

LEGAL PROFESSION ACT 2008

LEGAL PRACTITIONERS (MAGISTRATES COURT) (CRIMINAL) REPORT 2010

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 (Magistrates Court) (Criminal) Report 2010*.
- (2) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Practitioners (Magistrates Court) (Criminal) Determination 2010*.

PART 2 – NOTICE AND INQUIRIES

Notice under section 278 of the Act

2. The Legal Costs Committee has complied with the notice provisions of section 278 of the Act.

Inquiries and submissions under section 277 of the Act

3. Before making the *Legal Practitioners (Magistrates Court) (Criminal) Determination 2010* the Legal Costs Committee:
 - (a) reviewed all submissions received as a result of the notice given under section 278 of the Act;
 - (b) consulted with the Magistrates 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 2008*¹;
 - (e) had regard to relevant provisions of the *Magistrates Court Act 2004*; and
 - (f) conferred with other legal practitioners.

¹ Published in Gazette 26 June 2008 pp 2978-2980.

PART 3 – REPORT OF COMMITTEE’S CONCLUSIONS

Hourly rates and scale of costs

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 law practice 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) taking into account the incidental administrative implications of the calculation of the Goods and Services Tax,

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 2008* (supra) as the basis for the recommended scale of costs which have generally been rounded up or down to represent various increases of between 6.66% and 9.52% 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) Determination 2010*.

(4) It is further the recommendation of the Legal Costs Committee that the hourly rates charged by law practices under the *Legal Practitioners (Magistrates Court) (Civil) Determination 2010* should be adopted as the basis for costs for the supply of legal services covered under the *Legal Practitioners (Magistrates Court) (Criminal) Determination 2010*.

(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) Determination 2010*.

(6) It is further the recommendation of the Legal Costs Committee that the Table to clause 5 of the *Legal Practitioners (Magistrates Court) (Criminal) Determination 2010* should be adopted as the basis for costs for the supply of those legal services itemised in that Table.

(7) The recommendations of the Legal Costs Committee are not intended to override the entitlements of a law practice to make a written agreement as to costs with a client under the Act or any successor legislation.

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

Schedule

LEGAL PROFESSION ACT 2008

LEGAL PRACTITIONERS (MAGISTRATES COURT) (CRIMINAL) DETERMINATION 2010

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 *Legal Practitioners (Magistrates Court) (Criminal) Determination 2010*.

Commencement

2. This Determination comes into operation on 1 July 2010.

Application

3. (1) This Determination applies to the remuneration of law practices 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 law practices 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 law practices in respect of time reasonably taken to perform services in or for the purposes of work undertaken by law practices 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 are 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.

Table to clause 4

Fee Earner			Maximum allowable rates \$
Senior Practitioner (admitted for 5 years or more)(SP) ^α		hourly rate	352
Junior Practitioner (admitted for less than 5 years)(JP) ^α		hourly rate	253
Clerk/Paralegal	(C/PL)	hourly rate	121
Counsel fees charged as a disbursement to law practices or charged by in-house counsel:			
Counsel	(C)*	hourly rate	\$275
		daily rate	\$2,750
Senior Counsel	(SC)†	hourly rate	\$462
		daily rate	\$4,620

^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 the provisions of the Act permitting a law practice 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 law practice,

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 to clause 5

MAGISTRATES COURT CRIMINAL SCALE OF COSTS 2010

Item No	Item	Time	Maximum Amount \$
1.	Adjournment	1 hour	352
2.	Bail application, including preparation	5 hours	1,760
3.	Directions hearing, including preparation	4 hours	1,408
4.	First day of trial including preparation of case for trial and counsel fee	1½ days preparation; 1st day of trial	6,875
5.	Second and each successive day of trial		2,750
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	825
8.	Copies where reasonably necessary, including documents for which allowance is otherwise made in this Determination	per page	0.11

Made by the Legal Costs Committee on 15 June 2010.