

## LEGAL PROFESSION ACT 2008

### LEGAL PRACTITIONERS (MAGISTRATES COURT) (CRIMINAL) REPORT 2012

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 2012*.
- (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 2012*.

#### 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 2012* 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 and the Chief Magistrate;
  - (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 2010*<sup>1</sup>;
  - (e) had regard to relevant provisions of the *Magistrates Court Act 2004*; and
  - (f) conferred with other legal practitioners.

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<sup>1</sup> Published in Gazette 29 June 2010.

### 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) Subject to the matters referred to in sub-clause (7) below, the Legal Costs Committee considers that as a consequence of the position stated in subclause 4(1), 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
- (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) Determination 2010* as the basis for the recommended scale of costs which have generally been rounded up or down to represent various increases of between 6.25% and 9.09% 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 2012*.

(4) It is the recommendation of the Legal Costs Committee that the hourly rates charged by law practices under the *Legal Practitioners (Magistrates Court) (Civil) Determination 2012* should be adopted as the basis for costs for the supply of legal services covered under the *Legal Practitioners (Magistrates Court) (Criminal) Determination 2012*.

(5) The hourly rates referred to in subclause 4(4) are set out in Table A of the *Legal Practitioners (Magistrates Court) (Criminal) Determination 2012*.

(6) It is further the recommendation of the Legal Costs Committee that Table B of the *Legal Practitioners (Magistrates Court) (Criminal) Determination 2012* should be adopted as the basis for costs for the supply of those legal services itemised in that Table.

(7) It is the recommendation of the Legal Costs Committee that having regard to the input of the Chief Magistrate, the Determination should allow for only one adjournment unless additional adjournments are justified in the view of the presiding Magistrate or are otherwise permitted by the Court in its usual practice in a specialist list or court. Additionally, the Legal Costs Committee understands from the Court's experience, a distinction should be made between initial bail applications and an application for variation to bail conditions as well as between short pleas in mitigation and longer pleas in mitigation.

(8) 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 2012**

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 2012*.

##### **Commencement**

2. This Determination comes into operation on 1 November 2012.

##### **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 Table A below 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 Table B 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.

##### **Adjournments, Bail Applications and Pleas in mitigation**

5. (1) The Legal Costs Committee has resolved that having regard to comments from the Chief Magistrate and the circumstances noted in clause 4(7) of the Report, it is appropriate to include amendments to item 1 (to recognise that multiple adjournments should generally be discouraged and are an inefficient use of the Court's time), item 2 (to distinguish between initial bail applications and applications for variations of bail conditions) and the introduction of a new item 8 (pleas in mitigation).

(2) The reframing of Item 1 in Table B is intended to encourage the speedy progress of a matter to trial or other final conclusion, avoiding multiple adjournments. Item 1(c) is not intended to cover routine adjournments granted at the request of a practitioner, which are included in the allowance in item 1(a). Item 1(c) is intended to provide an allowance for adjournments arising from the Court's usual practices in specialist lists or courts, e.g. the Drug Court or Mental Health List.

##### **Trial Length**

6. The Legal Costs Committee has resolved that having regard to comments from the Chief Magistrate, it is appropriate to provide a proportionally greater allowance for a half day trial than a trial which lasts into a second half day, but not a second day. Item 4 in Table B reflects this change, with Item 5 providing the allowance for additional days of trial.

**Table A**

<b>Fee Earner</b>		<b>Maximum allowable rates</b>
Senior Practitioner (admitted for 5 years or more)(SP) <sup>α</sup>	hourly rate	\$374
Junior Practitioner (admitted for less than 5 years)(JP) <sup>α</sup>	hourly rate	\$275
Clerk/Paralegal (C/PL)	hourly rate	\$132

Counsel fees charged as a disbursement to law practices

or charged by in-house Counsel:

Counsel (C)*	hourly rate	\$297
	daily rate	\$2,970
Senior Counsel (SC)†	hourly rate	\$495
	daily rate	\$4,950

<sup>α</sup> 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**

7. (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 Table B.

(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 A of this Determination.

**Table B**

**MAGISTRATES COURT CRIMINAL SCALE OF COSTS 2012**

<b>Item No</b>	<b>Item</b>	<b>Time</b>	<b>Maximum Amount \$</b>
1.	(a) Subject to paragraphs (b) and (c), allow for one adjournment only	1 hour	374
	(b) Costs for additional adjournments to be awarded on application to, and at the discretion of, the presiding Magistrate		
	(c) Each Court ordered adjournment (see clause 5)	1 hour	374
2.	(a) Preparation for application for, and appearance at, initial bail application and/or apply for bail in respect of serious offences set out in the <i>Bail Act 1982 (WA)</i>	3.5 hours	1,309
	(b) Preparation for, and appearance at, application to vary bail conditions	1.5 hours	561
3.	Directions hearing, including preparation	4 hours	1,496
4.	(a) Preparation of case and half day trial, including counsel fee		6,688
	(b) Second half day		748
5.	Second and each successive day of trial		2,970
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	891
8.	(a) Short Plea in mitigation, including preparation (plea of up to 30 minutes)		594
	(b) Long Plea in mitigation, including preparation (plea in excess of 30 minutes)		1,782
9.	Copies where reasonably necessary, including documents for which allowance is otherwise made in this Determination	per page	0.165