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LEGAL PROFESSION ACT 2008

**LEGAL PRACTITIONERS (SUPREME COURT)
(CONTENTIOUS BUSINESS) REPORT AND
DETERMINATION 2012**

**LEGAL PRACTITIONERS (SUPREME COURT
AND DISTRICT COURT) (CRIMINAL) REPORT
AND DETERMINATION 2012**

**LEGAL PRACTITIONERS (MAGISTRATES
COURT) (CIVIL) REPORT AND
DETERMINATION 2012**

**LEGAL PRACTITIONERS (MAGISTRATES
COURT) (CRIMINAL) REPORT AND
DETERMINATION 2012**

LEGAL PROFESSION ACT 2008**LEGAL PRACTITIONERS (SUPREME COURT) (CONTENTIOUS
BUSINESS) REPORT 2012**

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

PART 1—PRELIMINARY**Citation**

1. (a) This Report may be cited as the *Legal Practitioners (Supreme Court) (Contentious Business) Report 2012*.
- (b) The Determination set out in the Schedule to this Report is referred to in this report as the *Legal Practitioners (Supreme Court) (Contentious Business) Costs Determination 2012*.

PART 2—NOTICE AND ENQUIRIES**Notice under section 278 of the Act**

2. The Legal Costs Committee has complied with the notice provisions of section 278 of the Act.

Inquiries and submissions under section 277 of the Act

3. Before making the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2012*, the Legal Costs Committee—
 - (a) reviewed all submissions received as a result of the notice given under section 278 of the Act including those made by The Law Society of Western Australia (Inc) and The Western Australian Bar Association (Inc);
 - (b) reviewed the impact of movements in the Consumer Price and Labour Price Indices for the financial year ending June 2011, and for the September 2011, December 2011 and March 2012 quarters; and
 - (c) conferred with other legal practitioners.

PART 3—REPORT OF COMMITTEE'S CONCLUSIONS**Maximum hourly and daily rates changed—scale of costs amended**

4. (a) The information gained as a result of the inquiries and submissions described in clause 3 satisfied the Legal Costs Committee that the manner in which legal services are provided made it appropriate to continue to adopt the hourly and daily rates charged by law practices as the basis for the rates used in the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2012*.
- (b) 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 the Western Australian Bar Association; and
 - (4) taking into account the incidental administrative implications of the calculation of the Goods and Services Tax,the hourly and daily rates referred to in subclause 4(a) be varied from the hourly and daily rates used in the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2010*¹ as the basis for the recommended scale of costs which have been generally rounded up or down to represent various, increases of between 5.13% and 7.41% 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 Practitioners (Supreme Court) (Contentious Business) Determination 2012*.
- (c) It is the recommendation of the Legal Costs Committee, as a result of the inquiries and submissions described in clause 3, the scale of costs be varied in the manner set out in Table B of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2012*.
- (d) The recommendations of the Legal Costs Committee are not intended to override the entitlement of a law practice to make a written agreement as to costs with a client under the Act or any successor legislation.

TED SHARP, Chairman.
ANGELA GAFFNEY, Member.
CLARE THOMPSON, Member.
MARCUS COCKER, Member.
JANICE DUDLEY, Member.
MATTHEW CURWOOD, Member.

¹ Published in *Gazette* 29 June 2010

*Schedule***LEGAL PROFESSION ACT 2008****LEGAL PRACTITIONERS (SUPREME COURT) (CONTENTIOUS BUSINESS) DETERMINATION 2012**

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

Citation

1. This Determination may be cited as the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2012*.

Commencement

2. This Determination comes into operation on 1 November 2012.

Application

3. (a) This Determination applies to the remuneration of law practices in respect of contentious business carried out by law practices in or for the purposes of proceedings before—
- (1) The Supreme Court; and
 - (2) The District Court other than contentious business to which the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2012* applies.
- (b) This Determination does not apply to the remuneration of law practices based on a written agreement as to costs under the *Legal Profession Act 2008* or any successor legislation.
- (c) This Determination does not apply to the remuneration of law practices based on costs incurred before 1 November 2012.

Application of 0.66, r11(3), r13, r18, r19, r20(3), r21 and r23 of the Rules of the Supreme Court

4. In the circumstances set out in Order 66, rules 11(3), 13, 18, 19, 20(3), 21 and 23 of the *Rules of the Supreme Court*, the Committee determines that the Court or the Taxing Officer, as the case may be, has the power to make the orders and allowances referred to in those rules.

Fixed amounts

5. Based upon the Committee’s enquiries, it has determined that items 1(b), 3(a), 7(a), 14, 23(a), 25(b) and 29(a) in Table B should be fixed amounts.

New item 35 for negotiated motor vehicle personal injury claims

6. The Committee resolved to introduce a category within the Determination relating to claims under Section 7(2) of the Motor Vehicle (Third Party Insurance) Act 1943 (WA) (“Motor Vehicle Act”) which are settled by negotiation between the parties at a pre trial conference.

The allowance set out in the new item 35 is intended to apply to claims for personal injury under the Motor Vehicle Act which follow a standard procedural pathway.

The Committee conferred widely about the introduction of such an item within the Determination. A variety of views and opinions was expressed to the Committee.

When should item 35 apply?

Item 35 is not a “one-size fits all” intended to apply to claims under the Motor Vehicle Act. The Committee recognises that—

- No two legal cases are the same;
- Every claim has different circumstances which form part of the factual and legal matrix which practitioners and clients must deal with;
- In some cases, liability is admitted but contributory negligence is pleaded by a defendant; and
- In some cases causation issues arise.

Notwithstanding the variables that apply to every legal case, the *District Court Rules 2005* provide that claims under the Motor Vehicle Act follow a standard procedural pathway. The rules provide a timetable for discovery and interrogatories and are designed to minimise the need for the parties to make chambers applications. The 2011 Annual Review of the District Court of Western Australia makes clear that an overwhelming majority of claims settle without going to trial. The Committee considers, in these circumstances, it is appropriate to adopt a short form scale item.

