

LEGAL PROFESSION ACT 2008
LEGAL PRACTITIONERS (SUPREME COURT AND DISTRICT COURT)
(CRIMINAL) REPORT 2010

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 (Supreme Court and District Court) (Criminal) Report 2010*.
- (2) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Practitioners (Supreme Court) (Criminal) Determination 2010*.

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 (Supreme Court and District Court) (Criminal) Determination 2010*, the Legal Costs Committee:

- (a) reviewed all submissions received as a result of the notice given under section 278 of the Act;
- (b) reviewed the impact of increases in the Consumer Price and Labour Price Indices for the financial year ending June 2009, and for the September, December 2009 and March 2010 quarters as they impacted on the hourly rates for legal practitioners set out in the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2008*¹;
- (c) reviewed a submission received from The Law Society of Western Australia (Inc) and comments by the Principal Registrar of the District Court of Western Australia; and
- (d) conferred with other legal practitioners.

PART 3 – REPORT OF COMMITTEE'S CONCLUSIONS

Hourly rates and scale of costs established

4

- (a) The information gained as a result of the inquiries and submissions described in clause 3 satisfied the Legal Costs Committee that the manner in which legal services are provided made it appropriate to continue to adopt the hourly and daily rates charged by law practices as the basis for the rates used in the *Legal Practitioners (Supreme Court and District Court) (Criminal)*

¹ Published in Gazette 26 June 2008

Determination 2010. No other appropriate methodologies were put to the Committee as an alternative to hourly and daily rates.

- (b) It is the recommendation of the Legal Costs Committee that:
- (1) as a result of the inquiries and submissions described in clause 3;
 - (2) having considered the impact of relevant Australian Bureau of Statistics data;
 - (3) taking into account the incidental administrative implications of the calculation of the Goods and Services Tax; and
 - (4) to be consistent with the hourly and daily rates referred to in the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2010* to be gazetted at or about the same time as this Report,

the hourly and daily rates referred to in sub-clause 4(a) be varied from the hourly and daily rates used in the *Legal Practitioners (Supreme Court and District Court) (Criminal Jurisdictions) Determination 2009*² as the basis for the recommended scale of costs which have been generally rounded up or down to represent various increases of between 5.55% and 8.33% inclusive of the Goods and Services Tax and for administrative convenience, divisible by 11. Those rates are set out in the Table to clause 5 of the *Legal Practitioners (Supreme Court and District Court) (Criminal) Determination 2010*.

- (c) The recommendations of the Legal Costs Committee are not intended to override the 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, Chairperson
ANGELA GAFFNEY, Member
CLARE THOMPSON, Member
MARCUS COCKER, Member
JANICE DUDLEY, Member
MATTHEW CURWOOD, Member

² Published in Gazette 30 September 2009

Schedule

LEGAL PROFESSION ACT 2008

**LEGAL PRACTITIONERS (SUPREME COURT AND DISTRICT COURT) (CRIMINAL)
DETERMINATION 2010**

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 (Supreme Court and District Court) (Criminal) Determination 2010*.

Commencement

- 2 This Determination comes into operation on 1 July 2010.

Application

- 3 This Determination applies to the remuneration of law practices, clerks and paralegals in respect of advice given by law practices 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 this Determination 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 law practice 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 to clause 5

Fee Earner	Maximum allowable rates
Senior Practitioner (admitted for 5 years or more) (SP) ^a – hourly rate	\$429
Junior Practitioner (admitted for less than 5 years) (JP) ^a – hourly rate	\$297
Clerk/Paralegal (C/PL) – hourly rate	\$209

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

Counsel (C)*	- hourly rate	\$341
	- daily rate	\$3410
Senior Counsel (SC) ^B	- hourly rate	\$605
	- daily rate	\$6050

- a 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.

Costs

6

- (a) Unless a law practice 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 law practice and must not exceed an amount calculated at the hourly rates in clause 5.
- (b) In respect of any appeals to the Supreme Court from any decision of a lower Court or single Judge exercising the relevant Court's criminal jurisdiction, item 23 of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2010* will apply to law practice/client costs on such appeals.

Made by the Legal Costs Committee on 15 June 2010.