

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>OUTPUT</i>	2003/04		
	<i>TARGET</i>	<i>ACTUAL</i>	<i>VARIANCE</i>
<i>Quantity</i>	2	2	0
<i>Quality</i>	Not Assessed	Not Assessed	N/A
<i>Timeliness</i>	In accordance with statutory requirements.		
<i>Cost</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

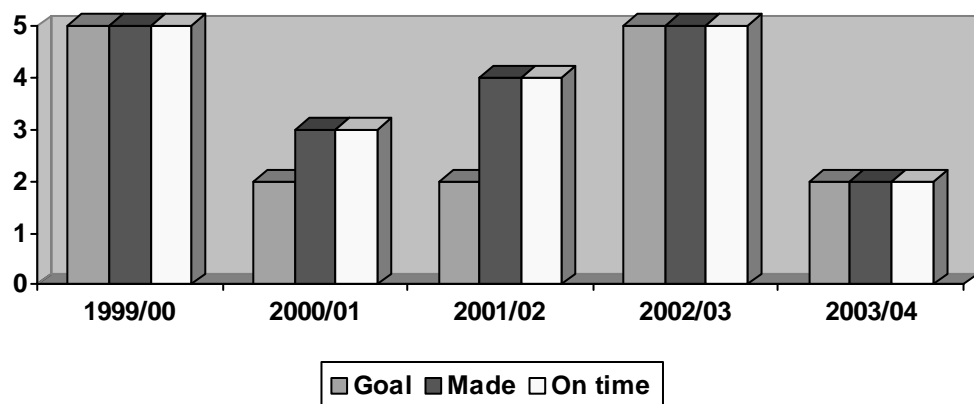
In accordance with Section 211 of the Legal Practice Act 2003, to review each determination in force at least once in the period of two years in the following jurisdictions:

- ◆ 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:

LEGAL COSTS COMMITTEE
Statement of Financial Performance
for the year ended 30 June 2004

	Note	2004 \$	2003 \$
COST OF SERVICES			
Expenses from ordinary activities			
Board member fees and entitlements	2	50,195	46,695
Other expenses from ordinary activities	3	<u>40,960</u>	<u>51,776</u>
Total cost of services		<u>91,155</u>	<u>98,471</u>
Revenues from ordinary activities			
<i>Revenue from operating activities</i>			
Grants from State Agencies	4	<u>57,000</u>	<u>57,000</u>
Total revenues from ordinary activities		<u>57,000</u>	<u>57,000</u>
NET COST OF SERVICES		<u>34,155</u>	<u>41,471</u>
REVENUES FROM STATE GOVERNMENT	5		
Resources received free of charge		<u>34,089</u>	<u>40,766</u>
Total revenues from State Government		<u>34,089</u>	<u>40,766</u>
Change in Net Assets		(66)	(705)
TOTAL CHANGES IN EQUITY OTHER THAN THOSE RESULTING FROM TRANSACTIONS WITH WA STATE GOVERNMENT AS OWNERS		<u>(66)</u>	<u>(705)</u>

The Statement of Financial Performance should be read in conjunction with the accompanying notes.

LEGAL COSTS COMMITTEE
Statement of Financial Position
as at 30 June 2004

	Note	2004 \$	2003 \$
Current Assets			
Cash assets	9(a)	55,771	61,226
Receivables	6	157	160
Total Current Assets		<u>55,928</u>	<u>61,386</u>
Total Assets		<u>55,928</u>	<u>61,386</u>
Current Liabilities			
Payables	7	1,540	6,932
Total Current Liabilities		<u>1,540</u>	<u>6,932</u>
Total Liabilities		<u>1,540</u>	<u>6,932</u>
NET ASSETS		<u>54,388</u>	<u>54,454</u>
Equity	8		
Accumulated surplus		<u>54,388</u>	<u>54,454</u>
TOTAL EQUITY		<u>54,388</u>	<u>54,454</u>

The Statement of Financial Position should be read in conjunction with the accompanying notes.

LEGAL COSTS COMMITTEE
Statement of Cash Flows
for the year ended 30 June 2004

	Note	2004 \$	2003 \$
CASH FLOWS FROM OPERATING ACTIVITIES			
Payments			
Payments to members and suppliers		(62,458)	(96,862)
GST payments		(674)	(1,091)
Receipts			
Grants from State Agencies		57,000	57,000
GST receipts		677	1,347
Net cash provided by/(used in) operating activities	9(b)	<u>(5,455)</u>	<u>(39,606)</u>
Net decrease in cash held		(5,455)	(39,606)
Cash assets at the beginning of the financial year		<u>61,226</u>	<u>100,832</u>
CASH ASSETS AT THE END OF THE FINANCIAL YEAR	9(a)	<u>55,771</u>	<u>61,226</u>

The Statement of Cash Flows should be read in conjunction with the accompanying notes.

