

31 August 2004

## **LEGAL COSTS COMMITTEE ANNUAL REPORT**

In accordance with Section 66 of the *Financial Administration and Audit Act 1985* I submit to the Honourable James Andrew McGinty BA B Juris (Hons) LLB JP MLA, Attorney General for the State of Western Australia, for information and presentation to Parliament, the Annual Report of the Legal Costs Committee of Western Australia for the period 1 July 2003 to 30 June 2004.

Ted Sharp  
**CHAIR**

# **LEGAL COSTS COMMITTEE**

## **ANNUAL REPORT**

**2003 - 2004**

## LEGAL COSTS COMMITTEE

The Legal Costs Committee was established following the proclamation of the *Acts Amendment (Legal Practitioners, Costs and Taxation) Act 1987* on 12 February 1988. The Committee is responsible under the *Legal Practice Act 2003* (the Act) for making determinations for the remuneration of legal practitioners in respect of the matters specified under Part 13 Divisions 1 and 2 of the Act (as well as other legislation) in the following jurisdictions:

- ◆ Non-contentious business carried out by practitioners
- ◆ Supreme Court
- ◆ District Court
- ◆ Local Court
- ◆ Court of Petty Sessions
- ◆ Workers' Compensation Proceedings
- ◆ Official Prosecutions (Defendants' Costs)
- ◆ Public Notaries

Prior to the establishment of the Legal Costs Committee those fees (except for the newer scales in relation to the Court of Petty Sessions and Public Notaries) were set by the Judges of the Courts or by the Under Secretary for Law as the case required.

During the period 1 July 2003 to 30 June 2004 the Committee consisted of:

Mr TH Sharp, Partner, KPMG Legal until 28 February 2004, then Consultant, Freehills, Barristers and Solicitors, as Chair;

Mr MJ McPhee, Principal Solicitor of Michell Sillar McPhee, Solicitors, as Deputy Chair;

Ms A Gaffney, Chartered Accountant, RSM Bird Cameron Chartered Accountants;

Ms J Freeman, Industrial Officer, Liquor Hospitality & Miscellaneous Union;

Ms C Thompson, Barrister, Francis Burt Chambers;

Mr M Cocker, Retired State Public Servant.

The Committee as in the past, endeavoured to meet on a monthly basis. In the 2003/2004 financial year, the Committee met on 11 occasions.

The Committee was able to complete two reviews resulting in the Determinations listed in paragraph 1 below.

**1. Determinations - 2003/2004 Financial Year**

- (a) Legal Practitioners (Supreme Court) (Contentious Business) Determination 2004.
- (b) Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2004

**2. Determinations anticipated in 2004/2005 Financial Year**

The Committee anticipates that it will complete reviews and determinations in respect of the following for the next financial year:

- (a) Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2002.
- (b) Legal Practitioners (Public Notaries) Determination 2002.
- (c) Legal Practitioners (Local Court) (Contentious Business) Determination 2002.
- (d) Legal Practitioners (Petty Sessions) (Contentious Business) Determination 2002.

**3. Performance Measures**

<i><b>OUTPUT</b></i>	<b>2003/04</b>		
	<i><b>TARGET</b></i>	<i><b>ACTUAL</b></i>	<i><b>VARIANCE</b></i>
<i><b>Quantity</b></i>	2	2	0
<i><b>Quality</b></i>	Not Assessed	Not Assessed	N/A
<i><b>Timeliness</b></i>	In accordance with statutory requirements.		
<i><b>Cost</b></i> (Average cost per determination)	\$45 582	\$45 582	0

**4. Accounts and Performance Indicators**

The annual accounts and performance indicators for the year ended 30 June 2004 are attached.

## **5. Report on Operations**

The Legal Costs Committee does not employ staff nor does it have its own premises. The facilities used by the Legal Costs Committee comply with the requirements listed under the *Financial Administration & Audit Act 1985* and are provided by either the Department of Justice or the Department of the Premier and Cabinet.

## **6. General Comments**

Although the Committee only completed 2 Reviews and Determinations during the year 2003/2004, it was nevertheless a busy period for the Committee for the reasons set out below.

As reported in the previous financial year, despite the Supreme Court and District Court Appeals Costs Scales having been published late in the financial year 2001/2002, the Committee made a conscious decision to again review those Scales during the financial year 2003/2004.

There is no doubt they are the premier scales to be considered by the Committee and the fact that the Committee's work was otherwise up to date, enabled it to look at these Scales again in some detail and consider new initiatives to better publicise the Reviews and if possible, obtain more market information for legal costs.

The Committee is mindful of the fact that it has to have regard to the interests of legal practitioners and their clients, particularly the latter.

The Committee is concerned to ensure that consumers of legal services are paying fees which represent the current market both as to costs payable by clients to their legal practitioners as well as party/party costs in a litigation matter so that in the latter case, the gap between what is recoverable from the losing party and the amount the successful party may have agreed to pay its legal practitioner, is not exaggerated by reason of the scales as determined by the Committee being below the market rates to an unreasonable extent.

Whilst some might argue that to increase the amounts in the scales is for the benefit of legal practitioners, the Committee takes the view that for the reason mentioned in the previous paragraph and to assist the consumer to gain access to legal services, it is appropriate that the legal practitioner be appropriately but fairly remunerated.

