

LEGAL PROFESSION ACT 2008
LEGAL PROFESSION (OFFICIAL PROSECUTIONS) (ACCUSED'S COSTS) REPORT
2022

Made by the Legal Costs Committee under Division 5 of Part 10 of the *Legal Profession Act 2008 (Act)*.

PART 1 - PRELIMINARY

1 Citation

- (a) This Report may be cited as the *Legal Profession (Official Prosecutions) (Accused's Costs) Report 2022*.
- (b) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2022*.

PART 2 - NOTICE AND INQUIRIES

2 Notice under section 278 of the Act

The Legal Costs Committee has complied with the notice provisions of section 278 of the Act.

3 Inquiries and submissions under section 277 of the Act

Before making the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2022*, the Legal Costs Committee:

- (a) Reviewed the submissions received as a result of the notice given under section 278 of the Act including those made by The Law Society of Western Australia (Inc); and
- (b) Considered the comments and suggestions made at a seminar with members of the legal profession held on 2 February 2022.

PART 3 - REPORT OF THE COMMITTEE'S CONCLUSIONS

4 Maximum hourly and daily rates changed

- (a) 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 Profession (Official Prosecutions) (Accused's Costs) Determination 2022* 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*.
- (b) The hourly rates referred to in sub clause (a) are set out in Table A of the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2022*.
- (c) The daily rates referred to in sub clause (a) are set out in Table B of the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2022*.
- (d) 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 Profession (Official Prosecutions) (Accused's Costs) Determination 2022* be adopted.
- (e) It is the further recommendation of the Legal Costs Committee that the daily and hourly rates and scale of costs continue to be inclusive of GST.
- (f) 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 by a witness or the accused are not intended to be recoverable.

- (g) The recommendation of the Legal Costs Committee in sub clause (f) is not intended to affect the generality of item 8 of the scale of costs set out in Table C of the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2022*.
- (h) Taking into account the incidental administrative implications of the calculation of the Goods and Services Tax, the hourly and daily rates referred to in subclause 5(a) are varied from the hourly and daily rates used in the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2020*¹. Those rates are set out in Table B of the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2022*.

CLARE THOMPSON SC Chair

JANICE DUDLEY Member

MATTHEW CURWOOD SC Member

CRAIG MCKIE Member

ANNETTE MORGAN Member

GREG RICKIE Member

¹ Published in Gazette 18 June 2020

Schedule
LEGAL PROFESSION ACT 2008
LEGAL PROFESSION (OFFICIAL PROSECUTIONS) (ACCUSED'S COSTS)
DETERMINATION 2022

Made by the Legal Costs Committee under section 275 of the *Legal Profession Act 2008 (Act)*.

1 Citation

This Determination may be cited as the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2022*.

2 Commencement

This Determination comes into operation on 1 July 2022.

3 Interpretation

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

4 Application

- (a) This Determination applies to the remuneration of legal practitioners, clerks and paralegals 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*.
- (b) 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.

5 Restricted Practitioner category

The amendments brought in by the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2016* remain in effect, other than clause 5(e) of that Determination.

6 Increase generally

- (a) The Committee is of the view that increases in the cost of practice over the past several years have justified an increase in the rates in Tables A, B and C.
- (b) The Committee made no general increase in the 2020 review as a result of the uncertain economic climate at that time due to the COVID-19 pandemic. Given the economic picture in 2022 is more positive, and the fact that rate rises have been modest for the past decade, the Committee determined it was appropriate to include a general increase.
- (c) In making its decision, the Committee is particularly cognisant of the increased costs to law practices occasioned by the purchase of technology and training to enable legal practitioners and staff to work remotely, and investments made by law practices in staff well-being initiatives.
- (d) Other costs incurred by law practices as a result of the COVID-19 pandemic, for example the purchase of sanitiser, masks, rapid antigen tests and other similar measures, are

intended to be covered by the rates in this Determination and are not properly chargeable to clients as disbursements.

- (e) The increase in the rates in this Determination are not uniform but have been calculated, generally, on the basis of a 5% increase, with a rounding so that each amount is divisible by 11 in accordance with the long-standing policy of the Committee.

