



WESTERN
AUSTRALIAN
GOVERNMENT

Gazette

4381



PERTH, WEDNESDAY, 12 AUGUST 1998 No. 162 SPECIAL

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 3.45 PM

LEGAL PRACTITIONERS ACT 1893

**LEGAL PRACTITIONERS
(SOLICITORS NON-CONTENTIOUS
PROBATE COSTS) REPORT 1998**

**SOLICITORS NON-CONTENTIOUS
PROBATE COSTS DETERMINATION
1998**

**LEGAL PRACTITIONERS
(SOLICITORS COSTS) REPORT 1998
SOLICITORS COSTS
DETERMINATION**

LEGAL PRACTITIONERS ACT 1893**LEGAL PRACTITIONERS (SOLICITORS NON-CONTENTIOUS
PROBATE COSTS) REPORT 1998****PART 1—PRELIMINARY****Citation**

1. (1) This report may be cited as the *Legal Practitioners (Solicitors Non-Contentious Probate Costs) Report 1998*.

(2) The determination set out in the Schedule to this report is referred to in this report as the *Solicitors Non-Contentious Probate Costs Determination 1998*.

PART 2—NOTICE AND ENQUIRIES**Notice under section 58Y of the Act**

2. The Legal Costs Committee has complied with the notice provisions of section 58Y of the Act.

Inquiries and submissions under section 58Y of the Act

3. Before making the *Solicitors Non-Contentious Probate Costs Determination 1998*, the Legal Costs Committee—

- (a) reviewed all submissions received as a result of the notice given under section 58Y of the Act;
- (b) conducted oral hearings with interested parties; and
- (c) obtained information as to hourly rates charged by practitioners for non-contentious legal work by virtue of enquiries made in connection with the Solicitors Remuneration Order 1991.

PART 3—REPORT OF COMMITTEE'S CONCLUSIONS**Basis for fixing costs altered**

4. (1) The information obtained as a result of the enquiries and submissions described in clause 3 satisfied the Legal Costs Committee that the existence of competition for the supply of legal services to be covered by the *Solicitors Non-Contentious Probate Costs Determination 1998* made it safe to adopt the rates charged by practitioners as a guide for the rates used in that determination.

(2) It is the recommendation of the Legal Costs Committee that the basis used for fixing costs be varied in the manner set out in the *Solicitors Non-Contentious Costs Determination 1998*.

(3) The recommendation of the Legal Costs Committee is not intended to override the entitlement for a practitioner to make a written agreement as to costs with a client under the *Legal Practitioners Act 1893*.

Reasons for altering basis for fixing costs

5. Each of the items in the determination cited as the *Non-Contentious Probate Costs Scale, 1991* contains *ad valorem* charges and instruction fees. It is the opinion of the Legal Costs Committee that the determination does not now reflect the basis on which many practitioners actually charge for the provision of legal services in relation to non-contentious probate work nor do those items of work described in that determination reflect the way work is now being performed by practitioners.

In the opinion of the Committee the *Non-Contentious Probate Costs Scale 1991* is no longer relevant to current conditions and practice in that—

- (a) it has a limited number of items to which it applies;
- (b) the fees itemised in it are artificial in the sense that they do not necessarily reflect the true extent of the work involved. This can be detrimental to practitioners and their clients alike.

The *Solicitors Non-Contentious Probate Costs Determination 1998* reflects the fact that costs charged by the majority of practitioners are now, in the main, calculated by reference to time reasonably spent in providing legal services and by applying to that time a reasonable hourly charge rate; the rate varying according to the seniority and experience of the practitioner and the complexity of the work.

TED SHARP, Chairman.

CHRIS PULLAN QC, Deputy Chairman.

ANGELA GAFFNEY, Member.

JILL VANDERWAL, Member.

PATRICK COWARD, Member.

JANET DAVIDSON, Member.

Schedule

LEGAL PRACTITIONERS ACT 1893**SOLICITORS NON-CONTENTIOUS PROBATE COSTS DETERMINATION 1998**

Made by Legal Costs Committee under section 58W of the Act.

Citation

1. This determination may be cited as the *Solicitors Non-Contentious Probate Costs Determination 1998*.

Commencement

2. This determination comes into operation on 1 October 1998.

Revocation of the Non-Contentious Probate Costs Scale 1991

3. The determination cited as the *Non-Contentious Probate Costs Scale 1991* published in the *Government Gazette* on 27 March 1991 is revoked on and from the commencement of this determination.

Application

4. (1) This determination applies to the remuneration of practitioners in respect of—
- (a) applications for grants of probate and letters of administration within Western Australia or reseals of grants and letters of administration made outside Western Australia; and
 - (b) agency allowances where the solicitor for the applicant for a grant of probate or letters of administration or to reseal a grant does not carry on practice in the Perth metropolitan area and employs a practitioner in Perth as agent in connection with the application.
- (2) This determination does not apply to the remuneration of practitioners based on a written agreement as to costs under section 59 of the *Legal Practitioners Act 1893*.
- (3) This determination does not apply to the remuneration of practitioners based on costs incurred in respect of instructions taken before the commencement of the determination.
- (4) This determination does not apply to those areas of legal work undertaken by practitioners in connection with the administration and winding up of deceased persons estates which can be properly chargeable under the provisions of the Solicitors Remuneration Order 1991 or any subsequent determination in substitution for or by way of variation to the same.

