to the Taxing Officer what reasonably may be expected in most cases.

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

### **Fixed items**

6. Some items in the Scale have been fixed without any indication of how these items have been calculated. These items are 1(b), 3, 16(a) and 16(i). These have been fixed because the Court staff require a fixed figure when completing the Form of Summons, Entry of Judgment by Default, Judgment Summons, or the like.

### **Scale divisions**

7. The Committee has adopted a Division providing a Scale of Costs for claims under \$3,000 and a Division providing a Scale for claims exceeding \$3,000 and up to the limit of the Local Court jurisdiction. The figure of \$3,000 was adopted because it corresponds with the jurisdictional limit of the Small Disputes Division of the Local Court. In each of these Divisions there is a routine and a non routine Scale.

### **Time estimates**

8. 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 13(a), which relates to preparation for trial or getting up case for trial, the routine Scale in Division 2 assumes that no more than 3 hours would be spent in preparation and getting up case for trial. If at the time judgment is given, the Magistrate or the Court is reasonably satisfied that the case did involve more than 3 hours by way of preparation, then the Magistrate or the Court may order that the costs be taxed on the non routine Scale. The hours referred to in the non routine Scale will guide the Taxing Officer about the amount which should be allowed in a particular case.

### **Settled procedures**

9. It is intended that item 13 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 taxation.

### **Independent counsel**

10. If independent counsel is not retained in the case, then this will be a factor to be considered by the Taxing Officer who might not then allow a full fee on brief under item 14(b), as well as a full getting up case allowance under item 13.

### **First trial date**

11. A new item 14(a) has been included to address costs associated with the Local Court requirement upon entry for trial to list a date prior to the date listed for trial.

### **Hourly rates**

12. The hourly rates set out in the Table to this clause are the maximum hourly 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 13.

**Table to Clause 12**

<b>Fee Earner</b>		<b>Maximum allowable hourly rates</b>
Practitioner (admitted for 5 years or more) (SP)	- hourly rate	\$250
Junior Practitioner (admitted for less than 5 years) (JP)	- hourly rate	\$175
Clerk/Paralegal (CPL)	- hourly rate	\$75

**Scale of costs**

**13.** 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 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 13**

**LOCAL COURT SCALE OF COSTS 2005**

ITEM		DIVISION 1 Not Exceeding \$3000				DIVISION 2 Exceeding \$3000			
		ROUTINE		NON ROUTINE		ROUTINE		NON ROUTINE	
		hours	\$	hours	\$	hours	\$	hours	\$
1.	(a) Letter of demand issued prior to commencing proceedings	0.3	52	0.3	52	0.3	52	0.3	52
	(b) Summons (including endorsement)		81		81		139		139
2.	Appointment of legal representative for person under disability (next friend or guardian ad litem)	0.5	87	0.5	87	0.5	87	0.5	87
3.	Entry of Judgment by default		23		23		23		23
4.	Particulars of Claim (where required or by order)	0.5	87	1	175	0.5	87	1-2	175 - 500
5.	Particulars of defence	0.5	87	1	175	0.5	87	1-2	175 - 500
6.	Counterclaim	0.5	87	1	175	0.5	87	1-2	175 - 500
7.	Reply (where necessary)	0.5	87	0.5	87	0.5	87	0.5	125
8.	Notices of any kind required by the Act or the Rules and not otherwise specified in the Scale	0.3	52	0.3	52	0.3	52	0.3	52
9.	Payment into or out of court (including requisite notices)	0.5	87	0.5	87	0.5	87	0.5	87
10.	Application for trial or assessment of damages	0.2	35	0.2	35	0.2	35	0.2	35