It is the Committee’s view that certain procedures (for example, contested interlocutory applications of substance or formal mediation conferences which take place after failed attempts to settle the matter at a pre trial conference) are indicative that the proceedings fall outside item 35.

Further, item 35 is not intended to apply to a claim which proceeds to a listing conference for the allocation of trial dates where significant preparation of the case for trial has occurred.

Item 35 cannot be used by a defendant to fix a defendant’s costs.

Who decides whether item 35 applies?

If either a plaintiff or a defendant (or on a practitioner/client basis either the practitioner or the client) considers that the allowance under item 35 either exceeds a reasonable allowance for the work carried out, or is insufficient remuneration for the work carried out, then any party may require the plaintiff (or in the event of a practitioner and client, the plaintiff’s practitioner) to prepare a bill of costs in the usual manner and have those costs assessed by the Court under other items of this Determination.

When will it be decided whether item 35 applies?

At the time when a settlement of the quantum of a claim (exclusive of legal costs) has been agreed, the parties may agree to have costs awarded/determined in accordance with item 35.

Is item 35 inclusive of disbursements?

The amount in item 35 does not include disbursements. It is the Committee's view that disbursements incurred for any claim under the Motor Vehicle Act should be added to item 35 on the same basis as under item 34.

Catastrophic personal injury claims

7. The Committee has resolved that the costs associated with preparation of catastrophic personal injury claims for trial should be taxed or fixed without limit to the number of hours fixed under item 17 where the Court has declared a claim to be one for a catastrophic injury.

The Committee conferred with the Chief Justice of Western Australia and the Principal Registrar of the District Court of Western Australia, and anticipates that the Courts will develop their own procedures for determination of whether a case is a catastrophic personal injury claim.

The Committee is of the view that a determination of whether a case is a catastrophic personal injury claim for the purposes of item 17 would involve the assessment of two criteria—

- (a) The injury or injuries sustained by the plaintiff that are at issue in the proceedings; and
- (b) By virtue of the injury or injuries, whether an extra burden is placed upon the practitioners involved in the case for the preparation of the case for trial.

It is intended that the increase to the scale limit could apply to any or all parties not solely the plaintiff.

Maximum hourly and daily rates

8. (a) The hourly and daily rates set out in Table A are the maximum hourly and daily rates, inclusive of GST, which the Legal Costs Committee determines shall be used to calculate the dollar amounts in the scale of costs set out in Table B. Each item in the scale of costs specifies a dollar amount with reference to the fee earner.
- (b) The rates referred to in paragraph (a) were ascertained in the manner set out in clause 4 of the *Legal Practitioners (Supreme Court) (Contentious Business) Report 2012*.
- (c) The daily rates set out in Table A 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

Fee Earner		Maximum allowable hourly and daily rates
Senior Practitioner (admitted for 5 years or more) (SP) ^o	hourly rate	\$451
Junior Practitioner (admitted for less than 5 years) (JP) ^o	hourly rate	\$319
Clerk/Paralegal (CPL)	hourly rate	\$220
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel—		
Counsel (C)*	hourly rate	\$363
	daily rate	\$3,630
Senior Counsel (SC)**	hourly rate	\$638
	daily rate	\$6,380

^o 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.

* 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 Queens 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 Western Australia.

Costs

9. (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 party to an action or other proceeding (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 (except as otherwise provided in item 33 of Table B).

- (b) Allowances made under item 33 of Table B are only to be awarded as between a law practice and its client, or if costs are awarded on an indemnity basis and not between party and party unless the Court otherwise orders.

Table B
SUPREME COURT SCALE OF COSTS 2012

Item		Time	Fee earner	\$
1.	Writ— (a) Writ of summons, whether specially or generally endorsed, including instructions, but excluding statement of Claim (b) For each additional defendant (c) Statement of Claim	1.5 hours 10 hours	SP SP	671 77 4,510
2.	Next friend or guardian <i>ad litem</i>	3 hours	JP	957
3.	Defence— (a) Memorandum of appearance (b) Defence (c) Counterclaim	 10 hours 10 hours	 SP SP	 99 4,510 4,510
4.	Reply and other pleadings Reply (if necessary), defence to counterclaim, or any other pleading	10 hours	SP	4,510
5.	(a) Third party notice (b) Pleadings in third party proceedings	2 hours 6 hours	SP SP	902 2,706
6.	(a) Requesting particulars of a pleading (where and to the extent necessary) (b) Giving particulars of a pleading	3 hours 5 hours	JP JP	957 1,595
7.	Discovery— (a) Notice requiring discovery (b) Giving discovery of documents	 10 hours	 SP	 66 4,510
8.	Inspection Inspection and giving inspection of discovered documents whether by personal attendance or otherwise	per hour	SP	451
9.	Interrogatories— (a) Delivery of interrogatories (b) Answers to interrogatories	5 hours 10 hours	SP SP	2,255 4,510
10.	Chambers— (a) Proceedings in Chambers other than proceedings to which item 11 applies (b) Attending on a reserved judgment in Chambers (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders) (c) Consent Orders including conferral but excluding extraction	 2 days preparation, 1 day hearing; per hour 1.5 hours	 C SP JP	 10,560 451 473
11.	Motions and originating process— (a) Originating motion, originating summons or originating application (b) For 2nd and each successive day of hearing (c) Attendance at hearing by instructing legal practitioner	 2 days preparation; 1 day hearing and preparation of case—50 hours per hour	 C SP C SP	 33,110 3,630

