

LEGAL PROFESSION UNIFORM LAW APPLICATION ACT 2022
LEGAL PROFESSION (OFFICIAL PROSECUTIONS) (ACCUSED'S COSTS)
REPORT 2026

Made by the Legal Costs Committee under Division 1 of Part 6 of the *Legal Profession Uniform Law Application Act 2022* (the Act).

PART 1 – PRELIMINARY

1 Citation

- (a) This Report may be cited as the *Legal Profession (Official Prosecutions) (Accused's Costs) Report 2026*.
- (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 2026*.

PART 2 – NOTICE AND INQUIRIES

2 Notice under section 139 of the Act

The Legal Costs Committee has complied with the notice provisions of section 139 of the Act.

3 Inquiries and submissions under section 138 of the Act

Before making the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2026*, the Legal Costs Committee:

- (a) reviewed submissions received as a result of the notice given under section 139 of the Act, including submissions made by The Law Society of Western Australia (Inc), the Australian Lawyers Alliance, the Bar Association of Western Australia, private practitioners and costs consultants;
- (b) considered the comments and suggestions made at a Law Society seminar with members of the legal profession and other attendees held on 24 March 2026;
- (c) considered the impact of changes in relevant Australian Bureau of Statistics data for the period, specifically consumer price index and wage price index data for the period since 1 July 2024;
- (d) considered the potential impact of the amendments to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, which now imposes a regulatory framework on sectors of legal services, with the aim of protecting the integrity of the Australian financial system;
- (e) undertook a review of cost regimes in other Australian jurisdictions;
- (f) met with Registrars of the District Court and Supreme Court of Western Australia, and considered observations concerning taxation practice and the practical operation of the scale of costs;
- (g) met with a representative of the Bar Association of Western Australia;

- (h) met with Parliamentary Draftspersons and a representative of the Department of Justice responsible for legislative services concerning the proposed drafting and structure of the Determination;
- (i) held meetings on eleven separate occasions since the commencement of the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2024* on 1 July 2024; and
- (j) noted the following changes in the membership and offices of the Committee since the publication of the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2024*:
 - (1) Mr Craig McKie ceased acting as Chair of the Committee and was succeeded as Chair by Mr David Bayly SC from 15 July 2024;
 - (2) Mr Craig McKie continued as Deputy Chair; and
 - (3) Dr Anne Peachey was appointed as a member of the Committee from 1 January 2025 to fill a vacant member position.

PART 3 – REPORT OF LEGAL COSTS COMMITTEE'S CONCLUSIONS

4 Maximum hourly and daily rates changed

- (a) Having regard to the information gained as a result of the inquiries and submissions described in clause 3, the Committee considers it appropriate that the hourly and daily rates set out in Tables A and B of the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2026* be adopted for the supply of legal services for an official prosecution and the award of costs to a successful accused under sections 5 or 7 of the *Official Prosecutions (Accused's Costs) Act 1973*.
- (b) The hourly rates applicable to Senior Practitioners, Junior Practitioners, Restricted Practitioners and Clerks/Paralegals referred to in paragraph (a) are set out in Table A of the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2026*.
- (c) The hourly and daily rates applicable to Counsel and Senior Counsel referred to in paragraph (a) are set out in Table B of the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2026*.
- (d) The Committee considers it appropriate that the scale of costs set out in Table C of the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2026* be adopted.
- (e) The Committee considers it appropriate that the hourly and daily rates and scale of costs continue to be inclusive of GST.
- (f) The 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 position stated by the Committee in paragraph (f) is not intended to affect the generality of item 7 of the scale of costs set out in Table C of the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2026*.
- (h) In calculating the revised rates, the Committee has taken into account the incidental administrative implications of the calculation of the Goods and Services Tax and the Committee's established rounding methodology.

5 Alignment of Counsel (other than Senior Counsel) and Senior Practitioner rates

- (a) The Committee considered the distinction between the maximum hourly rate applicable to Counsel and the maximum hourly rate applicable to a Senior Practitioner.
- (b) Contemporary litigation practice requires Counsel to undertake work of substantial complexity and responsibility.
- (c) The Committee considers it appropriate that the maximum hourly rate for Counsel be aligned with the maximum hourly rate for a Senior Practitioner, with a corresponding adjustment to the applicable daily rate for Counsel.
- (d) The Committee considered that the alignment of those rates would simplify the operation of the scale, promote greater consistency in recoverable costs outcomes and more accurately reflect contemporary litigation practice.

