

LEGAL PROFESSION ACT 2008

LEGAL PRACTITIONERS (SOLICITORS COSTS) REPORT 2011

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 (Solicitors Costs) Report 2011*.
- (2) The determination set out in the Schedule to this Report is referred to in this Report as the *Solicitors Costs Determination 2011*.

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.

Enquiries and submissions under section 277 of the Act

3. Before making the *Solicitors Costs Determination 2011*, the Legal Costs Committee:
 - (a) reviewed the submission of the Law Society of Western Australia Inc received as a result of the notice given under section 277 of the Act; and
 - (b) reviewed the impact of movements in the Consumer Price Index and Labour Price Index for the period between 1 July 2009 to 31 March 2011 (inclusive) as being an appropriate period given the time elapsed between the commencement of the previous Review and the commencement of this Review.

PART 3 – REPORT OF COMMITTEE'S CONCLUSIONS

Maximum hourly rates changed – scale of costs amended

- 4 (1) As a result of its inquiries and the submission described in clause 3, the Legal Costs Committee is satisfied it is appropriate to continue to adopt hourly rates charged by practitioners as the basis for the rates used in the *Solicitors Costs Determination 2011*. It is also considered appropriate to retain a system of instruction fees as set out in items 1 to 5 of the Table to clause 6 of the *Solicitors Costs Determination 2011*.
- (2) It is the recommendation of the Legal Costs Committee, as a result of the inquiries and submissions described in clause 3, that the hourly rates referred to in subclause 4 (1) are varied from the hourly rates used in the *Solicitors Costs Determination 2009* published in the Government Gazette on 30 September 2009 pp 3883-3890. Those rates are set out in Item 7 of the Table to clause 6 of the *Solicitors Costs Determination 2011*.
- (3) The Committee has resolved that the base amounts in Item 5 of the Table to clause 6 should be increased by an amount of 6% or thereabouts to account for movements in the CPI Indices and to be divisible by 11 for GST purposes.
- (4) The Committee has resolved that the terms 'Vendor' and 'Purchaser' as they appear in Items 1 and 5 of the *Solicitors Cost Determination 2009* should be amended to show 'Seller' and 'Buyer' respectively to reflect the use of those terms more commonly appearing in the majority of real estate transactions in Western Australia under the more recent versions of the Joint Form of General Conditions for the Sale of Land and associated documents.

- (5) 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 Profession Act 2008*.

TED SHARP, Chairman

ANGELA GAFFNEY, Member

CLARE THOMPSON, Member

MARCUS COCKER, Member

JANICE DUDLEY, Member

MATTHEW CURWOOD, Member

Schedule

LEGAL PROFESSION ACT 2008

SOLICITORS COSTS DETERMINATION 2011

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 *Solicitors Costs Determination 2011*.

Commencement

2. This Determination comes into operation on 1 July 2011.

The *Solicitors Costs Determination 2009*

3. The determination cited as the *Solicitors Costs Determination 2009* published in the *Government Gazette* on 30 September 2009 pp3883-3890 does not apply to business carried out by practitioners after the commencement of this Determination.

Interpretation

4. In this Determination –

“**clause**” means a clause in this Determination;

“**document**” includes a document in electronic form;

“**instruction fee**” means the fee set out in the column headed ‘Amount’ in the Table, in relation to the matter specified next to that fee in the Table;

“**instructions**” in relation to items 1 to 5 includes the initial attendance when instructions are taken, and all subsequent attendances at which instructions are taken which ought properly to have been taken at the initial attendance;

“**item**” means an item in the Table;

“**mortgagee**” includes the grantee of a security and, in relation to a hire-purchase agreement, means the owner;

“**mortgagor**” includes the grantor of a security and, in relation to a hire-purchase agreement, means the hirer;

“**prepare**” includes considering searches, researching matters of law, negotiating, settling and drafting the provisions of and producing a document;

“**security**” includes a mortgage, hire-purchase agreement, debenture or charge or a bill of sale or assignment by way of security, or any other form of security granted by a person;

“**sheet**” means one side of a single A4 page, with no less than 25 lines of print with a minimum of a 10 point font;

“**Table**” means the Table to this Determination.