LEGAL COSTS COMMITTEE
Notes to the Financial Statements
for the year ended 30 June 2004

1 Significant accounting policies

The following accounting policies have been adopted in the preparation of the financial statements of the Legal Costs Committee (for the purpose of these notes the "Committee"). Unless otherwise stated, these policies are consistent with those adopted in the previous year.

General Statement

The financial statements constitute a general purpose financial report which has been prepared in accordance with Accounting Standards, Statements of Accounting Concepts and other authoritative pronouncements of the Australian Accounting Standards Board and Urgent Issues Group (UIG) Consensus Views as applied by the Treasurer's Instructions. Several of these are modified by the Treasurer's Instructions to vary the application, disclosure, format and wording. The Financial Administration and Audit Act and the Treasurer's Instructions are legislative provisions governing the preparation of financial statements and take precedence over Accounting Standards, Statements of Accounting Concepts and other authoritative pronouncements of the Australian Accounting Standards Board and UIG Consensus Views. The modifications are intended to fulfil the requirements of general application to the public sector together with the need for greater disclosure and also satisfy accountability.

If any such modification has a material or significant financial effect upon the reported results, details of that modification and where practicable, the resulting financial effect are disclosed in individual notes to these financial statements.

Basis of Accounting

The financial statements have been prepared on the accrual basis of accounting using the historical cost convention, except for certain assets and liabilities which, as noted, are

(a) Grants

Grants are recognised as revenue when the Committee obtains control over the assets comprising the contributions. Control is normally obtained upon their receipt.

(b) Receivables

Receivables are recognised at the amounts receivable as they are due for settlement no more than 30 days from the date of recognition.

Collectability of receivables is reviewed on an ongoing basis. Debts which are known to be uncollectible are written off. A provision for doubtful debts is raised where doubt as to the collection exists.

(c) Payables

Payables, including accruals not yet billed, are recognised when the Committee becomes obliged to make future payments as a result of a purchase of assets or services. Payables are generally settled within 30 days.

(d) Superannuation

All Board Members are non-contributory members of the West State Superannuation Scheme, an accumulation fund complying with the Commonwealth Government's Superannuation Guarantee (Administration) Act 1992. This scheme is administered by the Government Employees Superannuation Board (GESB).

LEGAL COSTS COMMITTEE
Notes to the Financial Statements
for the year ended 30 June 2004

The liabilities for the superannuation charges under the West State Superannuation Scheme are extinguished by payment of employer contributions to the GESB.

(e) Resources Received Free of Charge

Resources received free of charge or for nominal value which can be reliably measured are recognised as revenues and as assets or expenses as appropriate at fair value.

(f) Comparative figures

Comparative figures are, where appropriate, reclassified so as to be comparable with the figures presented in the current financial year.

(g) Rounding

Amounts in the financial statements have been rounded to the nearest dollar.

	2004	2003
	\$	\$
2 Board member fees and entitlements		
Board member fees	46,050	42,450
Superannuation	4,145	4,245
	<u>50,195</u>	<u>46,695</u>
3 Other expenses from ordinary activities		
Advertising	2,308	5,625
Administration	34,089	40,766
Stationery and books	1,424	3,712
Other expenses	3,139	1,673
	<u>40,960</u>	<u>51,776</u>
4 Grants from State Agencies		
Operating grant from the Department of Justice	<u>57,000</u>	<u>57,000</u>

LEGAL COSTS COMMITTEE
Notes to the Financial Statements
for the year ended 30 June 2004

	2004	2003
	\$	\$
5 Revenues from State Government		
Resources received free of charge (I)		
Determined on the basis of the following estimates provided by agencies:		
Office of the Auditor General (II)		
Audit services	-	8,500
Department of Justice		
Financial Services	3,182	3,028
Secretarial and Management Support	30,907	29,238
	<u>34,089</u>	<u>40,766</u>
<p>(I) Where assets or services have been received free of charge or for nominal consideration, the Committee recognises revenues (except where the contribution of assets or services is in the nature of contributions by owners, in which case the Committee shall make a direct adjustment to equity) equivalent to the fair value of the assets and/or the fair value of those services that can be reliably determined and which would have been purchased if not donated, and those fair values shall be recognised as assets or expenses, as applicable.</p> <p>(II) Commencing with the 2003-04 audit, the Office of the Auditor General will be charging a fee for auditing the accounts, financial statements and performance indicators. The fee for the 2003-04 audit (\$6,000) will be due and payable in the 2004-05 financial year.</p>		
6 Receivables		
GST receivable	157	160
	<u>157</u>	<u>160</u>
7 Payables		
Trade and other creditors	1,540	6,932
	<u>1,540</u>	<u>6,932</u>
8 Equity		
Accumulated surplus		
Opening balance	54,454	55,159
Change in net assets	(66)	(705)
Closing balance	<u>54,388</u>	<u>54,454</u>

