



Western Australia

Legal Profession Act 2008

**Legal Profession (Official Prosecutions)
(Accused's Costs) Determination 2020**

Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2020

Contents

| | | |
|----|---|---|
| 1. | Citation | 1 |
| 2. | Commencement | 1 |
| 3. | Interpretation | 1 |
| 4. | Application | 1 |
| 5. | Restricted Practitioner category | 2 |
| 6. | Rates | 2 |
| 7. | Scale of costs | 4 |
| 8. | Complex matters, and matters involving a high degree of skill or urgency or requires Senior Counsel | 5 |
| 9. | Appeals | 5 |
| | Notes | |
| | Compilation table | 8 |

Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2020

1. Citation

This Determination may be cited as the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2020*.

2. Commencement

This Determination comes into operation on 1 July 2020.

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 legal practitioners, clerks and paralegals 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 legal practitioners 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.

cl. 5

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. 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 legal practitioners 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.

Table A

| Fee Earner | Maximum allowed hourly rates |
|--|-------------------------------------|
| Senior Practitioner ^α (permitted to practise on his or her own account for 5 years or more) (SP) ^ο | \$418 |
| Junior Practitioner ^α (permitted to practise on his or her own account for less than 5 years) (JP) | \$319 |
| Restricted Practitioner (RP) ^{#, ο} | \$231 |
| Clerk/Paralegal (C/PL) ^{##} | \$154 |

- ^ο 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.

- (b) The daily rates set out in Table B are the maximum daily rates, inclusive of GST, which the Legal Costs Committee determines shall apply to the remuneration of 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.

Table B

| Fee Earner | Maximum allowed daily rates |
|----------------------|------------------------------------|
| Counsel [§] | \$3,630 |
| Senior Counsel* | \$5,390 |

§ The reference to Counsel in this Determination means a practitioner acting as a barrister other than as Senior

cl. 7

Counsel and includes a practitioner appearing in court who does not practise in accordance with Supreme Court Practice Direction 10.5.

- * 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).
- (c) 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 in any way by additional hourly charges given that the maximum number of hours allowed for the daily rate is 10 hours per day.

7. Scale of costs

- (a) Subject to clause 8, 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 of their seniority in Table B and are not to be charged at rates applicable to a Senior Practitioner.
- (c) The increase in Counsel rates, and no increase in Senior Counsel or Senior Practitioner rates in Table B is designed to narrow the gap between those levels of seniority of legal practitioner and more accurately reflect the market for legal services.
- (d) 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.

8. Complex matters, and matters involving a high degree of skill or urgency or requires 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.

9. Appeals

All costs incurred in relation to an appeal to the Supreme 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 2020*.

Table C

Official Prosecutions (Accused's Costs) Scale of Costs 2020

| Item | | Maximum time | Maximum amount |
|------|---|--------------|----------------|
| 1 | Adjournments | | |
| | (a) Subject to paragraphs (b) and (c), allow for one adjournment only | 1 hour | \$418 |
| | (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 | \$418 |

**Legal Profession (Official Prosecutions) (Accused's Costs)
Determination 2020**

cl. 9

| Item | | Maximum time | Maximum amount |
|-------------|--|-------------------------|--|
| 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 (WA)</i> | 3.5 hours | \$1,463 |
| | (b) Preparation for, and appearance at, application to vary bail conditions | 1.5 hours | \$627 |
| 3 | Directions hearing, including preparation | 4 hours | \$1,672 |
| 4 | Trial | | |
| | (a) Preparation of case and half day trial, including counsel fee | | \$8,074 |
| | (b) Second half day | | \$913 |
| 5 | Second or each successive day of trial | | \$3,630 |
| 6 | An 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'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 | \$1,089 |

| Item | | Maximum time | Maximum amount |
|-------------|--|-------------------------|---------------------------|
| 8 | Disbursements | | |
| | (a) Copies | per page | 0.165 |
| | (b) In addition to the fees 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 as are necessarily or reasonably incurred | | |



**Legal Profession (Official Prosecutions) (Accused's Costs)
Determination 2020**

Notes Compilation table

Notes

This is a compilation of the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2020*. For provisions that have come into operation see the compilation table.

Compilation table

| Citation | Published | Commencement |
|--|------------------|------------------------|
| <i>Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2020</i> | 18 Jun 2020 | 1 Jul 2020 (see cl. 2) |