

LEGAL PROFESSION ACT 2008

**LEGAL PRACTITIONERS (OFFICIAL PROSECUTIONS) (ACCUSED'S COSTS)
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 (Official Prosecutions) (Accused's Costs) Report 2012*.
- (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 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 (Official Prosecutions) (Accused's Costs) Determination 2012*, 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 Costs Established

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 Table A and Table B of the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2012* be adopted for the supply of legal services for an official prosecution and the awarding of costs to a successful accused under sections 5 or 7 of the *Official Prosecutions (Accused's Costs) Act 1973*.

(2) The hourly rates referred to in sub clause (1) are set out in Table A of the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2012*.

(3) The daily rates referred to in sub clause (1) are set out in Table B of the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2012*.

(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 Table C of the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2012* 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 costs 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 in sub clause (6) is not intended to affect the generality of item 8 of the scale of costs set out in Table C of the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2012*.

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 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 (Official Prosecutions) (Accused's Costs) Determination 2012*.

Commencement

2. This Determination comes into operation on 1 January 2013.

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 legal 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* and the amount of costs ordered to be paid to a successful accused under sections 5 or 7 of the *Official Prosecutions (Accused's Costs) Act 1973*.

(2) This Determination does not apply to the remuneration of legal practitioners or the calculation of costs to be awarded to a successful accused for costs incurred in respect of business carried out before the commencement of this Determination.

Rates

5. (1) The hourly rates set out in Table A are the hourly rates which the Legal Costs Committee determines shall apply to the remuneration of legal practitioners and the award of costs to a successful accused (where the successful accused has been represented by a legal practitioner) 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 Table C.

Table A

Fee Earner	Rates
Senior Practitioner ^α (admitted for 5 years or more) (SP) -- hourly rate	\$374
Junior Practitioner ^α (admitted for less than 5 years) (JP) -- hourly rate	\$275
Clerk/Paralegal (CPL) -- hourly rate	\$132

^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 Table B are the daily rates which the Legal Costs Committee determines shall apply to the remuneration of legal practitioners in respect of an official prosecution in or for the purposes of proceedings before a Magistrates Court.

Table B

Fee Earner		Rates
Counsel [§]	-- daily rate	\$2,970
Senior Counsel*	-- daily rate	\$4,950

§ 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 Table B 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.

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 Table C.

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 Table B of this Determination.

Appeals

8. All costs incurred in relation to an appeal to the Supreme Court of Western Australia are to be taxed in accordance with the relevant items in Table B of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2012**.

* *Published in the Government Gazette on 29 October 2012 (pp5164 - 5170).*

TABLE C

OFFICIAL PROSECUTIONS (ACCUSED'S COSTS) SCALE OF COSTS

Item No	Item	Maximum Time	Maximum Amount
1	Adjournments		
	(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	Bail application		
	(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	Trial		
	(a) Preparation of case and half day trial, including counsel fee		\$6,688
	(b) Second half day		\$748
5	Second or each successive day of trial		\$2,970
6	An 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's 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	Disbursements		
	Copies		\$0.165 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.		