

## LEGAL PRACTICE ACT 2003

### LEGAL PRACTITIONERS (MAGISTRATES COURT) (CRIMINAL JURISDICTION) REPORT 2008

Made by the Legal Costs Committee under section 214 of the Act.

#### PART 1 – PRELIMINARY

##### Citation

1. (1) This Report may be cited as the *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Report 2008*.

(2) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Determination 2008*.

#### PART 2 – NOTICE AND INQUIRIES

##### Notice under section 213 of the Act

2. The Legal Costs Committee has complied with the notice provisions of section 213 of the Act.

##### Inquiries and submissions under section 213 of the Act

3. (1) The Legal Costs Committee initiated a review of the scale of costs in the Magistrates Court to maintain and enhance consistency where practicable with the format of the costs determinations applicable to the Supreme Court of Western Australia and the District Court of Western Australia.

(2) Before making the *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Determination 2008* the Legal Costs Committee:

- (a) reviewed all submissions received as a result of the notice given under section 213 of the Act;
- (b) consulted with the Court;
- (c) consulted with The Law Society of Western Australia Inc., the Western Australian Bar Association Inc and the Criminal Lawyers Association of Western Australia;
- (d) reviewed the *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Determination 2006*<sup>1</sup>; and
- (e) had regard to relevant provisions of the *Magistrates Court Act 2004*.

<sup>1</sup> [Published in Gazette 26 September 2006 pp.4237-4239].

### PART 3 – REPORT OF COMMITTEE’S CONCLUSIONS

#### Hourly rates established

4. (1) The Legal Costs Committee notes that the criminal jurisdiction of the Magistrates Court covers a wide range of summary criminal matters.

(2) As a consequence of the position stated in subclause 4(1), the Legal Costs Committee considers it is appropriate for a general scale of fees based on hourly rates to continue to apply to the time reasonably taken to perform the services provided by a practitioner in, or for the purposes of contentious business in the criminal jurisdiction of the Magistrates Court.

(3) It is the recommendation of the Legal Costs Committee that:

(a) as a result of the inquiries and submissions described in clause 3;

(b) having considered the impact of relevant Australian Bureau of Statistics data;

(c) having considered submissions and data from The Law Society of Western Australia and the Western Australian Bar Association; and

(d) the incidental administrative implications of the calculation of the Goods and Services Tax,

that the appropriate hourly rates referred to in subclause 4(2) be varied from the hourly and daily rates used in the *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Determination 2006* (supra) as the basis for the recommended scale of costs which have generally been rounded up or down to represent an increase of 10% 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 (Magistrates Court) (Criminal Jurisdiction) Determination 2008*.

(4) It is further the recommendation of the Legal Costs Committee that the hourly rates charged by practitioners under the *Legal Practitioners (Magistrates Court) (Civil Jurisdiction) Determination 2008* should be adopted as the basis for costs for the supply of legal services covered under the *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Determination 2008*.

(5) The hourly rates referred to in subclause 4(4) are set out in the Table to clause 4 of the *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Determination 2008*.

(6) It is further the recommendation of the Legal Costs Committee that the Table to clause 5 of the *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Determination 2008* should be adopted as the basis for costs for the supply of those legal services itemised in that Table. The *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Determination 2008* sets out the Scale of Costs which should be applicable to particular items of work referred to in that Scale.

(7) The recommendations of the Legal Costs Committee are not intended to override the entitlements of a practitioner to make a written agreement as to costs with a client under Section 221 of the *Legal Practice Act 2003*.

TED SHARP, Chairman  
ANGELA GAFFNEY, Member  
CLARE THOMPSON, Member  
MARCUS COCKER, Member  
JANICE DUDLEY, Member

## Schedule

### LEGAL PRACTICE ACT 2003

#### LEGAL PRACTITIONERS (MAGISTRATES COURT) (CRIMINAL JURISDICTION) DETERMINATION 2008

Made by the Legal Costs Committee under section 210 of the Act.

