

LEGAL PRACTITIONERS ACT 1893

**LEGAL PRACTITIONERS (OFFICIAL PROSECUTIONS) (DEFENDANTS' COSTS)
REPORT 2002**

Made by the Legal Costs Committee under section 58ZA of the Act.

PART 1 - PRELIMINARY

Citation

1. (1) This report may be cited as the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Report 2002*.
- (2) The determination set out in the Schedule to this report is referred to in this report as the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2002*.

PART 2 - NOTICE AND INQUIRIES

Notice under section 58Y of the Act

2. The Legal Costs Committee has complied with the notice provisions of section 58Y of the Act.

Inquiries and submissions under section 58Y of the Act

3. Before making the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2002*, the Legal Costs Committee:
 - (a) reviewed all submissions received as a result of the notice given under section 58Y of the Act.
 - (b) consulted with the Court.
 - (c) consulted with the Crown Solicitor who provided information with respect to the number of orders made for the financial years ending June 30 1998, 1999, 2000 and 2001 and the total costs paid out in each of those years;
 - (d) received submissions from the Criminal Lawyers Association and the Law Society of Western Australia;
 - (e) had regard to the impact of the Goods and Services Tax on the level of fees charged by Practitioners; and
 - (f) noted that the fees set by the Committee in the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination* have not been increased since 1999.

PART 3 - REPORT OF THE COMMITTEE'S CONCLUSIONS

Maximum Hourly Rates and Scale of Fees

4. (1) It is the recommendation of the Legal Costs Committee, after reviewing the information gained as a result of the inquiries and submissions described in clause 3, that the hourly and daily rates set out in the Tables to clause 5 of the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2002* be adopted for the supply of legal services covered by the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2002* and which have been rounded up or down to represent an increase of approximately 16%;
- (2) The hourly rates referred to in subclause (1) are set out in the Table to clause 5(1) of the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2002*.
- (3) The daily rates referred to in subclause (1) are set out in clause 5 (2) of the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2002*.
- (4) 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 the Table to clause 6 of the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2002* be adopted and which have been rounded up or down to represent an increase of approximately 16% over the previous scale set out in the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 1999*.
- (5) It is the further recommendation of the Committee that given the amendments to the hourly and daily rates set out in the Tables to clause 5 and the scale of fees set out in the Table to clause 6 of the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2002* are inclusive of any provision for the Goods and Services Tax, that from and including the date of that determination coming into operation, the *Legal Practitioners (Effect on Costs of a New Tax System) (Goods and services Tax) Determination 2000* as published in the Gazette on 15 September 2000 p5411 will no longer apply to the Official Prosecutions (Defendants Costs) scale of costs from that date.
- (6) 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.
- (7) The recommendation of the Legal Costs Committee under subclause (6) is not intended to affect the generality of item 7 of the scale of costs set out in the Table to clause 6 of the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2002*.

Ted Sharp, Chairman
Michael McPhee, Deputy Chairman
Patrick Coward, Member
Janine Freeman, Member
Angela Gaffney, Member
Jill Vander Wal, Member

SCHEDULE

LEGAL PRACTITIONERS ACT 1893

LEGAL PRACTITIONERS (OFFICIAL PROSECUTIONS) (DEFENDANTS' COSTS) DETERMINATION 2002

Made by the Legal Costs Committee under section 58W of the Act.

Citation

1. This determination may be cited as the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2002*.

Commencement

2. This determination comes into operation on 1 June 2002.

Interpretation

3. Words and phrases used in this determination have the same meaning as in the *Official Prosecutions (Defendants' Costs) Act 1973*.

Application

4. (1) This determination applies to the remuneration of practitioners in respect of an official prosecution carried out by practitioners in or for the purposes of proceedings before a Summary Court or an Appeal Court.

(2) This determination does not apply to the remuneration of practitioners based on costs incurred in respect of instructions taken before the commencement of this determination.

5. (1) The hourly rates set out in the table to this subclause are the hourly rates which the Legal Costs Committee determines shall be used to calculate the dollar amounts in the scale of costs set out in the Table to clause 6.

Table

Fee Earner			Maximum Hourly Rates
Senior Practitioner (admitted for more than 5 years)	(SP)	-- hourly rate	\$250
Junior Practitioner (admitted for less than 5 years)	(JP)	-- hourly rate	\$175
Clerk/Paralegal	(CPL)	-- hourly rate	\$75

(2) The daily rates set out in the Table to this subclause are the daily rates which the Legal Costs Committee determines shall be used to calculate the dollar amounts in items 3 and 4 of the scale of costs set out in the Table to clause 6.

Table

Fee Earner		Maximum Daily Rates
Junior Counsel	-- daily rate	\$2670
Senior Counsel*	-- daily rate	\$4060

* The reference to Senior Counsel in this determination includes reference to Queen's Counsel 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.

Scale of costs

6. The costs recoverable by a successful defendant in an official prosecution (inclusive of counsel fees but exclusive of other disbursements) shall not exceed the amounts set out in the Table to this clause.

TABLE

LEGAL PRACTITIONERS (OFFICIAL PROSECUTIONS) (DEFENDANTS' COSTS) SCALE OF COSTS

Item No	Item	Maximum Time	Maximum Amount
1	First day of trial including preparation of case for trial and counsel fee	10 hours	\$2500
2	Second or subsequent day of trial	5 hours	\$1250
3	Appeal:		
	(a) Junior Counsel	1 day preparation))	\$5340
		1 day hearing)	
	(b) Senior Counsel (if 2 or more counsel certified for)	1 day preparation))	\$8120
		1 day hearing)	
4	Second or subsequent day of appeal:		
	(a) Junior Counsel	1 day	\$2670
	(b) Senior Counsel (if 2 or more counsel certified for)	1 day	\$4060
5	A reasonable allowance for preparation where the trial does not proceed or the prosecution offers no evidence	7 hours	\$1225
6	Counsel fee for attending court for reserved decision on appeal	1 hour	\$250
7	Notice of appeal or motion for order <i>nisi</i>	10 hours	\$2500
8	Disbursements:		
	In addition to the fees allowed under this determination disbursements may be allowed as are necessarily or reasonably incurred.		

Made by the Legal Costs Committee on the 23 April 2002.

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