Costs

5. Unless a practitioner has made a written agreement as to costs with a client under the provisions of Section 59 of the *Legal Practitioners Act 1893*, the costs payable by the client to the client's solicitor shall be such amount as is reasonable in the circumstances such amount to be calculated on the basis of the time reasonably taken to perform the work described in clause 4 above and charged at an hourly rate which does not exceed the hourly rates set out below.

(a) General

Junior Clerk	\$65.00 per hour
Senior Clerk	\$150.00 per hour
Articled Clerk	\$130.00 per hour
Restricted Year Practitioner	\$175.00 per hour
Practitioner (less than 5 years)	\$200.00 per hour
Practitioner (5 years or more)	\$280.00 per hour

Travel is to be calculated in the same manner as above, with a maximum of 8 hours in any one day.

(b) Specific**Complex matters, and matters involving a high degree of skill or urgency.**

Where a practitioner acts on instructions or performs a service in respect of a matter that is complex, or involves a high degree of skill or urgency, the practitioner is entitled to charge a fee or charge (as the case requires) that is reasonable in the circumstances.

Made by the Legal Costs Committee on 4th August 1998.

LEGAL PRACTITIONERS ACT 1893**LEGAL PRACTITIONERS (SOLICITORS COSTS) REPORT 1998**

Made by Legal Costs Committee under section 58ZA of the Act.

PART 1 — PRELIMINARY**Citation**

1. (1) This report may be cited as the *Legal Practitioners (Solicitors Costs) Report 1998*.
(2) The determination set out in the Schedule to this report is referred to in this report as the *Solicitors Costs Determination 1998*.

PART 2 — NOTICE AND ENQUIRIES**Notice under section 58Y of the Act**

2. The Legal Costs Committee has complied with the notice provisions of section 58Y of the Act.

Enquiries and submissions under section 58Y of the Act

3. Before making the *Solicitors Costs Determination 1998*, the Legal Costs Committee—
 - (a) reviewed all submissions received as a result of the notice given under section 58Y of the Act;
 - (b) conducted oral hearings with interested parties; and
 - (c) conducted a survey of solicitors to ascertain the hourly rates charged by them for work performed by practitioners.

PART 3 — REPORT OF COMMITTEE'S CONCLUSIONS**Basis for fixing costs altered**

4. (1) The information obtained as a result of the enquiries and submissions described in clause 3 satisfied the Legal Costs Committee that the existence of competition for the supply of legal services to be covered by the *Solicitors Costs Determination 1998* made it safe to adopt the rates charged by practitioners as a guide for the rates used in that determination.
(2) It is the recommendation of the Legal Costs Committee that the basis used for fixing costs be varied in the manner set out in the *Solicitors Costs Determination 1998*.
(3) The recommendation of the Legal Costs Committee is not intended to override the entitlement for a solicitor to make a written agreement as to costs with a client under the *Legal Practitioners Act 1893*.

Reasons for altering basis for fixing costs

5. Many of the items in the determination cited as the *Solicitors Remuneration Order, 1991* contained ad valorem charges and instruction fees. It is the opinion of the Legal Costs Committee that the determination does not reflect the basis on which many solicitors actually charge for the provision of legal services and many of the items of work described in that determination were items that do not reflect the way work is now being performed by solicitors.

TED SHARP, Chairman.

CHRIS PULLAN QC, Deputy Chairman.

ANGELA GAFFNEY, Member.

JILL VANDERWAL, Member.

PATRICK COWARD, Member.

JANET DAVIDSON, Member.

Schedule

LEGAL PRACTITIONERS ACT 1893**SOLICITORS COSTS DETERMINATION 1998**

Made by Legal Costs Committee under section 58W of the Act.

Citation

1. This determination may be cited as the *Solicitors Costs Determination 1998*.

Commencement

2. This determination comes into operation on 1 October 1998.

Revocation of the *Solicitors Remuneration Order, 1991*

3. The determination cited as the *Solicitors Remuneration Order, 1991* published in the *Gazette* 27 March 1991 is revoked on and from the commencement of this determination.

Interpretation

4. In this determination—

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

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

“**folio**” means 72 words;

“**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 4 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;

“**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 page;

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

Application

5. 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 58W of the *Legal Practitioners Act 1893*.

(2) This determination does not apply to the remuneration of practitioners based on a written agreement as to costs under section 59 of the Act.

(3) This determination does not apply to the remuneration of practitioners based on costs incurred before the commencement of the determination.

Costs

6. Unless a solicitor has made a written agreement as to costs with a client under the provisions of the *Legal Practitioners Act 1893*, the costs payable by the client to the client's solicitor 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 5 of the Table;
- (b) the time reasonably taken to perform the work referred to in item 6, 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 properly 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 purchaser-mortgagor or for a vendor-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 vendor in circumstances to which item 4 applies, and the consideration or part thereof is secured by a security prepared by the same practitioner and executed by the purchaser in favour of the vendor, the practitioner shall be entitled to charge in respect of the sale the fee set out in item 4 reduced by 20%, and for instructions in respect of the security the instruction fee calculated in accordance with item 2 on the basis of the sum secured.