Item		Time	Fee earner	\$
12.	Proceedings in Court not otherwise provided for, including appeals from a Registrar	2 days preparation; ½ day hearing	C	9,075
13.	Listing Conference Attending at a Listing Conference (convened pursuant to Order 29 Rule 8 of the Rules of the Supreme Court or Rule 43 of the District Court Rules) and all necessary preparation	per hour	SP	
14.	Entry of judgment without trial			220
15.	Offers of compromise, notices, practice directions, etc— (a) Payment into or out of Court (b) Offer of compromise under O.24A (c) Acknowledgment of offer under O.24A (d) Acceptance of offer of compromise under O.24A (e) Notice of offer to consent to judgment (f) Other notices and certificates referred to or required by the Rules or procedures of the court (including practice directions)	2 hours 4 hours 4 hours 2 hours	JP SP SP SP	638 1,804 66 1,804 902 66
16.	Entry for trial/Entry for hearing— (a) Advising on, and preparing, documents required to be filed by the Rules of the Supreme Court or the Rules of the District Court (b) Preparation of Schedules (if any) required by District Court Rules 45C and 45D (c) Advice on evidence	2 hours 8 hours per hour	SP SP C/SC	902 3,608
17.	Preparation of case Preparation of case for trial (includes work reasonably and necessarily undertaken prior to commencement of proceedings) * If the claim is one declared by the Court, to be a catastrophic personal injury claim, the time reasonably spent by a legal practitioner, or by a clerk or paralegal of a legal practitioner in preparation of case for trial shall not be limited to 120 hours but shall be such amount that is reasonable in all of the circumstances	120 hours*	SP	54,120
18.	Examination of witness before trial by counsel or practitioner, pursuant to order			An allowance in accordance with item 20(c) or (d)
19.	Application for and striking jury	1 hour	JP	319
20.	Trial— Counsel fees (a) Fee on brief, i.e. first day of trial and preparation (including submissions) (b) Fee on brief for Senior Counsel, i.e. first day of trial and preparation (including submissions) (c) Counsel fee for the second and each successive day of hearing	3.5 days preparation; 1st day of trial 3.5 days preparation; 1st day of trial	C SC C	16,335 28,710 3,630

Item		Time	Fee earner	\$
	(d) Counsel fee for Senior Counsel for second and each successive day of hearing		SC	6,380
	(e) Instructing Legal Practitioner attending trial	per hour	SP	451
	(f) Clerk attending trial	per hour	C/PL	220
	(g) Attending on reserved judgment (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders)	per hour	SP	451
	(h) for each five hearing days after the first five, additional fee on brief	1 day	SC/C	
21.	Re-trial or Re-hearing— (a) Preparation of case for re-trial or re-hearing (b) Re-trial or re-hearing			Such amounts as are reasonable in the circumstances
22.	(a) Special case, case stated (otherwise than by way of appeal) or trial of an issue (b) For the second and each successive day of the trial or hearing			Such amounts as are reasonable in the circumstances
23.	Appeals to the Court of Appeal and Single Judge appeals (including appeals by way of case stated) and applications for leave to appeal (a) Appeal Notice, Service Certificate, Notice of Respondent's Intention (b) Appellant's Case, Respondent's Answer including relevant forms and all annexures (c) Appellant's Reply to Notice of Contention, when required (d) Settling appeal book indexes (including drafting and settling appeal book index) (e) An application in an appeal, an interlocutory or directions hearing before a single Judge or Registrar (f) Preparation of case appeal for hearing (g) Counsel fee on hearing (including preparation) (h) Counsel fee for Senior Counsel (including preparation) (i) Counsel fee for the second and each successive day of hearing (j) Counsel fee for Senior Counsel for the second and each successive day of hearing (k) Instructing Legal Practitioner attending appeal (l) Attending on reserved decision (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders)			451 25,520 6,380 3,608 3,630 4,510 10,890 19,140 3,630 6,380 451 451

Item		Time	Fee earner	\$
24.	Pretrial, mediation, conferrals, or other conferences— (a) Where required by order of the Court, by the <i>Rules of the Supreme Court</i> or by practice direction; (b) including informal conferences where reasonably held before or after commencement of proceedings; (c) attendances by Counsel and instructing legal practitioners at the conferrals and conferences set out in paragraphs (a) and (b) of this item; (d) preparation reasonably undertaken for the conferrals and conferences described in paragraphs (a), (b) and (c) of this item; and (e) conferences between Counsel and own instructing Legal Practitioner where reasonably necessary.	per hour per hour per hour per hour per hour	SP/SC /C SP/SC /C SP/SC /C C SP/SC /C	
25.	Orders Settling and extracting judgment or order— (a) With appointment (b) Without appointment	2 hours	JP	638 220
26.	Arbitration proceedings			The same costs as in an action
27.	Proceedings, whether by action or otherwise, for the recovery of compensation for the taking or resumption of land or any other property by the Crown in right of the State or of the Commonwealth or by any other person, body or instrumentality pursuant to any statutory power			Such amounts as are reasonable in the circumstances
28.	Proceedings by way of prerogative writ— (a) Motion for order to show cause (including preparation and hearing) (b) Preparation of case for hearing (c) Counsel fee on hearing of application for order absolute (including preparation) (d) Counsel fee for Senior Counsel (including preparation) (e) Counsel fee for Counsel on the second and each successive day of hearing (including preparation) (f) Counsel fee for Senior Counsel on the second and each successive day of hearing (including preparation) (g) Instructing Legal Practitioner attending hearing (h) Attending on reserved decision (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders)	20 hours 10 hours 2 days preparation; 1 day hearing 2 days preparation; 1 day hearing per hour per hour	SP SP C SC C SC SP SP	9,020 4510 10,890 19,140 3,630 6,380 451 451

