

LEGAL PRACTICE ACT 2003

LEGAL PRACTITIONERS (MAGISTRATES COURT) (CRIMINAL JURISDICTION) REPORT 2005

Made by the Legal Costs Committee under section 214 of the Act.

PART 1 – PRELIMINARY

Citation

1. (1) This report may be cited as the *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Report 2005*.

(2) The determination set out in the Schedule to this report is referred to in this report as the *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Determination 2005*.

PART 2 – NOTICE AND INQUIRIES

Notice under section 213 of the Act

2. The Legal Costs Committee has complied with the notice provisions of section 213 of the Act.

Inquiries and submissions under section 213 of the Act

3. Before making the *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Determination 2005* the Legal Costs Committee -

- (a) reviewed all submissions received as a result of the notice given under section 213 of the Act;
- (b) consulted with the Court;
- (c) consulted with the Magistrates Association of Western Australia, Law Society of Western Australia (Inc.), the Western Australian Bar Association Inc, the Criminal Lawyers Association of Western Australia and the Legal Aid Commission of Western Australia;
- (d) reviewed the *Legal Practitioners (Petty Sessions) (Contentious Business) Determination 2005*¹; and
- (e) had regard to relevant provisions of the *Magistrates Court Act 2004* which is proclaimed to commence 1 May 2005².

¹. [Published in Gazette 1 March 2005 pp.874-875].

². [see s. 2 and Gazette 31 Dec 2004 p. 7127].

PART 3 – REPORT OF COMMITTEE’S CONCLUSIONS

Hourly rates established

4. (1) The Legal Costs Committee noted that the criminal jurisdiction of the Magistrates Court covers a wide range of summary criminal matters.

(2) As a consequence of the position stated in subclause 4(1), the Legal Costs Committee considers it is appropriate for a general scale of fees based on hourly rates to be applied to the time reasonably taken to perform the services provided by a practitioner in, or for the purposes of contentious business in the criminal jurisdiction of the Magistrates Court.

(3) It is the recommendation of the Legal Costs Committee as a result of the inquiries and submissions described in clause 3, having assessed market conditions and having considered submissions and data provided by the Law Society of Western Australia and the incidental administrative implications of the calculation of the GST, that the appropriate hourly rates referred to in subclause 4(2) are the rates set out in the Table to clause 4 of the *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Determination 2005*.

(4) It is further the recommendation of the Legal Costs Committee that the hourly rates charged by practitioners under the *Legal Practitioners (Magistrates Court) (Civil Jurisdiction) Determination 2005* should be adopted as the basis for costs for the supply of legal services covered under the *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Determination 2005*.

(5) The hourly rates referred to in subclause 4(4) are set out in the Table to clause 4 of the *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Determination 2005*.

(6) It is further the recommendation of the Legal Costs Committee that the Table to clause 5 of the *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Determination 2005* should be adopted as the basis for costs for the supply of those legal services itemised in that Table. The *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Determination 2005* sets out the Scale of Costs which should be applicable to particular items of work referred to in that Scale.

(7) The recommendations of the Legal Costs Committee are not intended to override the entitlements of a practitioner to make a written agreement as to costs with a client under the *Legal Practice Act 2003*.

TED SHARP, Chairman

MICHAEL McPHEE, Deputy Chairman

JANINE FREEMAN, Member

ANGELA GAFFNEY, Member

CLARE THOMPSON, Member

MARCUS COCKER, Member

Schedule

LEGAL PRACTICE ACT 2003

LEGAL PRACTITIONERS (MAGISTRATES COURT) (CRIMINAL JURISDICTION) DETERMINATION 2005

Made by the Legal Costs Committee under section 210 of the Act.

Citation

1. This determination may be cited as the *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Determination 2005*.

Commencement

2. This determination comes into operation on 2 May 2005.

Application

3. (1) This determination applies to the remuneration of practitioners in respect of contentious business carried out by practitioners in or for the purposes of criminal proceedings in the Magistrates Court.

(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.

Maximum hourly rates

4. The hourly rates set out in the Table to this clause are the maximum hourly rates, inclusive of GST, which the Legal Costs Committee determines shall be used to calculate the remuneration of practitioners in respect of time reasonably taken to perform services in or for the purposes of contentious business carried out by practitioners in or for the purposes of criminal proceedings before the Magistrates Court.

Table to Clause 4

Fee Earner		Maximum allowable hourly rates \$
Senior Practitioner (admitted for 5 years or more) (SP)	hourly rate	286
Junior Practitioner (admitted for less than 5 years) (JP)	hourly rate	198
Clerk/Paralegal (C/PL)	hourly rate	88

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

Counsel	(C)*	hourly rate	\$220
		daily rate	\$1540
Senior Counsel	(SC)†	hourly rate	\$363
		daily rate	\$2541

α The reference to Junior Practitioner or to 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 practice 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.

† 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 the Supreme Court of Western Australia.

Costs

5. (1) Subject to section 221 of the *Legal Practice Act 2003* permitting a practitioner to make a written agreement as to costs with a client, the costs of or in relation to a prosecution or an accused (inclusive of GST and counsel fees, but exclusive of other disbursements) –

- (a) recoverable by one party from another party; or
- (b) payable by a party to that party's own practitioner,

shall not exceed the amounts set out in the Table to this clause.

(2) Each item of the Scale of Costs specifies a dollar amount. The purpose is to indicate the maximum amount for the work indicated in the item, but on assessment, less might be allowed. In no respect is the Scale to be seen as providing a minimum charge for any work. The reason for stating the number of hours estimated to be necessary to perform each of the items of work described in the Scale is to provide guidance to the Assessing Officer when dealing with the question of costs so that the Assessing Officer has some idea how much time is reasonably necessary to perform the work in most cases.

(3) Work undertaken by Senior Counsel, when certified for, shall be allowable in accordance with the rates in the Table to clause 4 of this Determination.

Table to clause 5

MAGISTRATES COURT CRIMINAL JURISDICTION SCALE OF COSTS 2005

Item No	Item	Time	Maximum Amount \$
1.	Adjournment	1 hour	286
2.	Bail application, including preparation	5 hours	1430
3.	Directions hearing, including preparation	4 hours	1144
4.	First day of trial including preparation of case for trial and counsel fee	12 hours	3432

Item No	Item	Time	Maximum Amount \$
5.	Second and each successive day of trial		1540
6.	Allowance for preparation where the trial does not proceed or the prosecution offers no evidence	8 hours	2288
7.	Counsel fee for attending court for remand appearance, directions hearing, status conference, mention, callover, reserved decision or other appearance not otherwise accounted for	2 hours	572
8.	Photocopies where necessary	per page	1.00

Made by the Legal Costs Committee on 26 April 2005.