Consequently, the Committee engaged a consultant to develop a Questionnaire which could be placed on the Committee's Website, which is linked to the Department of Justice Website, as part of the next review of these Scales. It was designed to be available to both the legal profession and the public for their comments when called for by the statutory advertising process and also for future reviews of other Scales.

The Committee hoped to gain a better understanding of market conditions by using this tool and believe it was worth pursuing for that reason.

The consideration and refinement of the terms of the online Questionnaire took a considerable amount of the Committee's meeting time during the year as well as individual Members' additional time spent outside regular meetings, examining the issues.

As matters turned out, one response was received from the public (from a public company being a large consumer of legal services) whilst the response from the profession was greater than on previous reviews.

Because of the number of Determinations for this financial year (2), the historically low cost of each of the Determinations for the previous financial year was not replicated, the calculation being simply a matter of costs divided by the number of Determinations made in a particular year. This calculation is always susceptible to the variable number of Reviews and Determinations conducted in each financial year.

I note that whilst the Committee's role is well defined in its governing legislation and does not require it (nor does it have the resources) to act in a pro-active manner for legislative change, it has been prepared to endorse any suggestions for the better interpretation of the Scales and the Act. By way of example, the Committee considered the suggestion that the Items listed in the Supreme Court Scale be re-ordered to more closely resemble the order of litigation proceedings was a relevant one. The Committee responded by amending the Schedule of Items in the Supreme Court Scale accordingly.

## **7. Executive Assistance**

The Committee wishes to acknowledge the valuable help and assistance provided during the year by Mr Brian Bennett and Ms Suzanne Yong of Courts and Tribunals who have offered the Committee and myself in particular, great assistance with the administration of the Committee and publication of our Notices, Reports and Determinations.

Lastly, but by no means least on behalf of the Committee, I wish to express the Committee's appreciation for the valuable assistance provided to it by Mr John Lightowlers of the Department of the Premier and Cabinet. John attends the Committee's meetings regularly in his own time and provides great assistance to the Committee with his counsel, drafting and knowledge of public sector protocols and legislative processes.

Ted Sharp  
**CHAIR**

**LEGAL COSTS COMMITTEE**  
**PERFORMANCE INDICATORS**  
**2003-2004**

**OUTCOME**

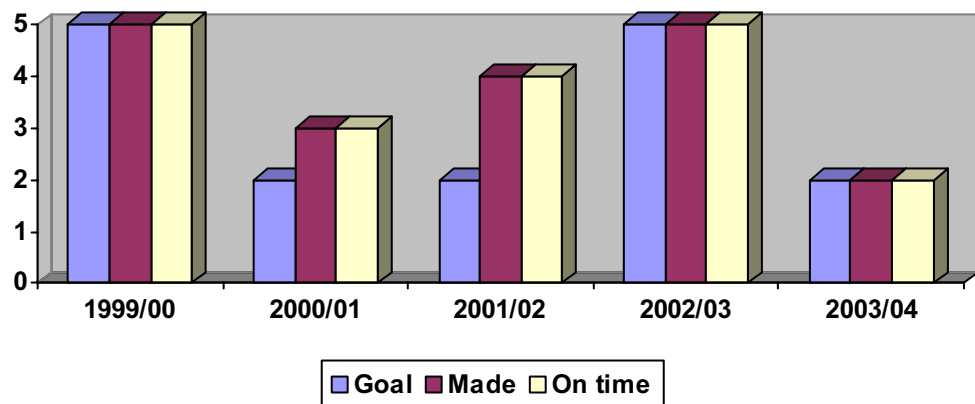
In accordance with Section 211 of the Legal Practice Act 2003, to review each determination in force at least once in the period of two years in the following jurisdictions:

- ◆ Supreme Court
- ◆ District Court (Appeals)
- ◆ Local Court
- ◆ Court of Petty Sessions
- ◆ Workers' Compensation (Conciliation Proceedings, Review Proceedings and Compensation Magistrate's Court)
- ◆ Non-Contentious Probate Costs
- ◆ Solicitors Costs
- ◆ Official Prosecutions (Defendants' Costs)
- ◆ Public Notaries

**EFFECTIVENESS INDICATOR**

The extent to which Legal Costs Committee determinations are completed in accordance with established deadlines, including the goals set at item 2 of the Annual Report for the year ended 30 June 2003.

**Performance Measure:** The number of Committee determinations made during the year and completed on time.



**The Committee stated its intention to make determinations during the financial year ended 30 June 2004 in respect of:**

- (a) Legal Practitioners (Supreme Court) (Contentious Business) Determination 2002;
- (b) Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2002;

The Legal Costs Committee does not employ staff but the administrative function is undertaken at no cost by staff from the Department of Justice. As such, the development of further effectiveness indicators would not be meaningful or relevant.

### **EFFICIENCY INDICATOR**

Efficiency Indicator measures cost per Determination.

- (a) Three Determinations were made in the 2000/2001 financial year at a cost of \$30,461 per Determination.
- (b) Four Determinations were made in the 2001/2002 financial year at a cost of \$22,912 per Determination.
- (c) Five Determinations were made in the 2002/2003 financial year at a cost of \$19,694 per Determination.
- (d) Two Determinations were made in the 2003/2004 financial year at a cost of \$45,582 per Determination.

We hereby certify that the performance indicators are based on proper records, are relevant and appropriate for assisting users to assess the Legal Costs Committee performance and fairly represent the performance of the Legal Costs Committee for the 2003/2004 financial year.

**CHAIR**

**MEMBER**

**Date:**

**Date:**