Item		Time	Fee earner	\$
29.	(a) Execution (b) If against land, an additional	3 hours	JP	319 957
30.	Taxing including drawing— (a) Drawing bill of costs and service; and (b) Taxation of costs (including the time spent in preparing for the taxation)		SP	Such amounts as are reasonable in the circumstances
31.	Copying 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		0.165
32.	Accounts and inquiries Taking accounts, inquiries		SP	Such amounts as are reasonable in the circumstances
33.	Other work— (a) Time reasonably spent by a legal practitioner on work requiring the skill of a legal practitioner (of the standing indicated) but not covered by any other item or (b) Time reasonably spent by a legal practitioner, or by a clerk or paralegal of a legal practitioner, on work not covered by any other item or by paragraph (a)	per hour per hour	SC SP C JP C/PL	
34.	Disbursements In addition to the fees and charges allowed under this Determination— (a) As between a law practice and client, a law practice may charge and be allowed disbursements necessarily or reasonably incurred; and (b) As between party and party, a party may be allowed disbursements incurred by that party except insofar as they are of an unreasonable amount or have been unreasonably incurred, so that subject to the above exceptions, that party is fully reimbursed for its disbursements.			
35.	Claims under Section 7(2) of the Motor Vehicle (Third Party Insurance) Act 1943 (WA) including— (a) Writ of Summons; (b) Statement of Claim; (c) Giving discovery (whether formally or informally); (d) Inspection and giving inspection of discovered documents; (e) Preparation of Entry for Trial, Papers, including Schedules of Damages; (f) Applications for Subpoena to produce documents prior to pre-trial conference; (g) Preparation for and attendance at pre-trial conference or, if appropriate, pre-trial conferences; and (h) Copying. If Counsel is engaged for and attends pre-trial conference, an additional			12,375 3,630

LEGAL PROFESSION ACT 2008**LEGAL PRACTITIONERS (SUPREME COURT AND DISTRICT COURT)
(CRIMINAL) REPORT 2012**

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

PART 1—PRELIMINARY**Citation**

1. (1) This Report may be cited as the *Legal Practitioners (Supreme Court and District Court) (Criminal) Report 2012*.
- (2) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Practitioners (Supreme Court) (Criminal) Determination 2012*.

PART 2—NOTICE AND INQUIRIES**Notice under section 278 of the Act**

2. The Legal Costs Committee has complied with the notice provisions of section 278 of the Act.

Inquiries and submissions under section 277 of the Act

3. Before making the *Legal Practitioners (Supreme Court and District Court) (Criminal) Determination 2012*, the Legal Costs Committee—
 - (a) reviewed all submissions received as a result of the notice given under section 278 of the Act;
 - (b) reviewed the impact of increases in the Consumer Price and Labour Price Indices for the financial year ending June 2011, and for the September 2011, December 2011 and March 2012 quarters as they impacted on the hourly rates for legal practitioners set out in the *Legal Practitioners (Supreme Court and District Court) (Criminal) Determination 2010*¹;
 - (c) reviewed a submission received from The Law Society of Western Australia (Inc) and comments by the Principal Registrar of the District Court of Western Australia; and
 - (d) conferred with other legal practitioners.

PART 3—REPORT OF COMMITTEE'S CONCLUSIONS**Hourly rates and scale of costs established**

4. (a) The information gained as a result of the inquiries and submissions described in clause 3 satisfied the Legal Costs Committee that the manner in which legal services are provided made it appropriate to continue to adopt the hourly and daily rates charged by law practices as the basis for the rates used in the *Legal Practitioners (Supreme Court and District Court) (Criminal) Determination 2012*. No other appropriate methodologies were put to the Committee as an alternative to hourly and daily rates.
- (b) 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) taking into account the incidental administrative implications of the calculation of the Goods and Services Tax; and
 - (4) to be consistent with the hourly and daily rates referred to in the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2012* to be gazetted at or about the same time as this Report,the hourly and daily rates referred to in sub-clause 4(a) be varied from the hourly and daily rates used in the *Legal Practitioners (Supreme Court and District Court) (Criminal) Determination 2010*¹ as the basis for the recommended scale of costs which have been generally rounded up or down to represent various increases of between 5.13% and 7.41% 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 Practitioners (Supreme Court and District Court) (Criminal) Determination 2012*.
- (c) The recommendations of the Legal Costs Committee are not intended to override the entitlement of a law practice to make a written agreement as to costs with a client under the Act or any successor legislation.

TED SHARP, Chairperson.
ANGELA GAFFNEY, Member.
CLARE THOMPSON, Member.
MARCUS COCKER, Member.
JANICE DUDLEY, Member.
MATTHEW CURWOOD, Member.

¹ Published in *Gazette* 29 June 2010

*Schedule***LEGAL PROFESSION ACT 2008****LEGAL PRACTITIONERS (SUPREME COURT AND DISTRICT COURT)
(CRIMINAL) DETERMINATION 2012**

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

Citation

1. This Determination may be cited as the *Legal Practitioners (Supreme Court and District Court) (Criminal) Determination 2012*.

Commencement

2. This Determination comes into operation on 1 November 2012.

Application

3. This Determination applies to the remuneration of law practices, clerks and paralegals in respect of advice given by law practices in or for the purposes of criminal proceedings or potential criminal proceedings which are ultimately dealt with in the Supreme Court of Western Australia and the District Court of Western Australia.

No minimum charge

4. In no respect is this Determination to be seen as providing a minimum charge for any work.

Hourly rates

5. The hourly and daily rates set out in Table A are the maximum hourly and daily rates, inclusive of GST which the Legal Costs Committee determines shall be used to calculate the dollar amounts chargeable by a law practice in providing advice and services to clients in respect of criminal proceedings and potential criminal proceedings which are ultimately dealt with in the Supreme Court of Western Australia and the District Court of Western Australia.

Table A

Fee Earner		Maximum allowable rates
Senior Practitioner (admitted for 5 years or more) (SP) ^a	hourly rate	\$451
Junior Practitioner (admitted for less than 5 years) (JP) ^a	hourly rate	\$319
Clerk/Paralegal (C/PL)	hourly rate	\$220
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel—		
Counsel (C) [*]	hourly rate	\$363
	daily rate	\$3,630
Senior Counsel (SC) [†]	hourly rate	\$638
	daily rate	\$6,380

^a Where a local legal practitioner has held an interstate practising 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.

^{*} 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 Queens 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 Western Australia.

Costs

6. (a) Unless a law practice has made a written agreement as to costs with a client under the provisions of section 282 of the Act, the costs of or in relation to a party to an action or other proceeding (inclusive of GST and Counsel fees but exclusive of other disbursements) in the relevant Court are payable by a party to that party's own law practice and must not exceed an amount calculated at the hourly rates in Table A.
- (b) In respect of any appeals to the Supreme Court from any decision of a lower Court or single Judge exercising the relevant Court's criminal jurisdiction, item 23 of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2012* will apply to law practice/client costs on such appeals.

