

## LEGAL PROFESSION ACT 2008

### LEGAL PROFESSION (MAGISTRATES COURT) (CRIMINAL) REPORT 2016

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

#### PART 1 – PRELIMINARY

### 1. Citation

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- (a) This Report may be cited as the *Legal Profession (Magistrates Court) (Criminal) Report 2016*.
- (b) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (Magistrates Court) (Criminal) Determination 2016*.

#### PART 2 – NOTICE AND INQUIRIES

### 2. Notice under section 278 of the Act

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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

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Before making the *Legal Profession (Magistrates Court) (Criminal) Determination 2016* the Legal Costs Committee:

- (a) reviewed all submissions received as a result of the notice given under section 278 of the Act;
- (b) considered the impact of changes in relevant Australian Bureau of Statistics data for the period;
- (c) consulted with the Magistrates Court, The Law Society of Western Australia Inc., the Western Australian Bar Association Inc and the Criminal Lawyers Association of Western Australia;
- (d) consulted with a range of people and organisations within the legal profession in respect to the impact of structural changes in the profession;
- (e) reviewed the *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Determination 2014*<sup>1</sup>; and
- (f) had regard to relevant provisions of the *Magistrates Court Act 2004*.

#### PART 3 – REPORT OF LEGAL COSTS COMMITTEE'S CONCLUSIONS

### 4. Maximum hourly and daily rates changed – scale of costs amended

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- (a) The Legal Costs Committee notes that the criminal jurisdiction of the Magistrates Court covers a wide range of summary criminal matters.
- (b) The Legal Costs Committee considers that as a consequence of the position stated in subclause 4(a), it is appropriate for a general scale of fees based on hourly rates to continue to apply to the time reasonably taken to perform the services provided by a

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<sup>1</sup> Published in Gazette 20 June 2014.

law practice in, or for the purposes of contentious business in the criminal jurisdiction of the Magistrates Court.

- (c) 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) having considered submissions and data from The Law Society of Western Australia; and
  - (4) taking into account the incidental administrative implications of the calculation of the Goods and Services Tax,

the appropriate hourly rates referred to in subclause 4(b) be varied from the hourly and daily rates used in the *Legal Practitioners (Magistrates Court) (Criminal) Determination 2014* as the basis for the recommended scale of costs which have generally been rounded up or down to represent increases of approximately 2% inclusive of the Goods and Services Tax, and for administrative convenience, divisible by 11. Those rates are set out in Table A of the *Legal Profession (Magistrates Court) (Criminal) Determination 2016*.

- (d) It is the recommendation of the Legal Costs Committee that the hourly rates charged by law practices under the *Legal Profession (Magistrates Court) (Civil) Determination 2016* should be adopted as the basis for costs for the supply of legal services covered under the *Legal Profession (Magistrates Court) (Criminal) Determination 2016*.
- (e) It is further the recommendation of the Legal Costs Committee that Table B of the *Legal Profession (Magistrates Court) (Criminal) Determination 2016* should be adopted as the basis for costs for the supply of those legal services itemised in that Table. These costs have generally been rounded up or down to represent increases of approximately 2% inclusive of the Goods and Services Tax, and for administrative convenience, divisible by 11.
- (f) It is the recommendation of the Legal Costs Committee, as a result of the consultations described in clause 3, that the new category of Restricted Practitioner should be introduced in the *Legal Profession (Magistrates Court) (Criminal) Determination 2016*.
- (g) The recommendations of the Legal Costs Committee are not intended to override any entitlement of a law practice to make a written agreement as to costs with a client under the Act or any successor legislation.

CLARE THOMPSON, Chair

ANGELA GAFFNEY, Member

MARCUS COCKER, Member

JANICE DUDLEY, Member

MATTHEW CURWOOD, Member

BRENDAN ASHDOWN, Member

## Schedule

### LEGAL PROFESSION ACT 2008

#### LEGAL PROFESSION (MAGISTRATES COURT) (CRIMINAL) DETERMINATION 2016

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

### 1. Citation

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This Determination may be cited as the *Legal Profession (Magistrates Court) (Criminal) Determination 2016*.

### 2. Commencement

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This Determination comes into operation on 1 July 2016.

### 3. Application

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- (a) 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 in the Magistrates Court.
- (b) This Determination does not apply to the remuneration of legal practitioners based on costs incurred in respect of work carried out before the commencement of this Determination.

### 4. Travel

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- (a) For the purposes of this Determination, minor travel means incidental travel associated with attendance at court for a hearing where that travel is of a minor duration. Examples of minor travel include, but are not limited to:
  - (1) a practitioner walking from their usual place of business to a court;
  - (2) a practitioner walking from a carpark to a court; or
  - (3) a practitioner walking or taking public transport from one centrally located court to another centrally located court.
- (b) As between a law practice and its own client, time spent travelling other than minor travel, is to be charged at no more than one half of the rates set out in Table A, with a maximum of 8 hours in any one day.
- (c) In making its decision in this Determination, the Legal Costs Committee has taken note of the Law Society of Western Australia's Standard Costs Agreement, which contains a provision that a law practice will charge travel at 50% of the agreed hourly rates.
- (d) The Legal Costs Committee has also considered an informal policy of the Legal Profession Complaints Committee that travel should not ordinarily be charged at a rate of more than 50% of a law practice's normal hourly charge-out rate.
- (e) Whilst the Legal Costs Committee recognises that during a travel period a law practice may not necessarily utilise legal skill and knowledge, there is a recognition of a loss of opportunity for the time spent travelling.
- (f) The Legal Costs Committee notes that, having regard to the above:
  - (1) it is the responsibility of a law practice to allocate the cost of time spent on travel fairly and reasonably where the travel is necessary to service more than one client on the day of travel; and

- (2) whilst nothing contained in this Determination prevents a law practice from charging time spent on a client matter or client matters in the course of travel (air travel by way of example), the law practice is not entitled to charge a client or clients for both time spent on a client matter (regardless of whether that time relates to the client for whom the travel is being undertaken) and the amount for travel allowed in this Determination.