DAVID BAYLY SC	Chair of the Committee
CRAIG MCKIE	Deputy Chair
GREG RICKIE	Member
ANNETTE MORGAN	Member
CAROLYN MEIGHAN	Member
ANNE PEACHEY	Member

Schedule

LEGAL PROFESSION UNIFORM LAW APPLICATION ACT 2022

LEGAL PROFESSION (OFFICIAL PROSECUTIONS) (ACCUSED'S COSTS)

DETERMINATION 2026

Made by the Legal Costs Committee under section 133 of the *Legal Profession Uniform Law Application Act 2022* (the Act).

1 Citation

This Determination may be cited as the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2026*.

2 Commencement

This Determination comes into operation on 21 September 2026.

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 fee earners 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 fee earners 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 and B and the corresponding amounts in Table C.
- (b) Given the inquiries made by the Committee as set out in clause 3 of the Report, the Committee determined that 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 inflationary pressures, subscriptions for legal resources, investment in technology and cyber security, investments made by law practices in staff skills and initiatives, and increasing costs of regulatory and

compliance systems, including integrity obligations affecting sectors of legal services from 1 July 2026.

- (d) The increases in the rates in Tables A and B in this Determination are not uniform but have been calculated generally in the range of 14% to 16%, with rounding so that each amount is divisible by 11 in accordance with the long-standing policy of the Committee.
- (e) The amounts in Table C have been calculated by reference to the applicable rates and allowances in this Determination.

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 fee earners 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.
- (b) The hourly and daily rates set out in Table B for Counsel and Senior Counsel are the maximum hourly and daily rates, inclusive of GST, which the Legal Costs Committee determines shall apply to the remuneration of Counsel and Senior 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.
- (c) The rates referred to in paragraphs (a) and (b) were ascertained in the manner set out in clause 4 of the *Legal Profession (Official Prosecutions) (Accused's Costs) Report 2026*.

Table A

Fee earner	Rate type	Maximum allowable hourly rates
Senior Practitioner (permitted to practise on his or her own account for 5 years or more) (SP) ¹	hourly rate	\$561
Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) ¹	hourly rate	\$440
Restricted Practitioner (RP) ^{1, 2}	hourly rate	\$319
Clerk/Paralegal (C/PL) ³	hourly rate	\$220

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 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.

Table B

Fee earner	Rate type	Maximum allowable hourly and daily rates
Counsel (C) ⁴	hourly rate	\$561
	daily rate	\$5,610
Senior Counsel (SC) ⁵	hourly rate	\$715
	daily rate	\$7,150

Notes:

4. The reference to Counsel in this Determination means a practitioner acting as a barrister other than a Senior Counsel.
5. The reference to Senior Counsel in this Determination means a person within the meaning of item 5 or item 6 of rule 9 of the *Legal Profession Uniform General Rules 2015 (WA)*.

- (d) 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 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 or Senior Counsel, as applicable, in Table B.
- (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.
- (d) Nothing in this clause prevents the Court or taxing officer from disallowing, reducing or otherwise adjusting Counsel fees that are not reasonable in the circumstances.

9 Complex matters and matters involving a high degree of skill or urgency or requiring 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 2026*.

Table C

Official Prosecutions (Accused's Costs) Scale of Costs 2026

Item	Description	Time	Fee earner	\$
1.	Adjournments			
	(a) Subject to paragraphs (b) and (c), allow for one adjournment only	1 hour	SP	561
	(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	SP	561
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</i> (WA)	3.5 hours	SP	1,964
	(b) Preparation for, and appearance at, application to vary bail conditions	1.5 hours	SP	842
3.	Directions hearing			
	Directions hearing, including preparation	4 hours	SP	2,244
4.	Trial			
	(a) Preparation of case and half day trial, including Counsel fee		C/SP	14,025
	(b) Second half day		C/SP	2,805
	(c) Second and each successive day of trial	per day	C/SP	5,610
	(d) Allowance for preparation where the trial does not proceed or the prosecution offers no evidence		C/SP	An amount which is reasonable in the circumstances
5.	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	C	1,683
6.	Copies			
	Copies where reasonably necessary, including of documents for which allowance is otherwise made in this Determination. This item covers all forms of electronic reproduction and copying.	per page		0.22
7.	Disbursements			
	In addition to the fees and charges 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 insofar as they are necessarily or reasonably incurred.			