Made by the Legal Costs Committee on 17 October 2012.

LEGAL PROFESSION ACT 2008**LEGAL PRACTITIONERS (MAGISTRATES COURT) (CIVIL) REPORT 2012**

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

PART 1—PRELIMINARY**Citation**

1. (1) This Report may be cited as the *Legal Practitioners (Magistrates Court) (Civil) Report 2012*.
- (2) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Practitioners (Magistrates Court) (Civil) Determination 2012*.

PART 2—NOTICE AND INQUIRIES**Notice under section 278 of the Act**

2. The Legal Costs Committee has complied with the notice provisions of section 278 of the Act.

Inquiries and submissions under section 277 of the Act

3. Before making the *Legal Practitioners (Magistrates Court) (Civil) Determination 2012* the Legal Costs Committee—
 - (a) reviewed all submissions received as a result of the notice given under section 278 of the Act;
 - (b) consulted with the Magistrates Court and the Chief Magistrate;
 - (c) consulted with The Law Society of Western Australia Inc. and the Western Australian Bar Association Inc.;
 - (d) reviewed the *Legal Practitioners (Magistrates Court) (Civil) Determination 2010*;¹
 - (e) had regard to relevant provisions of the *Magistrates Court Act 2004* and the *Magistrates Court (Civil Proceedings) Act 2004*; and
 - (f) conferred with other legal practitioners.

PART 3—REPORT OF COMMITTEE’S CONCLUSIONS**Hourly rates and scale of costs continued**

4. (1) The information gained as a result of the inquiries and submissions described in clause 3 satisfied the Legal Costs Committee that having regard to the provisions of the *Magistrates Court Act 2004* and the *Magistrates Court (Civil Proceedings) Act 2004*, it remains appropriate to determine hourly and daily rates and a scale of costs for legal work applicable to civil proceedings in the Magistrates Court.
- (2) It is the recommendation of the Legal Costs Committee that—
 - (a) as a result of the inquiries and submissions described in clause 3;
 - (b) having considered the impact of relevant Australian Bureau of Statistics data;
 - (c) having considered submissions and data from The Law Society of Western Australia; and
 - (d) taking into account the incidental administrative implications of the calculation of the Goods and Services Tax,the hourly and daily rates referred to in subclause 4 (1) be varied from the hourly and daily rates used in the *Legal Practitioners (Magistrates Court) (Civil) Determination 2010* as the basis for the recommended scale of costs which have generally been rounded up or down to represent various increases of between 6.25% and 9.09% 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 Practitioners (Magistrates Court) (Civil) Determination 2012*.
- (3) Having regard to the information gained as a result of the inquiries and submissions described in clause 3 the Legal Costs Committee has concluded it remains appropriate to—
 - (a) order the scale to reflect the procedures utilised in the Magistrates Court and the flow of litigation;
 - (b) maintain consistency where practicable with the format of the *Legal Practitioners (Supreme Court)(Contentious Business) Determination 2012*; and
 - (c) provide for hourly and daily rates applicable to Counsel and Senior Counsel.
- (4) The Legal Costs Committee intends, because the scale sets maximum hourly and daily rates and amounts and allowances that must not be exceeded, that the hourly and daily rates and scale of costs will apply in circumstances requiring the determination of allowable and other costs in the minor cases procedure of the Magistrates Court.

¹ Published in *Gazette* 29 June 2010.

(5) The Legal Costs Committee intends that the Determination shall apply to all civil proceedings dealt with in the Magistrates Court, including civil jurisdiction conferred on the Court by a written law, such as but not limited to the *Dividing Fences Act 1961* and the *Restraining Orders Act 1997*.

(6) The recommendations of the Legal Costs Committee are not intended to override the entitlement of a law practice to make a written agreement as to costs with a client under the Act.

TED SHARP, Chairman.
ANGELA GAFFNEY, Member.
CLARE THOMPSON, Member.
MARCUS COCKER, Member.
JANICE DUDLEY, Member.
MATTHEW CURWOOD, Member.

Schedule

LEGAL PROFESSION ACT 2008

LEGAL PRACTITIONERS (MAGISTRATES COURT) (CIVIL) DETERMINATION 2012

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

Citation

1. This Determination may be cited as the *Legal Practitioners (Magistrates Court) (Civil) Determination 2012*.

Commencement

2. This Determination comes into operation on 1 November 2012.

Application

3. (1) This Determination applies to the remuneration of practitioners in respect of business carried out by law practices in or for the purposes of civil proceedings before the Magistrates Court.

(2) This Determination does not apply to the remuneration of law practices based on costs incurred in respect of business carried out before the commencement of this Determination.

(3) Nothing in this Determination applies to costs in proceedings transferred to the Magistrates Court pursuant to the *Courts Legislation Amendment and Repeal Act 2004* insofar as those costs relate to work undertaken prior to the date of transfer.

No minimum charge

4. In no respect is this Determination to be seen as providing a minimum charge for any work other than the items referred to in clause 5. For example, item 2(b) provides for \$2,992 for the work involved. The figure of \$2,992 is a maximum, but on taxation less than \$2,992 might be allowed. Where there is a set cost or time or level of fee earner indicated, the purpose is to indicate to the Assessing Officer what reasonably may be expected in most cases.

Fixed items

5. Some items in this Determination have been fixed without any indication of how these items have been calculated. These items are 1, 2(a), 4(a), 12, 13(c), 18(a)(ii), 19(a), 21 and 22(a). These have been fixed because, based on past practices, the Court staff require a fixed figure when completing the form of Entry of Judgment by Default and the like.