7 Maximum hourly and daily rates

- (a) The hourly rates set out in Table A are the maximum hourly rates, inclusive of GST, 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 | Maximum allowable hourly rates |
|---|-----------------------------------|
| Senior Practitioner (permitted to practise on his or her own account for 5 years or more) (SP) ¹ | hourly rate \$429 |
| Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) ¹ | hourly rate \$341 |
| Restricted Practitioner (RP) ^{1, 2} | hourly rate \$242 |
| Clerk/Paralegal (C/PL) ³ | hourly rate \$165 |

Notes:

- 1 The reference to Restricted Practitioner, Junior Practitioner or 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 practising certificate, the length of unrestricted legal practice in that other jurisdiction is to be counted in assessing that practitioner's years of practice for the purposes of this Determination.
 - 2 The reference to Restricted Practitioner in this Determination includes practitioners undertaking restricted legal practice for the purposes of obtaining the required experience set out in section 50 of the Act and does not include a reference to an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practise under supervision for disciplinary, medical or other reasons.
 - 3 The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.
- (b) The daily rates set out in Table B are the maximum daily rates, inclusive of GST, which the Legal Costs Committee determines shall apply to the remuneration of counsel 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 B

| Fee Earner | Maximum allowed daily rates |
|----------------------------------|------------------------------------|
| Counsel (C) ⁴ | \$3,850 |
| Senior Counsel (SC) ⁵ | \$5,500 |

Notes:

- 4 The reference to Counsel in this Determination means a practitioner acting as a barrister other than a Senior Counsel, including, for the purposes of items 10, 11, 17, 22, 25 and 26, a practitioner appearing in court who does not practise in accordance with Supreme Court Practice Direction 10.5.
- 5 The reference to Senior Counsel in this Determination means a person within the meaning of item 11 or item 12 of Regulation 5(2) of the *Legal Profession Regulations 2009 (WA)*.
- (c) 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 are 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.

8 Scale of costs

- (a) Subject to clause 9, 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.
- (b) Fees charged by practitioners who practise solely as barristers in accordance with Supreme Court Practice Direction 10.5 are only to be charged at the rates provided for counsel of their seniority in Table B and are not to be charged at rates applicable to a Senior Practitioner.
- (c) Recovery of daily fees for counsel on the taxation or assessment of a Bill of Costs is intended to apply only when a full day has been worked, either in Court or in Court and in preparation for a subsequent hearing day.

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

- (a) Where a matter is complex, or involves a high degree of skill or urgency, or requires Senior Counsel, notwithstanding the rates 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.
- (b) Work undertaken by Senior Counsel shall be allowable in accordance with the rates in Table B of this Determination.

10 Appeals

All costs incurred in relation to an appeal to the Supreme Court of Western Australia or the District Court of Western Australia are to be taxed in accordance with the relevant items in Table B of the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2022*.

Table C

Official Prosecutions (Accused's Costs) Scale of Costs 2022

| Item | Maximum time | Maximum amount |
|--|--------------|--|
| 1 Adjournments | | |
| (a) Subject to paragraphs (b) and (c), allow for one adjournment only | 1 hour | \$429 |
| (b) Costs for additional adjournments to be awarded on application to, and at the discretion of, the presiding Magistrate | | |
| (c) Each Court ordered adjournment | 1 hour | \$429 |
| 2 Bail application | | |
| (a) Preparation for, and appearance at, initial bail application and/or application for bail in respect of serious offences set out in the <i>Bail Act 1982 (WA)</i> | 3.5 hours | \$1,502 |
| (b) Preparation for, and appearance at, application to vary bail conditions | 1.5 hours | \$644 |
| 3 Directions hearing, including preparation | 4 hours | \$1,716 |
| 4 Trial | | |
| (a) Preparation of case and half day trial, including counsel fee | | \$9,625 |
| (b) Second half day | | \$968 |
| 5 Second or each successive day of trial | | \$3,850 |
| 6 An allowance for preparation where the trial does not proceed or the prosecution offers no evidence | | An amount which is 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 | \$1,155 |
| 8 Disbursements | | |
| (a) Copies | per page | 0.165 |
| (b) 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 | | |