Application

5. (1) This Determination applies to the maximum remuneration of practitioners in respect of any work carried out by a practitioner not being of a contentious nature and which is not governed by any other determination of the Legal Costs Committee under section 275 of the *Legal Profession Act 2008*.

- (2) This Determination does not apply to the remuneration of practitioners based on a written agreement as to costs with a client under the *Legal Profession Act 2008*.
- (3) This Determination does not apply to the remuneration of practitioners based on costs incurred before the commencement of this Determination.

Costs

6. Unless a practitioner has made a written agreement as to costs with a client under the provisions of the *Legal Profession Act 2008*, the costs payable by the client to the client's practitioner shall not exceed an amount that is reasonable in the circumstances, that amount to be calculated on the basis of -
 - (a) the instruction fees and other fees for specific items set out in items 1 to 6 of the Table; and
 - (b) the time reasonably taken to perform the work referred to in item 7, charged at an hourly rate that does not exceed the hourly rates set out in that item; or
 - (c) where clause 14 applies, the skill, urgency or complexity required to perform the work, together with the time reasonably taken to do so.

Instruction fee when acting for both parties to a transaction

7. Subject to clauses 8 and 9, where a practitioner lawfully acts for both parties to a transaction, the practitioner is entitled to charge each party the relevant instruction fee relating to that transaction.

Instruction fees for related transactions

8.
 - (1) Subject to this clause, where a practitioner acts for either a buyer-mortgagor or for a seller-mortgagee, the practitioner may charge either the instruction fee fixed in relation to the sale or the instruction fee fixed in relation to the security, but not both.
 - (2) Where a practitioner acts for a seller in circumstances to which item 5 applies, and the consideration or part thereof is secured by a security prepared by the same practitioner and executed by the buyer in favour of the seller, the practitioner shall be entitled to charge in respect of the sale the fee set out in item 5 reduced by 20%, and for instructions in respect of the security the instruction fee calculated in accordance with item 3 on the basis of the sum secured.
 - (3) Where, in respect of one and the same transaction, a practitioner lawfully acts for both a buyer-mortgagor and a seller-mortgagee -
 - (a) if all the costs are to be paid by only one of the parties, the practitioner is entitled to charge the instruction fee in relation to the sale, calculated on the basis that the practitioner was acting for the buyer, but is not entitled to charge an instruction fee in relation to the security;
 - (b) if each party is to pay their own instruction fee, the practitioner is entitled to charge each party such an amount so that the aggregate of the amounts payable by each is no greater than the instruction fee in relation to the sale, calculated on the basis that the practitioner was acting for the buyer.
 - (4) Where, in one and the same transaction, a practitioner lawfully acts for both the seller and the buyer or for both the mortgagor and the mortgagee, the practitioner is not entitled to charge in respect of the instructions any amount which is greater in the aggregate than the instruction fee in relation to the sale or the security, calculated on the basis that the practitioner was acting for the buyer or the mortgagor, as the case may be.
 - (5) Where a practitioner acts for the mortgagee on instructions to extend the term of the security, the practitioner is entitled to charge, for instructions, an amount not exceeding 40% of the instruction fee that would be payable in relation to an original security for the same amount as that secured by the security as extended.

Instruction fees for leases

9.
 - (1) Where a practitioner lawfully acts for both the lessor and the lessee in respect of a lease or an extension of lease, the practitioner is entitled to charge for instructions only the instruction fee set out in item 4 in relation to a lessor.
 - (2) For the purposes of calculating the instructions fees set out in item 4 -
 - (a) where a term of a lease exceeds 12 years but does not exceed 26 years - the instruction fee shall be calculated on the basis of the rent payable during the first 12 years of the lease;
 - (b) where the term of the lease exceeds 26 years - the instruction fee shall be calculated on the basis of the rent payable during the first 15 years of the lease,

and for this purpose the term “rent” –

- (c) includes any moneys payable as a premium for the granting of the lease;
- (d) does not include any moneys payable or reserved under or by the lease in respect of -
 - (i) rates and taxes whether by way of reimbursement of the lessor or otherwise; or
 - (ii) expenditure incurred by the lessor in the conduct or management of the lease and premises or of any other property of which the leased premises forms part.

