

LEGAL PROFESSION ACT 2008

LEGAL PRACTITIONERS (SUPREME COURT) (CONTENTIOUS BUSINESS) REPORT 2010

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

PART 1—PRELIMINARY

Citation

1. (a) This Report may be cited as the *Legal Practitioners (Supreme Court) (Contentious Business) Report 2010*.
- (b) The Determination set out in the Schedule to this Report is referred to in this report as the *Legal Practitioners (Supreme Court) (Contentious Business) Costs Determination 2010*.

PART 2—NOTICE AND ENQUIRIES

Notice under section 278 of the Act

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

Inquiries and submissions under section 277 of the Act

3. Before making the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2010*, the Legal Costs Committee—

- (a) reviewed all submissions received as a result of the notice given under section 278 of the Act including those made by The Law Society of Western Australia (Inc) and The Western Australian Bar Association (Inc);
- (b) reviewed the impact of movements in the Consumer Price and Labour Price Indices for the financial year ending June 2009, and for the September 2009, December 2009 and March 2010 quarters; and
- (c) conferred with other legal practitioners.

PART 3—REPORT OF COMMITTEE'S CONCLUSIONS

Maximum hourly and daily rates changed—scale of costs amended

4. (a) 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 law practices as the basis for the rates used in the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2010*. No other appropriate methodologies were put to the Committee as an alternative to hourly and daily rates.
- (b) It is the recommendation of the Legal Costs Committee that—
 - (1) as a result of the inquiries and submissions described in clause 3;
 - (2) having considered the impact of relevant Australian Bureau of Statistics data;
 - (3) having considered submissions and data from The Law Society of Western Australia and the Western Australian Bar Association; and
 - (4) taking into account the incidental administrative implications of the calculation of the Goods and Services Tax,

the hourly and daily rates referred to in subclause 4(a) be varied from the hourly and daily rates used in the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2008*¹ as the basis for the recommended scale of costs which have been generally rounded up or down to represent various, increases of between 5.55% and 8.33% inclusive of the Goods and Services Tax and for administrative convenience, divisible by 11. Those rates are set out in the Table to clause 10 of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2010*.

- (c) It is the recommendation of the Legal Costs Committee, as a result of the inquiries and submissions described in clause 3, the scale of costs be varied in the manner set out in the Table to clause 11 of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2010*.
- (d) 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 or any successor legislation.

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

¹ Published in *Gazette* 26 June 2008.

*Schedule***LEGAL PROFESSION ACT 2008****LEGAL PRACTITIONERS (SUPREME COURT) (CONTENTIOUS BUSINESS) DETERMINATION 2010**

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

Citation

1. This Determination may be cited as the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2010*.

Commencement

2. This Determination comes into operation on 1 July 2010.

Application

3. (a) This Determination applies to the remuneration of law practices in respect of contentious business carried out by law practices in or for the purposes of proceedings before—
 - (1) The Supreme Court; and
 - (2) The District Court other than contentious business to which the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2010*.
- (b) This Determination does not apply to the remuneration of law practices based on a written agreement as to costs under the *Legal Profession Act 2008* or any successor legislation.
- (c) This Determination does not apply to the remuneration of law practices based on costs incurred before 1 July 2010.

Application of 0.66, r11(3), 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), 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.

Fixed Amounts

5. From the Committee's enquiries, it has determined that Items 1(b), 3(a), 7(a), 14, 23(a), 25(b) and 29(a) in the Table to clause 11 should be fixed amounts.

Entry for Trial Documentation

6. The Committee considered that there is a need for a specific Item in the Table to clause 11 to deal with the requirements of the Courts to file Entry for Trial and Entry for Hearing documentation in accordance with the Rules of the Courts.

Consequently, it is noted that—

- (a) the new Item 16(a) of the Table to clause 11 is intended to create a maximum allowance to cover the time spent in advising upon and preparing the documentation for entry of a case for trial or hearing—
 - (1) in the Supreme Court of Western Australia, the item is intended to cover the preparation of a case evaluation checklist (where applicable), entry for trial form and certificate of readiness (as required under Order 33 of the Rules of the Supreme Court) and Papers for the Judge. The allowance is intended to include the time spent in giving attention to all matters to be certified by the legal practitioner signing the certificate of readiness. Item 16(a) is not intended to cover the time spent in conferral relating to any case evaluation conference checklist or the attendance at a case evaluation conference before a case management registrar (which would be dealt with under items 10(a) and 24(a) respectively); and
 - (2) in the District Court of Western Australia, the item is intended to cover the preparation of a Form 1 entry under Rule 37 of the District Court Rules 2005 (including the time spent in giving attention to all the matters to be certified in Form 1), the notification to client under Rule 36, Papers for the Judge under Rule 45 and the index of any expert witnesses under Rule 45E;
- (b) the new Item 16(b) of the Table to clause 11 is intended to create a maximum allowance to cover the time spent in preparing any schedule required under Rules 45C and 45D of the District Court Rules 2005; and
- (c) the new Item 16(c) of the Table to clause 11 is intended to cover the preparation of a written advice on evidence by counsel required by certification in a certificate of readiness or where necessary in all of the circumstances.

