

LEGAL PRACTICE ACT 2003

LEGAL PRACTITIONERS (DISTRICT COURT APPEALS) (CONTENTIOUS BUSINESS) 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 (District Court Appeals) (Contentious Business) Report 2008*.

(2) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Practitioners (District Court Appeals) (Contentious Business) 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. Before making the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2008*, the Legal Costs Committee:

- (a) reviewed all submissions received as a result of the notice given under section 213 of the Act; and
- (b) reviewed the impact of movements in the Consumer Price and Labour Price Indices for the financial year ending June 2007, and for the September 2007, December 2007 and March 2008 quarters.

PART 3 - REPORT OF COMMITTEE'S CONCLUSIONS

Maximum hourly and daily rates charged – scale of costs amended.

4. 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 rates used in the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2008*. There were no other appropriate methodologies put to the Committee as an alternative to hourly and daily rates.

5. (1) As a result of the information gained from the inquiries and submissions described in clause 3 it is the recommendation of the Legal Costs Committee that the scale of costs as set out in the Table to clause 3 of the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2008* be adopted for appeals in the District Court.

(2) The recommendation of the Legal Costs Committee is 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.

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

Schedule

LEGAL PRACTICE ACT 2003

LEGAL PRACTITIONERS (DISTRICT COURT APPEALS) (CONTENTIOUS BUSINESS) 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 District Court Appeals (Contentious Business) Determination 2008*.

Commencement

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

Scale of costs

3. Subject to the provisions of the *Legal Practice Act 2003* or any successor legislation permitting a legal practitioner to make a written agreement as to costs with a client, the costs of or in relation to a party to an appeal to the District Court (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 legal practitioner,

shall not exceed the amount set out in the Table to this clause.

Table

Fee Earner			Maximum allowable hourly and daily rates
Senior Practitioner (admitted for more than 5 years)	(SP) ^α	hourly rate	\$396
Junior Practitioner (admitted for less than 5 years)	(JP) ^α	hourly rate	\$275
Clerk/Paralegal	(C/PL)	hourly rate	\$198
Counsel fees charged as a disbursement to practitioners or charged by in-house counsel:			
Counsel	(C)*	hourly rate	\$319
		daily rate	\$3,190
Senior Counsel	(SC)†	hourly rate	\$561
		daily rate	\$5,610

^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.

Maximum Hourly and Daily Rates

4. (1) The hourly and daily rates set out in the Table to clause 3 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 3.

(2) The Legal Costs Committee is aware that in the past, under a previous scale, some appeals conducted in the District Court have attracted a lower scale of costs than the same matter at first instance would have attracted if a *Legal Practitioners (Supreme Court) (Contentious Business) Determination* applied. This anomaly has been corrected in this Determination by a one off increase of a rate that is higher than it would have been if a straight 10% increase were applied.

TABLE
DISTRICT COURT APPEALS SCALE OF COSTS 2008

ITEM	DESCRIPTION	AMOUNT
1.	Notice of appeal	957
2.	Proceedings in Chambers	3,190
3.	Getting up appeal for hearing	3,190
4.	Counsel fee on hearing including preparation (see Notes 1 and 2)	6,380
5.	Counsel fee for second and each successive day of hearing (see Notes 1 and 2)	3,190
6.	Attending on reserved decision	363
7.	Settling and extracting order disposing of appeal	
	(a) With appointment	550
	(b) Without appointment	209
8.	Drawing bills of costs, copies and service	429
9.	Attending taxation (including time spent in preparing for the taxation) - per hour	275
10.	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.	

Note 1 In cases for which the Taxing Officer considers that the briefing of Senior Counsel or of two or more counsel was reasonably necessary the allowance is the amount shown increased by 50%.

Note 2 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.