ITEM		DIVISION 1 Not Exceeding \$3000				DIVISION 2 Exceeding \$3000			
		ROUTINE		NON ROUTINE		ROUTINE		NON ROUTINE	
		hours	\$	hours	\$	hours	\$	hours	\$
11.	Examination of witness before trial pursuant to order	per hour	175	per hour	175	per hour	175	per hour	250
12.	(a) Pretrial conference (including necessary preparation, notices, correspondence, and briefing counsel): with appearance by solicitor	1	175	1-2	175 - 350	1	175	1-3	175 - 750
	with appearance by clerk	1	75	1-2	75 - 150	1	75	1-3	75 - 225
	(b) Attending callover	0.5	87	0.5	87	0.5	87	0.5	87
	(c) Attending informal conferences where reasonably held after commencement of proceedings	per hour	175	per hour	175	per hour	175	per hour	175
13.	Preparation for trial which involves getting up case for trial and consists of all aspects not otherwise specified associated with preparing for trial including taking statements from and proofing witnesses, advice on evidence and law and delivering brief to counsel.  Note: If the action terminates before trial or listing for trial, the Taxing Officer may allow remuneration under this item and may allow less than the amount or minimum amount stated in the column as the officer finds reasonable in the circumstances.								
	(a) Where liability is an issue	2.5	437	3-5	525 - 875	3	525	4-20	700 - 5000
	(b) For an assessment of damages only	1.7	298	2-3	350 - 525	2	350	2-10	350 - 2500
	(c) Getting up case for rehearing or new trial	2.5	437	2.5-5	437 - 875	3	525	3-10	525 - 2500
14.	Trial: (a) First Trial Date	1-2	175-350	1-2	175-500	1-2	175-350	1-2	175-500
	(b) Fee on brief i.e., First day of trial (including mastering brief)	5	875	6-7	1050-1225	6	1050	7-15	1225-3750
	(c) Each additional day	5	875	5	875	5	875	5	875 - 1250



		DIVISION 1 Not Exceeding \$3000				DIVISION 2 Exceeding \$3000			
		1	75	1	75	1	75	1	75
	(h) Warrant of Execution where land involved								
	(i) Examination in Aid of Execution (including all incidental attendances by solicitor or clerk)		116		116		116		116
17.	Drawing up and serving interlocutory orders (where ordered or required)	0.5	37	0.5	37	0.5	37	0.5	87
18.	Third party notice and particulars	0.5	87	0.5	87	0.5	87	0.5	87
19.	Applications in court or chambers not otherwise provided for	0.5	87	0.5	87	1	175	1	250
20.	(a) Delivery of interrogatories	0.5	87	1	175	0.5	87	1-3	175 - 750
	(b) Answers to interrogatories	0.5	87	0.5	87	0.5	87	1-3	175 - 750
21.	(a) Notice requiring discovery	0.3	22	0.5	37	0.3	22	0.5	87
	(b) Giving discovery	0.5	87	1	175	0.5	87	1-2	175 - 500
	(c) Inspection and giving inspection	0.5	87	1	175	0.5	87	1-2	175 - 500
22.	Interpleader proceedings (where uncontested)	0.5	87	0.7	122	0.8	140	1	175
23.	Application for garnishee order (where uncontested)	1.5	262	1.5	262	1.5	262	1.5	262
24.	Recovery of possession (undefended, including appearance)	2	350	2-2.5	350 - 437	2	350	2-2.5	350 - 437
25.	Drawing Bill of Costs, copies and service	0.5	37	1	175	0.6	105	1	175
26.	Attending on taxation of costs:								
	(a) with an appearance by solicitor	0.5	87	0.7	122	0.5	87	1-2	175-350
	(b) with an appearance by clerk	0.5	37	0.7	52	0.5	37	1-2	75-150
27.	Attending on taking accounts, inquiries	per hour	175	per hour	175	per hour	175	per hour	175

		DIVISION 1 Not Exceeding \$3000				DIVISION 2 Exceeding \$3000			
28.	Preparation of Judgments or Orders (where necessary)	0.5	37	1	175	0.5	37	1	175
29.	Registration of Judgments including those under the <i>Service and Execution of Process Act 1992 (Cwlth)</i>	0.7	122	0.7	122	0.7	122	0.7	122
30.	Affidavits justifying choice of Court	0.5	37	0.5	37	0.5	37	0.5	87
31.	Application for review of taxation of costs by Magistrate	0.5	87	0.7	122	0.5	87	0.7	122
32.	Photocopies where necessary – per page	\$0.50							
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.								
34.	Allowances for Witnesses  In fixing an allowance for witnesses, including the Plaintiff and Defendant, the Taxing 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 15 February 2005.