

LEGAL PRACTICE ACT 2003

LEGAL PRACTITIONERS (MAGISTRATES COURT) (CIVIL JURISDICTION) REPORT 2008

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 2008*.

(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 2008*.

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. (1) The Legal Costs Committee initiated a review of the scale of costs in the Magistrates Court to maintain and enhance consistency where practicable with the format of the costs determinations applicable to the Supreme Court of Western Australia and the District Court of Western Australia.

(2) Before making the *Legal Practitioners (Magistrates Court) (Civil Jurisdiction) Determination 2008* 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. and the Western Australian Bar Association Inc.;
- (d) reviewed the *Legal Practitioners (Magistrates Court) (Civil Jurisdiction) Determination 2006*¹; and
- (e) had regard to relevant provisions of the *Magistrates Court Act 2004* and the *Magistrates Court (Civil Proceedings) Act 2004*.

¹ [Published in Gazette 26 September 2006 pp.4226-4235].

PART 3 – REPORT OF COMMITTEE’S CONCLUSIONS

Hourly rates and scale of costs continued

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 provisions of the *Magistrates Court Act 2004* and the *Magistrates Court (Civil Proceedings) Act 2004*, it remains 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 that:

- (a) as a result of the inquiries and submissions described in clause 3;
- (b) having considered the impact of relevant Australian Bureau of Statistics data;
- (c) having considered submissions and data from The Law Society of Western Australia and the Western Australian Bar Association; and
- (d) 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 (Magistrates Court) (Civil Jurisdiction) Determination 2006* (supra) as the basis for the recommended scale of costs which have generally been rounded up or down to represent an increase of 10% inclusive of the Goods and Services Tax and for administrative convenience, divisible by 11. Those rates are set out in the Table to clause 8 of the *Legal Practitioners (Magistrates Court) (Civil Jurisdiction) Determination 2008*.

(3) Having regard to the information gained as a result of the inquiries and submissions described in clause 3 the Legal Costs Committee has concluded it remains appropriate to:

- (a) order the scale to reflect the procedures utilised in the Magistrates Court and the flow of litigation;
- (b) maintain consistency where practicable with the format of the costs determination applicable to the Supreme Court of Western Australia; and
- (c) 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 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 Section 221 of the *Legal Practice Act 2003*.

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

Schedule

LEGAL PRACTICE ACT 2003

LEGAL PRACTITIONERS (MAGISTRATES COURT) (CIVIL JURISDICTION) DETERMINATION 2008

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 2008*.

Commencement

2. This Determination comes into operation on 1 July 2008.

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 \$2,640 for the work involved. The figure of \$2,640 is a maximum, but on taxation less than \$2,640 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 1, 2(a), 4(a), 12, 13(c), 18(a)(ii), 19(a), 21 and 22(a). 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 16(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. Some items reflect a number of hours that have been estimated so as to include work done with respect to the process of obtaining and considering evidence, interrogatories, documents, disclosures and the like, for example items 2(b), 4(b), 5, 10 and 20. 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 14 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, costs may be recovered for that work and allowed on an 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.

(2) The daily rates set out in the table below are intended to cover all work done on a hearing or trial day whether in or out of court including preparation of written submissions and is not intended to be supplemented in any way by additional hourly charges given that the maximum number of hours allowed for the daily rate is 10 hours per day.

(3) The Legal Costs Committee acknowledges that the implementation of clause 8 (2) will result in a proportionally smaller increase for Counsel daily rates, and a proportionally larger increase for Senior Counsel daily rates, in contrast to a straight increase of 10% being applied. The Legal Costs Committee considers that the anomaly of the Counsel daily rate being calculated at slightly more than 10 hours per day, and the Senior Counsel rate previously being calculated at slightly less than 10 hours per day needs to be corrected and for that reason, the disproportionate increases in each of the two rates appear in this Determination.

Table

Fee Earner			Maximum allowable rates
Senior Practitioner (admitted for 5 years or more)	(SP) ^α	hourly rate	\$330
Junior Practitioner (admitted for less than 5 years)	(JP) ^α	hourly rate	\$231
Clerk/Paralegal	(C/PL)	hourly rate	\$110
Counsel fees charged as a disbursement to practitioners			
or charged by in-house Counsel:			
Counsel	(C)*	hourly rate	\$253
		daily rate	\$2,530
Senior Counsel	(SC)†	hourly rate	\$429
		daily rate	\$4,290

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.

