

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (MAGISTRATES COURT) (CRIMINAL) REPORT 2014

Made by the Legal Costs Committee under Division 5 of Part 10 of the *Legal Profession Act 2008 (Act)*.

PART 1 – PRELIMINARY

Citation

1. (1) This Report may be cited as the *Legal Profession (Magistrates Court) (Criminal) Report 2014*.
- (2) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (Magistrates Court) (Criminal) Determination 2014*.
- (3) The citation for this Report (compared to previous Reports) has been amended to be consistent with the title of the Act.

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 Profession (Magistrates Court) (Criminal) Determination 2014* the Legal Costs Committee:

- (1)(a) reviewed all submissions received as a result of the notice given under section 278 of the Act;
 - (b) conferred with the Hon. Chief Justice of Western Australia;
 - (c) consulted with the Magistrates Court and the Chief Magistrate;
 - (d) consulted with The Law Society of Western Australia Inc., the Western Australian Bar Association Inc and the Criminal Lawyers Association of Western Australia;
 - (e) reviewed the *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Determination 2012¹*; and
 - (f) had regard to relevant provisions of the *Magistrates Court Act 2004*.
- (2) (a) In the submissions referred to in paragraph 3(1)(a) above, the lack of parity between the hourly rates allowed for Senior Practitioners practising in the amalgam and those Counsel who are of considerable experience but who have not been appointed as Queens Counsel or Senior Counsel, is noted.
 - (b) The Legal Costs Committee has given serious consideration to whether a distinction between practitioners acting as barristers of more than 10 years post admission experience and those of less than 10 years post admission experience should be made. Having consulted with the profession and with the Chief Justice, the Legal Costs Committee has determined that a structural change of this nature to the Determination is not presently justified.
 - (c) The difference in rates between Senior Practitioners practising in the amalgam and Counsel practising at the independent bar has historically been attributable to the substantially lower costs of practice for those at

¹ Published in Gazette 29 October 2012.

the independent bar, as compared with practitioners in the amalgam, who generally offer clients a wider range of services.

(d) The Legal Costs Committee has not been provided with sufficient evidence that suggests this historical differential has altered so that the costs incurred by members of the independent bar are now proportionally equivalent to those incurred by law practices in the amalgam.

(e) Furthermore, to make a structural change to the Determination of the nature identified above, even if the necessary information were made available, it would be necessary for the Legal Costs Committee to consider what would be a likely substantial increase in Counsel rates in light of the consumer protection and access to justice objectives of the Determination. This in turn would include giving consideration to the fact that many practitioners, including those at the independent bar, already enter into written agreements under the Act at rates which are in excess of those provided for in the Determination.

PART 3 – REPORT OF LEGAL COSTS 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 2012* as the basis for the recommended scale of costs which have generally been rounded up or down to represent various increases of approximately 6% 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 Profession (Magistrates Court) (Criminal) Determination 2014*.

(4) It is the recommendation of the Legal Costs Committee that the hourly rates charged by law practices under the *Legal Profession (Magistrates Court) (Civil) Determination 2014* should be adopted as the basis for costs for the supply of legal services covered under the *Legal Profession (Magistrates Court) (Criminal) Determination 2014*.

(5) The hourly rates referred to in subclause 4(4) are set out in Table A of the *Legal Profession (Magistrates Court) (Criminal) Determination 2014*.

(6) It is further the recommendation of the Legal Costs Committee that Table B of the *Legal Profession (Magistrates Court) (Criminal) Determination 2014* should be adopted as the basis for costs for the supply of those legal services itemised in that Table.

(7) The Legal Costs Committee notes its recommendation in the *Legal Practitioners (Magistrates Court) (Civil) Report 2012*² 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

² Published in Gazette 29 October 2012

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 any entitlement 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 PROFESSION (MAGISTRATES COURT) (CRIMINAL) DETERMINATION 2014

Made by the Legal Costs Committee under section 275 of the *Legal Profession Act 2008 (Act)*.

Citation

1. (1) This Determination may be cited as the *Legal Profession (Magistrates Court) (Criminal) Determination 2014*.

(2) The citation for this Determination (compared to previous Determinations) has been amended to be consistent with the title of the Act.

Commencement

2. This Determination comes into operation on 1 July 2014.

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 and daily 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 Rates referred to in paragraph (a) were ascertained in the manner set out in clause 4 of the *Legal Profession (Magistrates Court) (Criminal) report 2014*.

(3) 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.

(4) The items in Table B are not intended to be calculated on the basis of a minimum 6 minute unit.

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 continue and 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 as first set out in the *Legal Profession (Magistrates Court) (Criminal) Determination 2014*, 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.

Table A

Fee Earner			Maximum allowable rates
Senior Practitioner (admitted for 5 years or more)(SP) ^α		hourly rate	\$396
Junior Practitioner (admitted for less than 5 years)(JP) ^α		hourly rate	\$297
Clerk/Paralegal	(C/PL)	hourly rate	\$143
Counsel fees charged as a disbursement to law practices or charged by in-house Counsel:			
Counsel	(C)*	hourly rate	\$319
		daily rate	\$3,190
Senior Counsel	(SC)†	hourly rate	\$528
		daily rate	\$5,280

^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 a Senior Counsel.

† The reference to Senior Counsel in this Determination means a person within the meaning of item 11 or item 12 of Regulation 5(2) of the *Legal Profession Regulations 2009* (WA).

Costs

6. (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 2014

Item No	Item	Time	Maximum Amount \$
1.	(a) Subject to paragraphs (b) and (c), allow for one adjournment only	1 hour	396
	(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 6)	1 hour	396
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</i> (WA)	3.5 hours	1,386
	(b) Preparation for, and appearance at, application to vary bail conditions	1.5 hours	594
3.	Directions hearing, including preparation	4 hours	1,584
4.	(a) Preparation of case and half day trial, including counsel fee		7,084
	(b) Second half day		792
5.	Second and each successive day of trial		3,190
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	957
8.	(a) Short Plea in mitigation, including preparation (plea of up to 30 minutes)		616
	(b) Long Plea in mitigation, including preparation (plea in excess of 30 minutes)		1,892
9.	Copies where reasonably necessary, including documents for which allowance is otherwise made in this Determination	per page	0.165

Made by the Legal Costs Committee on 11 June 2014.