Time estimates

6. The reason for stating the number of hours estimated to be necessary to perform each of the items of work described in this Determination is to provide guidance to the Court when dealing with the question of costs so that the Court has some idea how much time is reasonably necessary to perform work in most cases. For example, in item 16(a), which relates to preparation for trial or getting up case for trial, the time indicated is that which can be expected in most cases. Some items reflect a number of hours that have been estimated so as to include work done with respect to the process of obtaining and considering evidence, interrogatories, documents, disclosures and the like, for example items 2(b), 4(b), 5, 10 and 20. The hours referred to in this Determination will guide the Assessing Officer about the amount which should be allowed in a particular case.

Settled proceedings

7. It is intended that item 14 should apply even if there is no trial. Thus, if the case is settled before trial and the law practice can demonstrate that preparation for trial was carried out, costs may be recovered for that work and allowed on an assessment of costs.

Hourly rates

8. (1) The hourly and daily rates set out in Table A are the maximum hourly and daily rates, inclusive of GST, which the Legal Costs Committee determines shall be used to calculate the dollar amounts set out in Table B. Except for certain items, each item in this Determination specifies a dollar amount with reference to the fee earner.

(2) The daily rates set out in Table A 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.

Trial Length

9. The Legal Costs Committee has resolved that having regard to comments from the Chief Magistrate, it is appropriate to provide a proportionally greater allowance for a half day trial than a trial which lasts into a second half day, but not a second day. Items 16(a)—(d) (inclusive) in Table B reflect this change, with items 16(e) and (f) providing the allowance for additional days of trial.

Table A

Fee Earner			Maximum allowable rates
Senior Practitioner (admitted for 5 years or more)	(SP) ^α	hourly rate	\$374
Junior Practitioner (admitted for less than 5 years)	(JP) ^α	hourly rate	\$275
Clerk/Paralegal (CPL)		hourly rate	\$132
Counsel fees charged as a disbursement to law practices or charged by in-house Counsel—			
Counsel (C)*		hourly rate daily rate	\$297 \$2,970
Senior Counsel (SC)†		hourly rate daily rate	\$495 \$4,950

^α 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.

* 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 Queens 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 Western Australia.

Costs

10. Unless a law practice has made a written agreement as to costs with a client under the Act, the costs of or in relation to a party to an action or other proceeding (inclusive of GST and counsel fees but exclusive of other disbursements)—

- (a) recoverable from one party by another party; or
- (b) payable by a party to that party's own law practice,

shall not exceed the amounts set out in Table B.

Table B
MAGISTRATES COURT CIVIL SCALE OF COSTS 2012

Item		Time	Fee Earner	Maximum Amount \$
1.	Letter of demand issued prior to proceedings			66
2.	Claim—			
	(a) Claim, including instructions, but excluding Statement of Claim For each additional defendant			374 55
	(b) Statement of Claim (including preparation and lodgement of a particulars of claim, where necessary or by order, and statutory declaration and list of documents)	8 hours	SP	2,992
3.	Appointment of litigation guardian	2 hours	JP	550
4.	Response—			
	(a) Lodgement of a response to a claim			187
	(b) Statement of defence (including preparation and lodgement of a statutory declaration)	8 hours	SP	2,992
	(c) Counterclaim, including instructions and statement of claim in the counterclaim, statutory declaration in support of counterclaim (where required), and all other documents necessary	8 hours	SP	2,992

Item		Time	Fee Earner	Maximum Amount \$
5.	Third party claim, including instructions and list of documents	8 hours	SP	2,992
6.	Disclosure Giving additional disclosure where ordered by the Court	3 hours	JP	825
7.	Inspection Inspection and giving inspection whether by personal attendance or otherwise	per hour	JP	275
8.	Interrogatories— (a) Delivery of interrogatories (b) Answers to interrogatories including affidavit	5 hours 5 hours	SP SP	1,870 1,870
9.	Interpleaders Interpleader proceedings— (a) where uncontested (b) where contested	1 hour	JP	275 An allowance in accordance with item 10
10.	Application to the Court Proceedings and/or responses to applications (including all documentation and preparation for hearing) <i>Note: In relation to the above, if the proceedings do not commence and settle or adjourn on the day of the hearing then the Assessing Officer shall allow such amount as is reasonable in the circumstances</i>	1 day preparation ½ day hearing	C	4,455.00
11.	Applications in court, including applications under Part 21 of the <i>Magistrates Court (Civil Proceedings) Rules 2005</i> , not otherwise provided for	1 hour	SP	374
12.	Application for entry of judgment by default (<i>without trial</i>)			132
13.	Offers of settlement, notices, practice directions, applications, declarations, memoranda, affidavits— (a) Offers of settlement (b) Acceptance of offer of settlement (c) Other notices and certificates referred to or required by the Act, Rules or procedures of the Court (including practice directions) not otherwise specified in this Scale (d) Preparation, lodgement and service of affidavits and statutory declarations not otherwise provided for (e) Drawing and serving of interlocutory orders (where ordered or required) (f) Preparation, lodgement and service of a listing conference memorandum (g) Applications in court not otherwise provided for	2 hours 2 hours per hour 2 hours 6 hours 1 hour	SP SP SP JP SP JP	748 748 132 374 550 2,244 275
14.	Preparation of case Preparation for trial (includes work reasonably and necessarily undertaken prior to commencement of proceedings)	50 hours	SP	18,700