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

MAGISTRATES COURT CIVIL JURISDICTION SCALE OF COSTS 2008

Item		Time	Fee Earner	Maximum Amount \$
1.	Letter of demand issued prior to proceedings			66
2.	<p>Claim:</p> <p>(a) Claim, including instructions, but excluding Statement of Claim</p> <p>For each additional defendant</p> <p>(b) Statement of Claim (including preparation and lodgement of a particulars of claim, where necessary or by order, and-statutory declaration and list of documents)</p>	8 hours	SP	330 44 2,640
3.	Appointment of litigation guardian	2 hours	JP	462
4.	<p>Response:</p> <p>(a) Lodgement of a response to a claim</p> <p>(b) Statement of defence (including preparation and lodgement of a statutory declaration)</p> <p>(c) Counterclaim, including instructions and statement of claim in the counterclaim, statutory declaration in support of counterclaim (where required), and all other documents necessary</p>	8 hours 8 hours	SP SP	165 2,640 2,640
5.	Third party claim, including instructions and list of documents	8 hours	SP	2,640
6.	<p>Disclosure:</p> <p>Giving additional disclosure where ordered by the Court</p>	3 hours	JP	693
7.	<p>Inspection:</p> <p>Inspection and giving inspection whether by personal attendance or otherwise</p>	per hour	JP	231
8.	<p>Interrogatories:</p> <p>Answers to interrogatories including affidavit</p>	5 hours	SP	1,650

Item		Time	Fee Earner	Maximum Amount \$
9.	<p>Interpleaders: Interpleader proceedings:</p> <p>(a) where uncontested</p> <p>(b) where contested</p>	1 hour	JP	<p>231</p> <p>An allowance in accordance with item 10</p>
10.	<p>Application to the Court:</p> <p>Proceedings and/or responses to applications (including all documentation and preparation for hearing)</p> <p><i>Note: In relation to the above, if the proceedings 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></p>	1 day preparation ½ day hearing	C	3,795
11.	Applications in court, including applications under Part 21 of the <i>Magistrates Court (Civil Proceedings) Rules 2005</i> , not otherwise provided for	1 hour	SP	330
12.	Application for entry of judgment by default (<i>without trial</i>)			110

Item		Time	Fee Earner	Maximum Amount \$
13.	Offers of settlement, notices, practice directions, applications, declarations, memoranda, affidavits: (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, lodgement and service of affidavits and statutory declarations not otherwise provided for (e) Drawing and serving of interlocutory orders (where ordered or required) (f) Preparation, lodgement and service of a listing conference memorandum (g) Applications in court not otherwise provided for	2 hours 2 hours per hour 2 hours 6 hours 1 hour	SP SP SP JP SP JP	660 660 110 330 462 1,980 231
14.	Getting up: Preparation for trial (includes work reasonably and necessarily undertaken prior to commencement of proceedings)	50 hours	SP	16,500
15.	Examination of witness before trial by a practitioner, pursuant to an order			An allowance in accordance with item 16(c) or (d)

Item		Time	Fee Earner	Maximum Amount \$
16.	<p>Trial:</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</p> <p>(e) Instructing practitioner attending trial</p> <p>(f) Clerk attending trial</p> <p><i>Note: In relation to paragraphs (a) - (f) if:</i> <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>(g) Attending on reserved judgment (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders)</p>	<p>2 days preparation 1st day of trial</p> <p>2 days preparation 1st day of trial</p> <p></p> <p></p> <p>per hour</p> <p>per hour</p> <p></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></p> <p>SP</p>	<p>7,590</p> <p>12,870</p> <p>2,530</p> <p>4,290</p> <p>231</p> <p>110</p> <p></p> <p>330</p>
17.	<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>330</p>
18.	<p>Judgments and orders:</p> <p>(a) Settling and extracting judgment or order</p> <p>(i) with appointment</p> <p>(ii) without appointment</p> <p>(b) Request for certified copy of judgment or order</p>	<p>1 hour</p>	<p>JP</p>	<p>231</p> <p>165</p> <p>110</p>

Item		Time	Fee Earner	Maximum Amount \$
19.	Enforcement: (a) Execution (b) If against land, an additional	3 hours	JP	165 693
20.	Proceedings in court pursuant to <i>Civil Judgments Enforcement Act 2004</i> for the following: (a) Means Inquiry (b) Default Inquiry (c) Suspension of enforcement order application (d) Application to cancel or amend an order; For each appearance by practitioner For each appearance by clerk	8 hours 3 hours	SP C/PL	2,640 330
21.	Registration of judgments: Registration of judgments including those under <i>Service and Execution of Process Act 1992 (Cwlth)</i>			165
22.	Assessment of costs including drawing bill: (a) Lodgement of bill of costs (b) Drawing bill of costs, copies and service (c) Making an objection to a bill (d) Assessment of costs (including the time spent in preparing for the assessment)		SP	44 Such amounts as are reasonable in the circumstances
23.	Appeals: An appeal to a Magistrate from a decision of a Registrar			Allowances calculated in accordance with item 10
24.	Copying: Photocopies where necessary, including of documents for which allowance is otherwise made in this Determination	per page		1.00
25.	Accounts and inquiries: Attending on taking accounts, inquiries		SP	Such amounts as are reasonable in the circumstances

Item		Time	Fee Earner	Maximum Amount \$
26.	<p>Other work:</p> <p>(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</p> <p>(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)</p>	per hour	SC SP C JP C/PL	429 330 253 231 110
27.	<p>Disbursements: 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>			
28.	<p>Allowances for witnesses: The amount of any costs to be paid in respect of work done by a practitioner in conducting any proceedings in a case may include a reasonable allowance for:</p> <p>(a) witnesses called because of their professional, scientific or other special skill or knowledge; and</p> <p>(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.</p>			

Made by the Legal Costs Committee on 17 June 2008.