

LEGAL PRACTICE ACT 2003

**LEGAL PRACTITIONERS (OFFICIAL PROSECUTIONS) (DEFENDANTS' COSTS)
REPORT 2004**

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 (Official Prosecutions) (Defendants' Costs) Report 2004*.

(2) The determination set out in the Schedule to this report is referred to in this report as the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2004*.

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) Before making the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2004*, 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 Director of Legal Aid Western Australia;
- (d) received submissions from the Criminal Lawyers Association of Western Australia, the State Solicitors Office and the Law Society of Western Australia; and
- (e) noted that no submissions had been received concerning the daily rates of fees applicable to counsel.

(2) The Legal Costs Committee also had regard to the nature and extent of the jurisdiction of the Courts of Petty Sessions and to pre-trial and procedural changes that have taken place in those Courts, including those related to case management and disclosure obligations of the parties, and the scales contained in costs determinations applicable in other Courts.

PART 3 - REPORT OF THE COMMITTEE'S CONCLUSIONS

Maximum Hourly Rates and Scale of Fees

4. (1) It is the recommendation of the Legal Costs Committee, after reviewing the information gained as a result of the inquiries and submissions described in clause 3, that the hourly and daily rates set out in the Tables to clause 5 of the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2004* be adopted for the supply of legal services covered by the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2004*.
- (2) The hourly rates referred to in subclause (1) are set out in the Table to clause 5(1) of the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2004*.
- (3) The daily rates referred to in subclause (1) are set out in clause 5 (2) of the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2004*.
- (4) It is the recommendation of the Legal Costs Committee as a result of inquiries and submissions described in clause 3 that the scale of costs set out in the Table to clause 6 of the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2004* be adopted.
- (5) It is the further recommendation of the Committee that given the amendments to the hourly and daily rates set out in the Tables to clause 5 and the scale of fees set out in the Table to clause 6 of the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2002* were inclusive of any provision for the Goods and Services Tax (GST), the daily and hourly rates and scale of costs continue to be inclusive of GST.
- (6) The Legal Costs Committee considers that it is impossible to include an item for witness fees because of the wide range of occupations of witnesses who are called to give evidence. Witness fees should be allowed as a disbursement and at the discretion of the Court or the taxing officer but loss of earnings foregone of a witness or the defendant are not intended to be recoverable.
- (7) The recommendation of the Legal Costs Committee under subclause (6) is not intended to affect the generality of item 9 of the scale of costs set out in the Table to clause 6 of the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2004*.

Ted Sharp, Chairman

Michael McPhee, Deputy Chairman

Janine Freeman, Member

Angela Gaffney, Member

Clare Thompson, Member

Marcus Cocker, Member

SCHEDULE

LEGAL PRACTICE ACT 2003

LEGAL PRACTITIONERS (OFFICIAL PROSECUTIONS) (DEFENDANTS' COSTS) DETERMINATION 2004

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

Citation

1. This determination may be cited as the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2004*.

Commencement

2. This determination comes into operation on 1 January 2005.

Interpretation

3. Words and phrases used in this determination have the same meaning as in the *Official Prosecutions (Defendants' Costs) Act 1973*.

Application

4. (1) This determination applies to the remuneration of practitioners in respect of an official prosecution carried out by practitioners in or for the purposes of proceedings before a Summary Court or an Appeal Court.

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

Rates

5. (1) The hourly rates set out in the table to this subclause are the hourly rates which the Legal Costs Committee determines shall apply to the remuneration of practitioners in respect of an official prosecution in or for the purposes of proceedings before a Summary Court and shall be used to calculate the dollar amounts in the scale of costs set out in the Table to clause 6 except for item 8 (Appeals).

Table

Fee Earner	Rates
Senior Practitioner ^α (admitted for 5 years or more) (SP) -- hourly rate	\$275
Junior Practitioner ^α (admitted for less than 5 years) (JP) -- hourly rate	\$200
Clerk/Paralegal (CPL) -- hourly rate	\$75

^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.

(2) The daily rates set out in the table to this subclause are the daily rates which the Legal Costs Committee determines shall apply to the remuneration of practitioners in respect of an official prosecution in or for the purposes of proceedings before a Summary Court

Table

Fee Earner		Rates
Counsel [§]	-- daily rate	\$2670
Senior Counsel*	-- daily rate	\$4060

§ 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 Queen's 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.

Scale of costs

6. Subject to clause 7, the costs recoverable by a successful defendant in an official prosecution (inclusive of counsel fees but exclusive of other disbursements) shall not exceed the amounts set out in the Table to this clause.

TABLE

LEGAL PRACTITIONERS (OFFICIAL PROSECUTIONS) (DEFENDANTS' COSTS) SCALE OF COSTS

Item No	Item	Maximum Time	Maximum Amount
1	Adjournment	1 hour	\$275
2	Bail application, including preparation	5 hours	\$1375
3	Directions hearing, including preparation	4 hours	\$1100
4	First day of trial including preparation of case for trial and counsel fee	12 hours	\$3300

5	Second or subsequent day of trial	5 hours	\$1375
6	A reasonable allowance for preparation where the trial does not proceed or the prosecution offers no evidence	8 hours	\$2200
7	Counsel fee for attending court for remand appearance, directions hearing, status conference, mention, callover, reserved decision or other appearance not otherwise accounted for	2 hours	\$550
8	Appeals	As per the rates specified in item 22 of the <i>Legal Practitioners (Supreme Court) (Contentious Business) Determination 2004*</i>	
9	Disbursements:		
	Photocopying		1.00 per page

In addition to the fees allowed under this Determination disbursements (for example transport, accommodation, meals and travelling costs of a defendant, solicitor, counsel or witness actually incurred by a defendant as a necessary incident to defending an official prosecution) may be allowed as are necessarily or reasonably incurred.

* *Published in the Government Gazette on 25 June 2004 (pp2315 - 2323).*

Complex matters, and matters involving a high degree of skill or urgency

7. Where a matter is complex, or involves a high degree of skill or urgency, notwithstanding the rates or scale set out in the Tables to this Determination, the defendant is entitled to recover a fee that is greater than the one that is set out in this Determination, if it is reasonable in the circumstances.

Made by the Legal Costs Committee on the 21st December 2004.