Item		Time	Fee Earner	Maximum Amount \$
15.	Examination of witness before trial by a practitioner, pursuant to an order			An allowance in accordance with item 16(e) or (f)
16.	<p>Trial—</p> <p>(a) Fee on brief for Counsel ie half day trial and preparation</p> <p>(b) Allowance for second half day of trial</p> <p>(c) Fee on brief for Senior Counsel ie half day trial and preparation (where two or more Counsel are certified for)</p> <p>(d) Allowance for second half day of trial for Senior Counsel</p> <p>(e) Counsel fee for the second and each successive day of hearing</p> <p>(f) Counsel fee for Senior Counsel for second and each successive day of hearing</p> <p>(g) Instructing practitioner attending trial</p> <p>(h) Clerk attending trial</p> <p><i>Note: Subject to paragraphs (a)-(h) if—</i></p> <p><i>(1) The trial lasts less than 2 hours; or</i></p> <p><i>(2) The trial does not commence and settles or adjourns on the day of the trial,</i></p> <p><i>then the Assessing Officer shall allow such amount as is reasonable in the circumstance.</i></p> <p>(i) Attending on reserved judgment (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders)</p>	<p>2 days preparation 1/2 day of trial</p> <p>2 days preparation 1/2 day of trial</p> <p>per hour</p> <p>per hour</p>	<p>C</p> <p>C</p> <p>SC</p> <p>SC</p> <p>C</p> <p>SC</p> <p>JP</p> <p>CPL</p> <p>SP</p>	<p>7,425</p> <p>1,485</p> <p>12,375</p> <p>2,475</p> <p>2,970</p> <p>4,950</p> <p>275</p> <p>132</p> <p>374</p>
17.	<p>Pretrial, mediation, conferrals, or other conferences—</p> <p>(a) where required by an Act, order of the Court, by the <i>Rules</i> or by practice direction;</p> <p>(b) including informal conferences where reasonably held after commencement of proceedings; and</p> <p>(c) preparation reasonably undertaken for the conferences described in paragraph (b) of this item</p>	per hour	SP	374
18.	<p>Judgments and orders—</p> <p>(a) Settling and extracting judgment or order—</p> <p>(i) with appointment</p> <p>(ii) without appointment</p> <p>(b) Request for certified copy of judgment or order</p>	1 hour	JP	<p>275</p> <p>187</p> <p>132</p>

Item		Time	Fee Earner	Maximum Amount \$
19.	Enforcement— (a) Execution (b) If against land, an additional	3 hours	JP	187 825
20.	Proceedings in court pursuant to <i>Civil Judgments Enforcement Act 2004</i> for the following— (a) Means Inquiry (b) Default Inquiry (c) Suspension of enforcement order application (d) Application to cancel or amend an order; For each appearance by practitioner For each appearance by clerk	8 hours 3 hours	SP CPL	2,992 396
21.	Registration of judgments Registration of judgments including those under <i>Service and Execution of Process Act 1992 (Cwlth)</i>			187
22.	Assessment of costs including drawing bill— (a) Lodgement of bill of costs (b) Drawing bill of costs, copies and service (c) Making an objection to a bill (d) Assessment of costs (including the time spent in preparing for the assessment)		SP	55 Such amounts as are reasonable in the circumstances
23.	Appeals An appeal to a Magistrate from a decision of a Registrar			Allowances calculated in accordance with item 10
24.	Copies Copies where necessary, including of documents for which allowance is otherwise made in this Determination	per page		0.165
25.	Accounts and inquiries Attending on taking accounts, inquiries		SP	Such amounts as are reasonable in the circumstances
26.	Other work— (a) Time reasonably spent by a legal practitioner on work requiring the skill of a legal practitioner (of the standing indicated) but not covered by any other item or (b) Time reasonably spent by a legal practitioner, or by a clerk or paralegal of a legal practitioner, on work not covered by any other item or by paragraph (a)	per hour per hour	SP/JP/SC/ C/CPL SP/JP/SC/ C/CPL	

27.	<p>Disbursements</p> <p>In addition to the fees and charges allowed under this Determination—</p> <ul style="list-style-type: none">(a) As between a law practice and client, a law practice may charge and be allowed disbursements necessarily or reasonably incurred; and(b) As between party and party, a party may be allowed disbursements incurred by that party except insofar as they are of an unreasonable amount or have been unreasonably incurred, so that subject to the above exceptions, that party is fully reimbursed for its disbursements
28.	<p>Allowances for witnesses</p> <p>The amount of any costs to be paid in respect of work done by a practitioner in conducting any proceedings in a case may include a reasonable allowance for—</p> <ul style="list-style-type: none">(a) witnesses called because of their professional, scientific or other special skill or knowledge; and(b) witnesses called other than those covered in paragraph (a). In fixing an allowance for witnesses under paragraph (b), including the Claimant and Defendant, the Assessing Officer may have regard to the amount of salary, wages, or income (if any) actually lost by the witness.

Made by the Legal Costs Committee on 17 October 2012.

LEGAL PROFESSION ACT 2008**LEGAL PRACTITIONERS (MAGISTRATES COURT) (CRIMINAL) REPORT 2012**

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

PART 1—PRELIMINARY**Citation**

1. (1) This Report may be cited as the *Legal Practitioners (Magistrates Court) (Criminal) Report 2012*.
- (2) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Practitioners (Magistrates Court) (Criminal) Determination 2012*.

PART 2—NOTICE AND INQUIRIES**Notice under section 278 of the Act**

2. The Legal Costs Committee has complied with the notice provisions of section 278 of the Act.

Inquiries and submissions under section 277 of the Act

3. Before making the *Legal Practitioners (Magistrates Court) (Criminal) Determination 2012* the Legal Costs Committee—
 - (a) reviewed all submissions received as a result of the notice given under section 278 of the Act;
 - (b) consulted with the Magistrates Court and the Chief Magistrate;
 - (c) consulted with The Law Society of Western Australia Inc., the Western Australian Bar Association Inc and the Criminal Lawyers Association of Western Australia;
 - (d) reviewed the *Legal Practitioners (Magistrates Court) (Criminal Jurisdiction) Determination 2010*¹;
 - (e) had regard to relevant provisions of the *Magistrates Court Act 2004*; and
 - (f) conferred with other legal practitioners.