Limitations on instruction fee in item 3

10. In relation to an instruction fee set out in item 3 –

- (a) any amount secured by an existing collateral security prepared by the same practitioner within one year prior to the instructions shall be deducted from the amount to be secured before calculating the instruction fee; and
- (b) where the security is for an annuity and the term during which the annuity is to be paid is a period exceeding 12 years or for life - the instruction fee shall be calculated on the basis that the amount secured is 12 times either the annual payment or the average of the first 12 payments.

Uncompleted business

11. Where any business is not completed the instruction fee payable shall be such proportion of the relevant instruction fee payable under this Determination as is reasonable in the circumstances.

Services related to item 5

12. (1) The fees set out in item 5 are the remuneration payable in respect of acting on instructions for the completion by transfer of an executed contract for the sale of land registered under the *Transfer of Land Act 1893* and include the fees for all services usually performed in respect of the transaction and in particular -

- (a) the investigation of title;
- (b) enquiries of and advice to all rating and taxing authorities of change of ownership;
- (c) the adjustment of rates and taxes;
- (d) preparation, execution, stamping and the registration of the transfer; and
- (e) the arrangements for and attendances on settlement including the discharge of encumbrances,

but the remuneration does not include the fees for –

- (f) any service performed or rendered in respect of an amendment to the contract of sale;
 - (g) the perusal of any document other than the contract of sale;
 - (h) the preparation of any document other than the transfer;
 - (i) requisitions on title or answers thereto;
 - (j) correspondence or attendances as may be rendered necessary by the amendment to, or the preparation of, any document other than the transfer;
 - (k) correspondence or attendances not usually involved in respect of completion of the contract of sale including interpretation of or enforcement of the contract of sale; or
 - (l) any costs or expenses lawfully incurred due to the distance of the practitioner from the place of settlement or from an office of the Western Australian Land Information Authority.
- (2)** Where a practitioner acting on instructions to which item 5 applies is obliged to perform additional services which are not services to which item 5 applies, the practitioner is entitled to charge for those additional services at the rate set out in item 7.

Preparing documents and copies for execution, photocopying, facsimile and electronic transmissions (item 6)

13. The fees set out in items 601, 602 and 605 are fees in addition to time taken to prepare documents (including amendments to drafts or standard documents) and –
- (a) In the case of item 601, the fee is intended to recognize the cost to, and time taken by, a practitioner in the preparation and maintenance of standard precedents - by way of example, a standard office lease, shop lease, assignment of lease, extension of lease and mortgage;
 - (b) in the case of item 602, the fee is intended to recognize the cost to, and time taken by, a practitioner in the preparation, availability and maintenance of a document which is not a standard precedent within item 601, and the skill, cost of preparation and maintenance of having such a document available; and
 - (c) in the case of item 605, the fee is intended to be charged only in circumstances where a hard copy of an electronic transmission is reasonably required for a file.

Complex matters, and matters involving a high degree of skill or urgency

14. Where a practitioner acts on instructions or performs a service in respect of a matter –
- (a) in relation to which a fee or rate of remuneration is set out under items 1 to 6, that is complex, or involves a high degree of skill or urgency; or
 - (b) that is not referred to in any of items 1 to 6,
- then, notwithstanding the rates in item 7, the practitioner is entitled to charge a fee, or charge at a rate (as the case requires) that is greater than one that is set out in an item, if it is reasonable in the circumstances.

Effect on costs of Goods and Services Tax (GST)

15. The hourly rates and the calculation of fees under each of the items in the Table are intended to be inclusive of GST. If any amount calculated under items 1 to 4 is not divisible by 11, it should be rounded up to the next highest amount which is divisible by 11.