## 5. Introduction of new Restricted Practitioner category

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- (a) This Determination introduces the new category Restricted Practitioner. This category includes all Australian legal practitioners engaging in restricted legal practice pursuant to section 50 of the Act, during the period when that person is undertaking the “required experience”, as defined in section 50 of the Act, and whilst an endorsement to that effect remains on their practising certificate.
- (b) A Restricted Practitioner is not intended to include 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 practice under supervision for disciplinary, medical or other reasons.
- (c) The Legal Costs Committee consulted the profession regarding the necessity for amendments to the levels of practitioner set out in Table A, in light of the changing nature of legal practice in this State. In particular the Legal Costs Committee was conscious of the changes to admission requirements and pathways to admission, which have resulted in practitioners being admitted to practise without the close supervision of legal practice formerly afforded by articles of clerkship but with a longer period of restricted practice. The effect of this is that practitioners become senior practitioners with less experience than they previously have had, which has the effect of increasing the legal costs to consumers of their services.
- (d) It is the Legal Costs Committee's view, as expressed in this Determination, that the Determination should as far as possible reflect the regulated structure of the profession and thereby provide consumers of legal services with additional transparency as to the experience of the practitioner providing the legal services.
- (e) So as not to adversely affect clients of legal services provided by those practitioners who would, but for this change, have been Junior Practitioners or Senior Practitioners, transitional arrangements apply so that:
- (1) practitioners admitted after 1 July 2014, but before 1 July 2016, are entitled to recover their legal costs as if they were Junior Practitioners until 30 June 2018, or the date on which they would, but for this clause, become Junior Practitioners under this Determination; and
  - (2) practitioners admitted after 1 July 2011, but before 1 July 2014, are entitled to recover their legal costs as if they were either Junior Practitioners or Senior Practitioners, whichever category would have applied but for this change, until 30 June 2018, or the date on which they would, but for this clause, become Senior Practitioners under this Determination.

## 6. Maximum hourly and daily rates

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- (a) The hourly rates set out in Table A below are the maximum hourly rates, inclusive of GST, which the Legal Costs Committee determines shall be used to calculate the remuneration of law practices in respect of time reasonably taken to perform services in or for the purposes of work undertaken by law practices in respect of criminal proceedings before the Magistrates Court.
- (b) The Rates referred to in paragraph (a) were ascertained in the manner set out in clause 4 of the *Legal Profession (Magistrates Court) (Criminal) Report 2016*.

- (c) The daily rates set out in Table B below 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.
- (d) The items in Table B are not intended to be calculated on the basis of a minimum 6 minute unit.

**Table A**

<b>Fee Earner</b>	<b>Maximum allowed hourly rates</b>
Senior Practitioner <sup>°</sup> (permitted to practise on his or her own account for 5 years or more) (SP) <sup>α</sup>	\$407
Junior Practitioner <sup>°</sup> (permitted to practise on his or her own account for less than 5 years) (JP)	\$308
Restricted Practitioner (RP) #, <sup>°</sup>	\$231
Clerk/Paralegal (C/PL) ##	\$154
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Counsel fees charged as a disbursement to law practices or charged by in-house Counsel	<b>Maximum allowed rates</b>
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Counsel*	
hourly rate	\$330
daily rate	\$3,300
Senior Counsel**	
hourly rate	\$539
daily rate	\$5,390

- <sup>°</sup> 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.
- # 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.
- ## The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.
- \* The reference to Counsel in this Determination means a practitioner acting as a barrister other than a Senior Counsel.
- \*\* 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).

## 7. Costs

- (a) Subject to the provisions of the Act permitting a law practice to make a written agreement as to costs with a client, the costs of or in relation to a prosecution of an accused (inclusive of GST and counsel fees, but exclusive of other disbursements):
- (1) recoverable by one party from another party; or
  - (2) payable by a party to that party's own law practice,
- shall not exceed the amounts set out in Table B.
- (b) 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.
- (c) Work undertaken by Senior Counsel shall be allowable in accordance with the rates in the Table A of this Determination.

**Table B**

### **Magistrates Court Criminal Scale of Costs 2016**

<b>Item</b>		<b>Time</b>	<b>\$</b>
1.	(a) Subject to paragraphs (b) and (c), allow for one adjournment only  (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          1 hour	407          407
2.	(a) Preparation 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</i> (WA)  (b) Preparation for, and appearance at, application to vary bail conditions	3.5 hours          1.5 hours	1,430          616
3.	Directions hearing, including preparation	4 hours	1,628
4.	(a) Preparation of case and half day trial, including counsel fee  (b) Second half day		7,491          836
5.	Second and each successive day of trial		3,300
6.	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 fee for attending court for remand appearance, directions hearing, status conference, mention, callover, reserved decision or other appearance not otherwise accounted for	3 hours	990

Item		Time	\$
8.	(a) Short Plea in mitigation, including preparation (plea of up to 30 minutes) (b) Long Plea in mitigation, including preparation (plea in excess of 30 minutes)		627 1,925
9.	Copies where reasonably necessary, including documents for which allowance is otherwise made in this Determination	per page	0.165

Made by the Legal Costs Committee on 15 June 2016.