Single Judge Appeals and Appeals to the Court of Appeal

7. Item 23 of the Table to clause 11 is intended to apply to applications for leave to appeal and appeals to a single judge of the Supreme Court and to appeals to the Court of Appeal.

Proceedings by way of prerogative writ

8. Item 28 of the Table to clause 11 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.

Other amendments noted

9. (a) The Committee considers it reasonable to allow for preparation of submissions by Counsel under Item 20 of the Table to clause 11 by increasing the time allowed under paragraph (a) of Item 20 by half a day from 3 days to 3.5 days.
- (b) The Committee considers that Order 59 Rule 9 of the Rules of the Supreme Court of Western Australia and any other rule in substitution for it, supports the expansion of the provisions in Item 24 of the Table to clause 11.
- (c) The Committee notes that the allowance for copies in Item 31 of the Table to clause 11 is intended to cover all forms of electronic reproduction and copying.
- (d) The Committee considers it reasonable to increase the maximum time allowed for getting up case for trial under Item 17 of the Table to clause 11 by 20 hours given the increasing complexity of written witness statements that are required in civil trials and the need for all witnesses in Supreme Court civil trials to provide a written statement of their proposed evidence in chief.

Maximum hourly and daily rates

10. (a) 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 11. Each item in the scale of costs specifies a dollar amount with reference to the fee earner.
- (b) The rates referred to in paragraph (a) were ascertained in the manner set out in clause 4 of the *Legal Practitioners (Supreme Court) (Contentious Business) Report 2010*.
- (c) 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 are 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.

Table to Clause 10

Fee Earner	Maximum allowable hourly and daily rates
Senior Practitioner (admitted for 5 years or more) (SP) ° hourly rate	\$429
Junior Practitioner (admitted for less than 5 years) (JP) ° hourly rate	\$297
Clerk/Paralegal (CPL) hourly rate	\$209
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel—	
Counsel (C)* hourly rate	\$341
Counsel (C)* daily rate	\$3,410
Senior Counsel (SC)** hourly rate	\$605
Senior Counsel (SC)** daily rate	\$6,050

- ° 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

11. (a) Subject to the provisions of the Act permitting a law practice 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)—
 - (1) recoverable by one party from another party; or
 - (2) payable by a party to that party's own law practice,

shall not exceed the amounts set out in the Table to this clause (except as otherwise provided in item 33 of the Table).
- (b) Allowances made under item 33 of the Table to this clause are only to be awarded as between a law practice and its client, or if costs are awarded on an indemnity basis and not between party and party unless the Court otherwise orders.

Table to Clause 11
SUPREME COURT SCALE OF COSTS 2010

Item		Time	Fee earner	\$
1.	Writ— (a) Writ of summons, whether specially or generally endorsed, including instructions, but excluding statement of Claim (b) For each additional defendant (c) Statement of Claim	1.5 hours 10 hours	SP SP	638 77 4,290
2.	Next friend or guardian <i>ad litem</i>	3 hours	JP	891
3.	Defence— (a) Memorandum of appearance (b) Defence (c) Counterclaim	10 hours 10 hours	SP SP	99 4,290 4,290
4.	Reply and other pleadings Reply (if necessary), defence to counterclaim, or any other pleading	10 hours	SP	4,290
5.	(a) Third party notice (b) Pleadings in third party proceedings	2 hours 6 hours	SP SP	858 2,574
6.	(a) Requesting particulars of a pleading (where and to the extent necessary) (b) Giving particulars of a pleading	3 hours 5 hours	JP JP	891 1,485
7.	Discovery— (a) Notice requiring discovery (b) Giving discovery of documents	10 hours	SP	66 4,290
8.	Inspection Inspection and giving inspection of discovered documents whether by personal attendance or otherwise	per hour	SP	429
9.	Interrogatories— (a) Delivery of interrogatories (b) Answers to interrogatories	5 hours 10 hours	SP SP	2,145 4,290
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) (c) Consent Orders including conferral but excluding extraction	2 days preparation, 1 day hearing; per hour 1.5 hours	C SP JP	10,230 429 440
11.	Motions and originating process— (a) Originating motion, originating summons or originating application (b) For 2nd and each successive day of hearing (c) Attendance at hearing by instructing legal practitioner	2 days preparation; 1 day hearing and Getting up— 50 hours per hour	C SP C SP	31,680 3,410
12.	Proceedings in Court not otherwise provided for, including appeals from a Registrar	2 days preparation ½ day hearing	C	8,525
13.	Listing Conference Attending at a Listing Conference (convened pursuant to Order 29 Rule 8 of the Rules of the Supreme Court or Rule 43 of the District Court Rules) and all necessary preparation	per hour	SP	429