#### **Citation**

1. This Determination may be cited as the *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Determination 2008*.

#### **Commencement**

2. This Determination comes into operation on 1 July 2008.

#### **Application**

3. (1) This Determination applies to the remuneration of practitioners in respect of work undertaken for the purposes of criminal proceedings in the Magistrates Court.

(2) This Determination does not apply to the remuneration of practitioners based on costs incurred in respect of work carried out before the commencement of this determination.

#### **Maximum hourly rates**

4. (1) The hourly rates set out in the Table to this clause are the maximum hourly rates, inclusive of GST, which the Legal Costs Committee determines shall be used to calculate the remuneration of practitioners in respect of time reasonably taken to perform services in or for the purposes of work undertaken by practitioners in respect of criminal proceedings before the Magistrates Court.

(2) 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 is 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.

(3) The Legal Costs Committee acknowledges that the implementation of clause 4 (2) will result in a proportionally smaller increase for Counsel daily rates and a proportionally larger increase for Senior Counsel daily rates in contrast to a straight increase of 10% being applied. The Legal Costs Committee considers that the anomaly of the Counsel daily rate being calculated at slightly more than 10 hours per day and the Senior Counsel rate previously being calculated at a slightly less than 10 hours per day needs to be corrected and for that reason, the disproportionate increases in each of the two rates appear in this Determination.

**Table**

| <b>Fee Earner</b>   |             | <b>Maximum<br/>allowable<br/>rates<br/>\$</b> |
|---|-------------|---|
| Senior Practitioner (admitted for 5 years or more) (SP)   | hourly rate | 330   |
| Junior Practitioner (admitted for less than 5 years) (JP) | hourly rate | 231   |
| Clerk/Paralegal (C/PL)                                    | hourly rate | 110   |
| Counsel fees charged as a disbursement to practitioners   |             |   |
| or charged by in-house counsel:                           |             |   |
| Counsel (C)*  | hourly rate | \$253   |
|   | daily rate  | \$2,530                                       |
| Senior Counsel (SC)†                                      | hourly rate | \$429   |
|   | daily rate  | \$4,290                                       |

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. (1) Subject to section 221 of the *Legal Practice Act 2003* permitting a practitioner to make a written agreement as to costs with a client, the costs of or in relation to a prosecution of an accused (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 practitioner,

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

(2) Each item of the Scale of Costs specifies a dollar amount. The purpose is to indicate the maximum amount for the work indicated in the item, but on assessment, less might be allowed. In no respect is the

Scale to be seen as providing a minimum charge for any work. The reason for stating the number of hours estimated to be necessary to perform each of the items of work described in the Scale is to provide guidance to the Assessing Officer when dealing with the question of costs so that the Assessing Officer has some idea how much time is reasonably necessary to perform the work in most cases.

(3) Work undertaken by Senior Counsel shall be allowable in accordance with the rates in the Table to clause 4 of this Determination.

**Table**

**MAGISTRATES COURT CRIMINAL JURISDICTION SCALE OF COSTS 2008**

| <b>Item No</b> | <b>Item</b>  | <b>Time</b>                           | <b>Maximum Amount \$</b>                            |
|----------------|--|---------------------------------------|---|
| 1.             | Adjournment  | 1 hour                                | 330   |
| 2.             | Bail application, including preparation  | 5 hours                               | 1,650   |
| 3.             | Directions hearing, including preparation  | 4 hours                               | 1,320   |
| 4.             | First day of trial including preparation of case for trial and counsel fee   | 1½ days preparation; 1st day of trial | 6,325   |
| 5.             | Second and each successive day of trial  |                                       | 2,530   |
| 6.             | Allowance for preparation where the trial does not proceed or the prosecution offers no evidence   |                                       | Such amounts as are reasonable in the circumstances |
| 7.             | Counsel fee for attending court for remand appearance, directions hearing, status conference, mention, callover, reserved decision or other appearance not otherwise accounted for | 3 hours                               | 759   |
| 8.             | Photocopies where necessary  | per page                              | 1.00  |

Made by the Legal Costs Committee on 17 June 2008.