

LEGAL PROFESSION ACT 2008
LEGAL PRACTITIONERS (SUPREME COURT AND DISTRICT COURT)
(CRIMINAL JURISDICTIONS) REPORT 2009

Made by the Legal Costs Committee under section 279 of the Act.

PART 1 – PRELIMINARY

Citation

1

- (1) This Report may be cited as the *Legal Practitioners (Supreme Court and District Court) (Criminal Jurisdictions) Report 2009*.
- (2) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Practitioners (Supreme Court) (Criminal Jurisdiction) Determination 2009*.

PART 2 - BACKGROUND

Background

2 At its meeting on 19 May 2009, the Legal Costs Committee resolved to initiate an inquiry into the need for a separate scale of costs relevant to the remuneration of legal practitioners in respect of criminal proceedings and potential criminal proceedings which are ultimately dealt with in the Supreme Court of Western Australia and the District Court of Western Australia.

Previous judicial comment (Justice Parker in *Pryles & Deferos v Green* (1999) 20 WAR 541) and more recent comments including those of the Principal Registrar of the District Court of Western Australia referred to below, indicate there can be some difficulties for the Supreme Court, the District Court and legal practitioners dealing with assessment of costs in the criminal jurisdictions of those Courts in the absence of a costs agreement or a Determination by the Committee.

As well, given the costs disclosure obligations of legal practitioners under the Legal Profession Act 2008, a separate scale of costs would assist legal practitioners in complying with those obligations.

PART 3 – NOTICE AND INQUIRIES

Notice under section 278 of the Act

3 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

4

- (a) Before making the *Legal Practitioners (Supreme Court and District Court) (Criminal Jurisdictions) Determination 2009*, the Legal Costs Committee:
 - (1) notified the Honourable Mr Christian Porter, Attorney General for Western Australia, the Honourable Wayne Martin, Chief Justice of Western Australia, the Honourable Antoinette Kennedy, Chief Judge of the District Court of Western Australia, the Honourable Dennis Reynolds, President of the Children's Court of Western Australia, The Western Australia Bar Association Inc, The Law Society of Western Australia and the Legal Aid Commission of its intentions; and

- (2) reviewed a submission received from The Law Society of Western Australia and comments by the Principal Registrar of the District Court of Western Australia.
- (b) In light of the costs disclosure obligations contained in the Act, the Legal Costs Committee considers it is appropriate to establish a scale of costs on a legal practitioner/client basis dealing with criminal proceedings and potential criminal proceedings which are ultimately dealt with in the Supreme Court of Western Australia and the District Court of Western Australia.

PART 4 – REPORT OF COMMITTEE’S CONCLUSIONS

Hourly rates and scale of costs established

- 5 The Legal Costs committee has determined that as a consequence of the information gained as a result of the inquiries and submissions described in clause 4:
 - (a) it is unnecessary as at the date of this Report to recommend the implementation of a scale of fees in connection with criminal matters dealt with by the Supreme Court of Western Australia and the District Court of Western Australia in respect of party/party costs; but
 - (b) as a consequence of the costs disclosure provisions in the Act, it is appropriate to determine a scale of fees applicable to the work of legal practitioners, clerks and paralegals in and in connection with criminal proceedings in the Supreme Court of Western Australia and the District Court of Western Australia on a legal practitioner/client basis; and
 - (c) the recommendations of the Legal Costs Committee are not intended to override the entitlement of a legal practitioner to make a written agreement as to costs with a client under the Act.

TED SHARP, Chairperson

ANGELA GAFFNEY, Member

CLARE THOMPSON, Member

MARCUS COCKER, Member

JANICE DUDLEY, Member

MATTHEW CURWOOD, Member

Schedule

LEGAL PROFESSION ACT 2008

LEGAL PRACTITIONERS (SUPREME COURT AND DISTRICT COURT) (CRIMINAL JURISDICTIONS) 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 (Supreme Court and District Court) (Criminal Jurisdictions) Determination 2009*.

Commencement

- 2 This Determination comes into operation on 1 October 2009.

Application

- 3 This Determination applies to the remuneration of legal practitioners, clerks and paralegals in respect of advice given by legal practitioners in or for the purposes of criminal proceedings or potential criminal proceedings which are ultimately dealt with in the Supreme Court of Western Australia and the District Court of Western Australia.

No minimum charge

- 4 In no respect is the Scale to be seen as providing a minimum charge for any work.

Hourly rates

- 5 The hourly and daily rates set out in the Table to this clause are the maximum hourly and daily rates, inclusive of GST which the Legal Costs Committee determines shall be used to calculate the dollar amounts chargeable by a legal practitioner, clerk or paralegal in providing advice and services to clients in respect of criminal proceedings and potential criminal proceedings which are ultimately dealt with in the Supreme Court of Western Australia and the District Court of Western Australia.

Table

Fee Earner	Maximum allowable rates
Senior Practitioner (admitted for 5 years or more) (SP) ^a – hourly rate	\$396
Junior Practitioner (admitted for less than 5 years) (JP) ^a – hourly rate	\$275
Clerk/Paralegal (C/PL) – hourly rate	\$198

Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel

Counsel (C)*	- hourly rate	\$319
	daily rate	\$3190
Senior Counsel (SC) ^B	- hourly rate	\$561
	daily rate	\$5610

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.

- * The reference to Counsel in this Determination means a practitioner acting as a barrister other than as Senior Counsel.
- B 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 Western Australia.

Scale of Costs

6

- (a) Unless a legal practitioner has made a written agreement as to costs with a client under the provisions of section 282 of the Act, the costs of or in relation to a party to an action or other proceeding (inclusive of GST and Counsel fees but exclusive of other disbursements) in the relevant Court are payable by a party to that party's own legal practitioner and must not exceed an amount calculated at the hourly rates in clause 5.
- (b) In respect of any appeals to the District Court and the Supreme Court from any decision of a lower Court or single Judge exercising the relevant Court's criminal jurisdiction, item 22 of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2008* (or any succeeding determination by that title or any determination substituted for it), will apply to legal practitioner/client costs on such appeals.

Made by the Legal Costs Committee on 22 September 2009.