

LEGAL PROFESSION ACT 2008

**LEGAL PRACTITIONERS (OFFICIAL PROSECUTIONS) (ACCUSED'S COSTS)
REPORT 2009**

Made by the Legal Costs Committee under Part 10 Division 5 of the Act.

PART 1 - PRELIMINARY

Citation

1. (1) This report may be cited as the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Report 2009*.
- (2) The determination set out in the Schedule to this report is referred to in this report as the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2009*.

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 (Official Prosecutions) (Accused's Costs) Determination 2009*, the Legal Costs Committee -
 - (a) consulted with the Chief Justice of Western Australia, the Chief Judge of the District Court of Western Australia, the Chief Magistrate, the State Solicitor, Director of Legal Aid Western Australia, the Western Australian Bar Association and the Criminal Lawyers Association ; and
 - (b) reviewed a submission from the Law Society of Western Australia.

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 the submission described in clause 3, that the hourly and daily rates set out in the Tables to clause 5 of the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2009* be adopted for the supply of legal services covered by the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2009*.

(2) The hourly rates referred to in sub clause (1) are set out in the Table to clause 5(1) of the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2009*.

(3) The daily rates referred to in sub clause (1) are set out in clause 5 (2) of the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2009*.

(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) (Accused's Costs) Determination 2009* be adopted.

(5) It is the further recommendation of the Committee given that 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) (Defendant's 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 accused are not intended to be recoverable.

(7) The recommendation of the Legal Costs Committee under sub clause (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) (Accused's Costs) Determination 2009*.

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 (OFFICIAL PROSECUTIONS) (ACCUSED'S COSTS) DETERMINATION 2009

Made by the Legal Costs Committee under section 275 of the Act.

Citation

1. This determination may be cited as the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2009*.

Commencement

2. This determination comes into operation on 1 June 2009.

Interpretation

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

Application

4. (1) This determination applies to the remuneration of practitioners in respect of an official prosecution in or for the purposes of proceedings before a Magistrates Court or an Appeal Court, as defined in the *Official Prosecutions (Accused's Costs) Act 1973*.

(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 sub clause 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 Magistrates 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	\$330
Junior Practitioner ^α (admitted for less than 5 years) (JP) -- hourly rate	\$231
Clerk/Paralegal (CPL) -- hourly rate	\$110

^α The reference to Junior Practitioner or to Senior Practitioner in this Determination includes all Australian legal practitioners even if the services were rendered in

another State or Territory. Where a local legal practitioner has held an interstate practising 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 below 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 Magistrates Court.

Table

Fee Earner		Rates
Counsel [§]	-- daily rate	\$2,772
Senior Counsel*	-- daily rate	\$4,290

§ 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.

(3) The daily rates set out in the table above 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.

(4) The Legal Costs Committee acknowledges that the implementation of clause 5(3) will result in no increase for Counsel daily rates and a proportionally smaller increase for Senior Counsel daily rates in contrast to the general increase 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.

Scale of costs

6. Subject to clause 7, the costs recoverable by a successful accused 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) (ACCUSED'S COSTS) SCALE OF COSTS

Item No	Item	Maximum Time	Maximum Amount
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; 1 st day of trial	\$6,325
5	Second or subsequent day of trial		\$2,530
6	A reasonable 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	Appeals	As per the rates specified in item 22 of the <i>Legal Practitioners (Supreme Court) (Contentious Business) Determination 2008*</i>	
9	Disbursements:		
	Photocopying		\$1.00 per page

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

** Published in the Government Gazette on 26 June 2008 (pp2952 - 2957).*

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

7. (1) Where a matter is complex, or involves a high degree of skill or urgency or requires Senior Counsel, notwithstanding the rates or scale set out in the Tables to this Determination, the accused 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.

(2) Work undertaken by Senior Counsel shall be allowable in accordance with the rates in the Table to clause 5 of this Determination.

Made by the Legal Costs Committee on 21 April 2009.