

LEGAL PRACTICE ACT 2003

**LEGAL PRACTITIONERS (OFFICIAL PROSECUTIONS) (DEFENDANTS' COSTS)  
REPORT 2006**

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 (Official Prosecutions) (Defendants' Costs) Report 2006*.

(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 2006*.

**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. (1) Before making the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2006*, the Legal Costs Committee -

(a) consulted with the Chief Justice of Western Australia, the President of the Court of Appeal, the Chief Judge of the District Court of Western Australia, the Chief Magistrate, the State Solicitor, Director of Legal Aid Western Australia and the Western Australian Bar Association; and

(b) reviewed a submission from the Law Society of Western Australia.

(2) When making the *Legal Practitioners (Official Prosecutions) Defendants Costs) Determination 2004*<sup>1</sup> the Committee took into account the significant procedural and jurisdictional changes that were taking place in the Magistrates Court (then called Summary Courts). The Committee notes that no evidence has been received that the procedural and jurisdictional changes in the Magistrates Court have had any impact on the scale of costs applicable in the Magistrates Court.

1. Published in the Government Gazette on 29 December 2004 (pp6271 – 6275)

**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 the submission 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 2006* be adopted for the supply of legal services covered by the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2006*.
- (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 2006*.
- (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 2006*.
- (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 2006* be adopted.
- (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* were inclusive of any provision for the Goods and Services Tax (GST), the daily and hourly rates and scale of costs continue to be inclusive of GST.
- (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 but loss of earnings foregone of a witness or the defendant are not intended to be recoverable.
- (7) The recommendation of the Legal Costs Committee under subclause (6) is not intended to affect the generality of item 9 of the scale of costs set out in the Table to clause 6 of the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2006*.

Ted Sharp, Chairman

Michael McPhee, Deputy Chairman

Angela Gaffney, Member

Clare Thompson, Member

Marcus Cocker, Member

Janice Dudley, Member

## SCHEDULE

### LEGAL PRACTICE ACT 2003

#### LEGAL PRACTITIONERS (OFFICIAL PROSECUTIONS) (DEFENDANTS' COSTS) DETERMINATION 2006

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

##### Citation

1. This determination may be cited as the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Determination 2006*.

##### Commencement

2. This determination comes into operation on 1 January 2007.

##### 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 Magistrates Court or an Appeal 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.

##### Rates

5. (1) The hourly rates set out in the table to this subclause are the hourly rates which the Legal Costs Committee determines shall apply to the remuneration of practitioners 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 the Table to clause 6 except for item 8 (Appeals).

##### Table

Fee Earner	Rates
Senior Practitioner <sup>α</sup> (admitted for 5 years or more) (SP) -- hourly rate	\$286
Junior Practitioner <sup>α</sup> (admitted for less than 5 years) (JP) -- hourly rate	\$209
Clerk/Paralegal (CPL) -- hourly rate	\$77

<sup>α</sup> 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.

(2) The daily rates set out in the table to this subclause are the daily rates which the Legal Costs Committee determines shall apply to the remuneration of practitioners in respect of an official prosecution in or for the purposes of proceedings before a Magistrates Court

**Table**

<b>Fee Earner</b>		<b>Rates</b>
Counsel <sup>§</sup>	-- daily rate	\$2772
Senior Counsel*	-- daily rate	\$4224

§ 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 Queen's 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.

**Scale of costs**

6. Subject to clause 7, 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**

<b>Item No</b>	<b>Item</b>	<b>Maximum Time</b>	<b>Maximum Amount</b>
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

5	Second or subsequent day of trial	5 hours	\$1430
6	A reasonable 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	\$576
8	Appeals	As per the rates specified in item 22 of the <i>Legal Practitioners (Supreme Court) (Contentious Business) Determination 2006*</i>	
9	Disbursements:		
	Photocopying	1.00 per page	

In addition to the fees allowed under this Determination disbursements (for example transport, accommodation, meals and travelling costs of a defendant, solicitor, counsel or witness actually incurred by a defendant as a necessary incident to defending an official prosecution) may be allowed as are necessarily or reasonably incurred.

*\* Published in the Government Gazette on 27 June 2006 (pp2331 - 2342).*

**Complex matters, and matters involving a high degree of skill or urgency**

7. Where a matter is complex, or involves a high degree of skill or urgency, notwithstanding the rates or scale set out in the Tables to this Determination, the defendant 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.

Made by the Legal Costs Committee on 5 December 2006.