PART 3—REPORT OF COMMITTEE'S CONCLUSIONS**Hourly rates and scale of costs**

4. (1) The Legal Costs Committee notes that the criminal jurisdiction of the Magistrates Court covers a wide range of summary criminal matters.
- (2) Subject to the matters referred to in sub-clause (7) below, the Legal Costs Committee considers that as a consequence of the position stated in subclause 4(1), 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 law practice in, or for the purposes of contentious business in the criminal jurisdiction of the Magistrates Court.
- (3) It is the recommendation of the Legal Costs Committee that—
 - (a) as a result of the inquiries and submissions described in clause 3;
 - (b) having considered the impact of relevant Australian Bureau of Statistics data;
 - (c) having considered submissions and data from The Law Society of Western Australia; and
 - (d) 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(2) be varied from the hourly and daily rates used in the *Legal Practitioners (Magistrates Court) (Criminal) Determination 2010* as the basis for the recommended scale of costs which have generally been rounded up or down to represent various increases of between 6.25% and 9.09% inclusive of the Goods and Services Tax and for administrative convenience, divisible by 11. Those rates are set out in the Table to clause 4 of the *Legal Practitioners (Magistrates Court) (Criminal) Determination 2012*.

- (4) It is the recommendation of the Legal Costs Committee that the hourly rates charged by law practices under the *Legal Practitioners (Magistrates Court) (Civil) Determination 2012* should be adopted as the basis for costs for the supply of legal services covered under the *Legal Practitioners (Magistrates Court) (Criminal) Determination 2012*.

- (5) The hourly rates referred to in subclause 4(4) are set out in Table A of the *Legal Practitioners (Magistrates Court) (Criminal) Determination 2012*.

- (6) It is further the recommendation of the Legal Costs Committee that Table B of the *Legal Practitioners (Magistrates Court) (Criminal) Determination 2012* should be adopted as the basis for costs for the supply of those legal services itemised in that Table.

- (7) It is the recommendation of the Legal Costs Committee that having regard to the input of the Chief Magistrate, the Determination should allow for only one adjournment unless additional adjournments are justified in the view of the presiding Magistrate or are otherwise permitted by the

¹ Published in *Gazette* 29 June 2010.

Court in its usual practice in a specialist list or court. Additionally, the Legal Costs Committee understands from the Court's experience, a distinction should be made between initial bail applications and an application for variation to bail conditions as well as between short pleas in mitigation and longer pleas in mitigation.

(8) The recommendations of the Legal Costs Committee are not intended to override the entitlements of a law practice to make a written agreement as to costs with a client under the Act or any successor legislation.

TED SHARP, Chairman.
ANGELA GAFFNEY, Member.
CLARE THOMPSON, Member.
MARCUS COCKER, Member.
JANICE DUDLEY, Member.
MATTHEW CURWOOD, Member.

Schedule

LEGAL PROFESSION ACT 2008

LEGAL PRACTITIONERS (MAGISTRATES COURT) (CRIMINAL)
DETERMINATION 2012

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

Citation

1. This Determination may be cited as the *Legal Practitioners (Magistrates Court) (Criminal) Determination 2012*.

Commencement

2. This Determination comes into operation on 1 November 2012.

Application

3. (1) This Determination applies to the remuneration of law practices in respect of work undertaken for the purposes of criminal proceedings in the Magistrates Court.

(2) This Determination does not apply to the remuneration of law practices based on costs incurred in respect of work carried out before the commencement of this determination.

Maximum hourly rates

4. (1) 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.

(2) 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.

Adjournments, Bail Applications and Pleas in mitigation

5. (1) The Legal Costs Committee has resolved that having regard to comments from the Chief Magistrate and the circumstances noted in clause 4(7) of the Report, it is appropriate to include amendments to item 1 (to recognise that multiple adjournments should generally be discouraged and are an inefficient use of the Court's time), item 2 (to distinguish between initial bail applications and applications for variations of bail conditions) and the introduction of a new item 8 (pleas in mitigation).

(2) The reframing of Item 1 in Table B is intended to encourage the speedy progress of a matter to trial or other final conclusion, avoiding multiple adjournments. Item 1(c) is not intended to cover routine adjournments granted at the request of a practitioner, which are included in the allowance in item 1(a). Item 1(c) is intended to provide an allowance for adjournments arising from the Court's usual practices in specialist lists or courts, e.g. the Drug Court or Mental Health List.

Trial Length

6. The Legal Costs Committee has resolved that having regard to comments from the Chief Magistrate, it is appropriate to provide a proportionally greater allowance for a half day trial than a trial which lasts into a second half day, but not a second day. Item 4 in Table B reflects this change, with Item 5 providing the allowance for additional days of trial.

Table A

Fee Earner		Maximum allowable rates
Senior Practitioner (admitted for 5 years or more)(SP) ^α	hourly rate	\$374
Junior Practitioner (admitted for less than 5 years)(JP) ^α	hourly rate	\$275
Clerk/Paralegal (C/PL)	hourly rate	\$132
Counsel fees charged as a disbursement to law practices or charged by in-house Counsel—		
Counsel (C)*	hourly rate	\$297
	daily rate	\$2,970
Senior Counsel (SC)†	hourly rate	\$495
	daily rate	\$4,950

^α 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.

* 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 Queens 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.

Costs

7. (1) 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)—

- (a) recoverable by one party from another party; or
- (b) payable by a party to that party's own law practice,

shall not exceed the amounts set out in Table B.

(2) 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.

(3) 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 2012

Item No.	Item	Time	Maximum Amount \$
1.	(a) Subject to paragraphs (b) and (c), allow for one adjournment only	1 hour	374
	(b) Costs for additional adjournments to be awarded on application to, and at the discretion of, the presiding Magistrate		
	(c) Each Court ordered adjournment (see clause 5)	1 hour	374
2.	(a) Preparation for application for, and appearance at, initial bail application and/or apply for bail in respect of serious offences set out in the Bail Act 1982 (WA)	3.5 hours	1,309
	(b) Preparation for, and appearance at, application to vary bail conditions	1.5 hours	561
3.	Directions hearing, including preparation	4 hours	1,496
4.	(a) Preparation of case and half day trial, including counsel fee		6,688
	(b) Second half day		748
5.	Second and each successive day of trial		2,970

Item No.	Item	Time	Maximum Amount \$
6.	Allowance for preparation where the trial does not proceed or the prosecution offers no evidence		Such amounts as are 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	891
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)		594 1,782
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 17 October 2012.