(3) Where, in respect of one and the same transaction, a practitioner properly acts for both a purchaser-mortgagor and a vendor-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 purchaser, 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 purchaser.

(4) Where, in one and the same transaction, a practitioner properly acts for both the vendor and the purchaser 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 purchaser 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 properly 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 3 in relation to a lessor.

(2) For the purposes of calculating the instructions fees set out in item 3—

- (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.

(3) Where a practitioner acts on the instructions of a lessor on an extension of a lease, 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 lease on the same terms as the extension.

Limitations on instruction fee in item 2

10. In relation to an instruction fee set out in item 2—

- (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 4

12. (1) The fees set out in item 4 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 properly incurred due to the distance of the practitioner from the place of settlement or from an office of the Department of Land Administration.

(2) Where a practitioner acting on instructions to which item 4 applies is obliged to perform additional services which are not services to which item 4 applies, the practitioner is entitled to charge for those additional services at the rate set out in item 6.

Drawing copies for execution, photocopying, facsimile and electronic transmissions (item 5)

13. The fees set out in items 501 and 502 are fees in addition to time taken to draft and engross documents (including amendments to drafts or standard documents) and—

- (a) in the case of item 501—'Documents which could economically be a standard precedent'—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 502, 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 501, and the skill, cost of preparation and maintenance of having such a document available.

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 5, 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 5,

then, notwithstanding the rates in item 6, the practitioner is entitled to charge a fee, charge or 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.

Table

ITEM 1—INSTRUCTIONS TO ACT ON A SALE OR OTHER DISPOSITION FOR VALUABLE CONSIDERATION OF PROPERTY

Ref	Party	Consideration (\$)	Amount (as a %)
101	Purchaser	1—100,000	0.45%
		100,001—7,500,000	0.25%
		7,500,001 or more	0.03%
102	Vendor	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 SECURITY

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

ITEM 3—INSTRUCTIONS TO ACT ON A LEASE OF PROPERTY (REAL OR PERSONAL OR BOTH)

Ref	Party	Consideration (\$)	Amount (as a %)
301	Lessor	1—20,000	0.80%
		20,001 or more	0.40%
302	Lessee	1—20,000	0.40%
		20,001 or more	0.20%

ITEM 4—THE SETTLEMENT OF A CONTRACT FOR THE SALE OF LAND UNDER THE TRANSFER OF LAND ACT 1893

Ref	Party	Consideration (\$)	Amount (as a %)
301	Purchaser*	1—25,000	\$214
		25,001—150,000	\$214 plus 0.24% of any amount in excess of \$25,000
		150,001—500,000	\$520 plus 0.2% of any amount in excess of \$150,000
		500,001—1,000,000	\$1,234 plus 0.15% of any amount in excess of \$500,000
		1,000,001 or more	\$1,999 plus 0.1% of any amount in excess of \$1,000,000
402	Vendor*	1—25,000	\$143
		25,001—150,000	\$143 plus 0.16% of any amount in excess of \$25,000
		150,001—500,000	\$347 plus 0.13% of any amount in excess of \$150,000
		500,001—1,000,000	\$811 plus 0.1% of any amount in excess of \$500,000
		1,000,001 or more	\$1,321 plus 0.071% of any amount in excess of \$1,000,000

*If the contract for sale is for a Strata Title, add \$35.00 if acting for the Vendor, and \$55.00 if acting for the purchaser.

ITEM 5—DRAFTING, COPIES FOR EXECUTION, PHOTOCOPYING, FACSIMILE AND ELECTRONIC TRANSMISSIONS

Ref	Description of task	Amount
Drafting		
501	Documents which could economically be a standard precedent	\$1.30 per folio
502	Documents which could not economically be a standard precedent	\$5.85 per folio
All copies for execution and cost of binding		
503	Each document for execution	\$2.00 per sheet
Photocopying (other than item 503)		
504	Each sheet	\$0.50 per sheet
Facsimile and Electronic Transmissions		
505	Each sheet sent	\$2.00 per sheet

ITEM 6—ATTENDANCES AND PERFORMANCE OF WORK WHERE ITEMS 1-5 DO NOT APPLY, AND TRAVEL

Ref	Practitioner	Maximum Rate (\$ per hour)
Attendances and performance of work where items 1-5 do not apply, and travel, and including time otherwise necessarily spent where no other charges apply		
601	Junior Clerk	\$65 per hour
602	Senior Clerk	\$150 per hour
603	Articled Clerk	\$130 per hour
604	Restricted Year Practitioner	\$175 per hour
605	Practitioner (less than 5 years)	\$200 per hour
606	Practitioner (5 years or more)	\$280 per hour

Travel

607 Travel is to be calculated in the same manner as items 601 to 606, with a maximum of 8 hours in any one day.



1 9 9 8 0 0 1 6 2 6 6