LEGAL COSTS COMMITTEE
Notes to the Financial Statements
for the year ended 30 June 2004

	2004	2003
	\$	\$
9 Notes to the Statement of Cash Flows		
(a) Reconciliation of cash		
Cash at the end of the financial year as shown in the Statement of Cash Flows is reconciled to the related items in the Statement of Financial Position as follows:		
Cash assets	<u>55,771</u>	<u>61,226</u>
(b) Reconciliation of net cost of services to net cash flows provided by/(used in) operating activities		
Net cost of services	(34,155)	(41,471)
Non-cash items:		
Resources received free of charge	34,089	40,766
Increase / (decrease) in liabilities:		
Payables	(5,392)	(39,157)
Change in GST receivables	3	256
Net cash provided by/(used in) operating activities	<u>(5,455)</u>	<u>(39,606)</u>

10 Remuneration of Members of the Accountable Authority and Senior Officers

Remuneration of Members of the Accountable Authority

whose total of fees, salaries, superannuation and other benefits for the financial year fall within the following bands are:

	2004	2003
\$0 - \$10,000	5	5
\$10,001 - \$20,000	1	1
	\$	\$
The total remuneration of the members of the Accountable Authority is:	<u>50,195</u>	<u>46,695</u>

The superannuation included here represents the superannuation expense incurred by the Committee in respect of members of the Accountable Authority.

No members of the Accountable Authority are members of the Pension Scheme.

11 The Impact of Adopting International Accounting Standards

The transition to Australian equivalents to International Accounting Standards is being managed by the Department of Justice on behalf of the Committee as part of its corporate financial support function. Justice Finance staff are keeping abreast of changes through the review of available information, such as publications on the CPA Australia and Department of Treasury and Finance websites and by attending relevant workshops. Committee members will be briefed on any IAS issue that affects the Committee.

The adoption of Australian equivalents to International Accounting Standards is expected to have minimal impact on future financial reporting requirements of the Committee.

12 Financial instruments

(a) Interest rate risk exposure

The Committee does not have any interest bearing accounts and is therefore not subject to any interest rate risk exposure.

(b) Credit risk exposure

All financial assets are unsecured.

Amounts owing by other government agencies are guaranteed, therefore no credit risk exists in respect of those amounts. In respect of other financial assets the carrying amounts represent the Committee's maximum exposure to credit risk.

13 Supplementary financial information

- There were no losses of public moneys or other public property through theft or default during the financial year (2003, nil).
- There were no write offs of public money or other public property during the financial year
- There were no gifts of public property during the financial year (2003, nil).
- There were no contingent liabilities as at 30 June 2004 (2003, nil).
- There were no events occurring after the balance date at the end of the financial year.
- The Committee had no related bodies during the financial year (2003, nil).
- The Committee had no affiliated bodies during the financial year (2003, nil).

14 Explanatory Statement

(i) Significant variations between estimates and actual results for the financial year

Details and reasons for significant variations between actual results with the corresponding items of the preceding year are detailed below. Significant variations are considered to be those greater than 10%.

	Actual 2004 \$	Estimates 2004 \$	Variance
Expenses from ordinary activities			
Other expenses from ordinary activities	40,960	51,000	\$10,040
Revenues from State Government			
Resources received free of charge	34,089	40,000	\$5,911

Other expenses from ordinary activities

This variance is largely due to the estimate including audit fees in the resources free of charge expense (\$6,000). The actual expense does not include audit fees. See note 5 (II) for explanation regarding why

Resources received free of charge

This variance is largely due to the estimate including audit fees in the resources free of charge (\$6,000). See note 5 (II) for explanation regarding why audit fees are not included.

(ii) Significant variations between actual revenues and expenditures for the financial year and revenues and expenditures for the immediately preceding financial year.

Details and reasons for significant variations between actual results with the corresponding items of the preceding year are detailed below. Significant variations are considered to be those greater than 10%.

	2004 \$	2003 \$	Variance \$
Expenses from ordinary activities			
Other expenses from ordinary activities	40,960	51,776	(10,816)
Revenues from State Government			
Resources received free of charge	34,089	40,766	(6,677)

Other expenses from ordinary activities

The variance is largely due to audit fees being included in the Resources Free of Charge expense in 2003 (\$8,500). In 2004, audit fees were not included. See note 5 (II) for explanation.

Resources received free of charge

The variance is largely due to audit fees being included in the Resources Free of Charge in 2003 (\$8,500). In 2004, audit fees were not included. See note 5 (II) for explanation.