Item		Time	Fee earner	\$
14.	Entry of judgment without trial			209
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	594 1,716 66 1,716 858 66
16.	Entry for trial/Entry for hearing— (a) Advising on, and preparing, documents required to be filed by the Rules of the Supreme Court or the Rules of the District Court (b) Preparation of Schedules (if any) required by District Court Rules 45C and 45D (c) Advice on evidence	2 hours 8 hours per hour	SP SP C/SC	858 3,432
17.	Getting up Getting up case for trial (includes work reasonably and necessarily undertaken prior to commencement of proceedings)	120 hours	SP	51,480
18.	Examination of witness before trial by counsel or practitioner, pursuant to order			An allowance in accordance with item 20(c) or (d)
19.	Application for and striking jury	1 hour	JP	297
20.	Trial Counsel fees— (a) Fee on brief, i.e. first day of trial and preparation (including submissions) (b) Fee on brief for Senior Counsel, i.e. first day of trial and preparation (including submissions) (c) Counsel fee for the second and each successive day of hearing (d) Counsel fee for Senior Counsel for second and each successor day of hearing (e) instructing legal practitioner attending trial (f) Clerk attending trial (g) Attending on reserved judgment (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders)	3.5 days preparation 1st day of trial 3.5 days preparation; 1st day of trial per hour per hour per hour	C SC C SC SP C/PL SP	15,345 27,225 3,410 6,050 429 209 429
21.	Re-trial or Re-hearing— (a) Getting up case for re-trial or re-hearing (b) Re-trial or re-hearing			Such amounts as are reasonable in the circumstances

Item		Time	Fee earner	\$
22.	(a) Special case, case stated (otherwise than by way of appeal) or trial of an issue (b) For the second and each successive day of the trial or hearing			Such amounts as are reasonable in the circumstances
23.	Appeals to the Court of Appeal and Single Judge appeals (including appeals by way of case stated) and applications for leave to appeal— (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 drafting and settling appeal book index) (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) Instructing Legal Practitioner attending appeal (l) Attending on reserved decision (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders)	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	429 24,200 6,050 2,376 3,410 4,290 10,230 18,150 3,410 6,050 429 429
24.	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; (b) including informal conferences where reasonably held before or after commencement of proceedings; (c) attendances by Counsel and instructing legal practitioners at the conferrals and conferences set out in paragraphs (a) and (b) of this item; (d) preparation reasonably undertaken for the conferrals and conferences described in paragraphs (a), (b) and (c) of this item; and (e) conferences between Counsel and own instructing Legal Practitioner where reasonably necessary.	per hour per hour per hour per hour per hour	SP/SC/ C SP/SC/ C SP/SC/ C C SP/SC/ C	
25.	Orders Settling and extracting judgment or order— (a) With appointment (b) Without appointment	2 hours	JP	594 209
26.	Arbitration proceedings			The same costs as in an action

Item		Time	Fee earner	\$
27.	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
28.	Proceedings by way of prerogative writ— <ul style="list-style-type: none"> (a) Motion for order to show cause (including preparation and hearing) (b) Getting up for hearing (c) Counsel fee on hearing of application for order absolute (including preparation) (d) Counsel fee for Senior Counsel (including preparation) (e) Counsel fee for Counsel on the second and each successive day of hearing (including preparation) (f) Counsel fee for Senior Counsel on the second and each successive day of hearing (including preparation) (g) Solicitor attending hearing (h) Attending on reserved decision (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders) 	20 hours 10 hours 2 days preparation; 1 day hearing 2 days preparation; 1 day hearing per hour	SP SP C SC C SC SP per hour	8,580 4,290 10,230 18,150 3,410 6,050 429 429
29.	(a) Execution (b) If against land, additional	3 hours	JP	286 891
30.	Taxing including drawing— <ul style="list-style-type: none"> (a) Drawing bill of costs 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
31.	Copying Copies where reasonably necessary, including of documents for which allowance is otherwise made in this Determination	per page		0.11
32.	Accounts and inquiries Taking accounts, inquiries		SP	Such amounts as are reasonable in the circumstances
33.	Other work— <ul style="list-style-type: none"> (a) Time reasonable spent by a legal practitioner on work requiring the skill of a legal practitioner (of the standing indicated) but not covered by any other item or (b) Time reasonably spent by a legal practitioner, or by a clerk or paralegal of a legal practitioner, on work not covered by any other item or by paragraph (a) 	per hour per hour	SC SP C JP C/PL	

Item		Time	Fee earner	\$
34.	Disbursements In addition to the fees and charges allowed under this Determination— (a) As between a law practice and client, a law practice may charge and be allowed disbursements necessarily or reasonably incurred; and (b) As between party and party, a party may be allowed disbursements incurred by that party except insofar as they are of an unreasonable amount or have been unreasonably incurred, so that subject to the above exceptions, that party is fully reimbursed for its disbursements.			

Made by the Legal Costs Committee on 15 June 2010.
