

## LEGAL PROFESSION ACT 2008

### LEGAL PRACTITIONERS (DISTRICT COURT APPEALS) (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. (1) This Report may be cited as the *Legal Practitioners (District Court Appeals) (Contentious Business) Report 2010*.
- (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 2010*.

#### PART 2 - NOTICE AND INQUIRIES

##### 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 (District Court Appeals) (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 – 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 rates used in the *Legal Practitioners (District Court Appeals) (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 5(a) be varied from the hourly and daily rates used in the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2008*<sup>1</sup>

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 4 of the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2010*.

- (c) 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 5 of the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2010* be adopted for appeals in the District Court.
- (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

## Schedule

### LEGAL PROFESSION ACT 2008

#### LEGAL PRACTITIONERS (DISTRICT COURT APPEALS) (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 (District Court Appeals) (Contentious Business) Determination 2010*.

#### Commencement

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

#### Application

3. This Determination applies to the remuneration of law practices in respect of appeals to a Judge of the District Court of Western Australia, whether from a Registrar of that Court or from another Court or Tribunal.

#### 4. Maximum hourly and daily rates

- (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 5. 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 4

Fee Earner	Maximum allowable hourly and daily rates
Senior Practitioner (admitted for 5 years or more) (SP) <sup>a</sup> hourly rate	\$429
Junior Practitioner (admitted for less than 5 years) (JP) <sup>a</sup> hourly rate	\$297
Clerk/Paralegal (C/PL) hourly rate	\$209
Counsel fees charged as a disbursement to practitioners	

or charged by in-house counsel:

Counsel	(C)*	hourly rate	\$341
		daily rate	\$3,410
Senior Counsel	(SC)†	hourly rate	\$605
		daily rate	\$6,050

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.

#### Costs

5. 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) -

- (a) recoverable by one party from another party; or
- (b) payable by a party to that party's own law practice,

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

**TABLE TO CLAUSE 5**  
**DISTRICT COURT APPEALS SCALE OF COSTS 2010**

ITEM	DESCRIPTION	\$ AMOUNT
1.	Notice of appeal	1,034
2.	Proceedings in Chambers	3,410
3.	Getting up appeal for hearing	3,410
4.	Counsel fee on hearing including preparation (see Notes 1 and 2)	6,820
5.	Counsel fee for second and each successive day of hearing (see Notes 1 and 2)	3,410
6.	Attendance at appeal by instructing legal practitioner – per hour	429
7.	Attending on reserved decision	429
8.	Settling and extracting order disposing of appeal (a) With appointment (b) Without appointment	 550 209
9.	Drawing bills of costs, copies and service	440
10.	Attending taxation (including time spent in preparing for the taxation) - per hour	297
11.	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.	

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.

Made by the Legal Costs Committee on 15 June 2010.