Table (Clause 6)

**ITEM 1 – INSTRUCTION TO ACT ON A SALE OR OTHER DISPOSITION
FOR VALUABLE CONSIDERATION OF PROPERTY**

Ref	Party	Consideration (\$)	Maximum Amount (as a %)
101	Buyer	1 – 100,000	0.45%
		100,001 – 7,500,000	0.25%
		7,500,001 or more	0.03%
102	Seller	1 – 100,000	0.35%
		100,001 – 7,500,000	0.17%
		7,500,001 or more	0.02%

**ITEM 2 – INSTRUCTIONS TO ACT ON A GIFT OF REAL OR PERSONAL
PROPERTY OR BOTH WHERE VALUE ASCERTAINABLE**

Ref	Party	Value (\$)	Maximum Amount (as a %)
201	Donor	1 – 100,000	0.45%
		100,001 – 7,500,000	0.25%
		7,500,001 or more	0.03%
202	Donee	1 – 100,000	0.35%
		100,001 – 7,500,000	0.17%
		7,500,001 or more	0.02%

ITEM 3 – INSTRUCTIONS TO ACT ON SECURITY

Ref	Party	Consideration (\$)	Maximum Amount (as a %)
301	Mortgagee	1 – 100,000	0.45%
		100,001 – 7,500,000	0.25%
		7,500,001 or more	0.03%
302	Mortgagor	1 – 100,000	0.23%
		100,001 – 7,500,000	0.13%
		7,500,001 or more	0.013%

ITEM 4 – INSTRUCTIONS TO ACT ON A LEASE, SUB-LEASE, ASSIGNMENT OF LEASE OR EXTENSION OF LEASE OF PROPERTY (REAL OR PERSONAL OR BOTH)

Ref	Party	Consideration (\$)	Maximum Amount (as a %)
401	Lessor/Sub-Lessor	1 – 20,000	0.80%
		20,001 or more	0.40%
402	Lessee/Sub-Lessee	1 – 20,000	0.40%
		20,001 or more	0.20%
403	Assignor/Assignee	1-20,000	0.40%
		20,001 or more	0.20%

ITEM 5 – THE SETTLEMENT OF A CONTRACT FOR THE SALE OF LAND UNDER THE TRANSFER OF LAND ACT 1893

Ref	Party	Consideration (\$)	Maximum Amount or %
501	Buyer*	1-150,000	\$891
		150,001 – 500,000	\$891 plus 0.22% of any amount in excess of \$150,000
		500,001 – 1,000,000	\$1661 plus 0.165% of any amount in excess of \$500,000
		1,000,001 or more	\$2486 plus 0.11% of any amount in excess of \$1,000,000
502	Seller*	1-150,000	\$605
		150,001 – 500,000	\$605 plus 0.143% of any amount in excess of \$150,000
		500,001 – 1,000,000	\$1105.50 plus 0.11% of any amount in excess of \$500,000
		1,000,001 or more	\$1655.50 plus 0.077% of any amount in excess of \$1,000,000

*If the contract for sale is for a Strata Title, add \$55.00 if acting for the Seller, and \$110.00 if acting for the Buyer.

ITEM 6 – PREPARE DOCUMENTS AND COPIES FOR EXECUTION, PHOTOCOPYING, FACSIMILE AND ELECTRONIC TRANSMISSIONS

Ref	Description of task	Maximum Amount
Preparation of documents		
601	Documents which could economically be a standard precedent	\$11.00 per sheet
602	Documents which could not economically be a standard precedent	\$44.00 per sheet
All copies for execution and cost of binding		
603	Each document for execution	\$5.50 per page
Photocopying (other than item 603)		
604	Each page	\$0.11 per page
Facsimile and Electronic Transmissions		
605	Each page sent or received	\$0.11 per page

ITEM 7 – ATTENDANCES AND PERFORMANCE OF WORK WHERE ITEMS 1-6 DO NOT APPLY, AND TRAVEL

Ref	Practitioner	Maximum Rate
701	Practitioner (admitted 5 years or more)	\$440 per hour
702	Practitioner (admitted less than 5 years)	\$319 per hour
703	Clerk/Paralegal	\$209 per hour

Note: The reference to practitioner in this Determination includes all legal practitioners even if the services were rendered in another State or Territory. Where a local legal 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.

Travel

704 Travel is to be calculated in the same manner as items 701 to 703, with a maximum of 8 hours in any one day