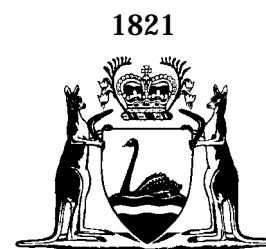


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LEGAL PROFESSION ACT 2008

**LEGAL PRACTITIONERS
(OFFICIAL PROSECUTIONS)
(ACCUSED'S COSTS) REPORT
AND DETERMINATION 2009**

**LEGAL PRACTITIONERS
(PUBLIC NOTARIES) REPORT
AND DETERMINATION 2009**

LEGAL PROFESSION ACT 2008**LEGAL PRACTITIONERS (OFFICIAL PROSECUTIONS) (ACCUSED'S COSTS) REPORT 2009**

Made by the Legal Costs Committee under section 275 of the Act.

PART 1—PRELIMINARY**Citation**

1. (1) This report may be cited as the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Report 2009*.
- (2) The determination set out in the Schedule to this report is referred to in this report as the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2009*.

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 (Official Prosecutions) (Accused's Costs) Determination 2009*, the Legal Costs Committee—
 - (a) consulted with the Chief Justice of Western Australia, the Chief Judge of the District Court of Western Australia, the Chief Magistrate, the State Solicitor, Director of Legal Aid Western Australia, the Western Australian Bar Association and the Criminal Lawyers Association; and
 - (b) reviewed a submission from the Law Society of Western Australia.

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) (Accused's Costs) Determination 2009* be adopted for the supply of legal services covered by the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2009*.
- (2) The hourly rates referred to in sub clause (1) are set out in the Table to clause 5(1) of the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2009*.
- (3) The daily rates referred to in sub clause (1) are set out in clause 5 (2) of the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2009*.
- (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) (Accused's Costs) Determination 2009* be adopted.
- (5) It is the further recommendation of the Committee given that 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) (Defendant's 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 accused are not intended to be recoverable.
- (7) The recommendation of the Legal Costs Committee under sub clause (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) (Accused's Costs) Determination 2009*.

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 (OFFICIAL PROSECUTIONS) (ACCUSED'S COSTS)
DETERMINATION 2009**

Made by the Legal Costs Committee under section 275 of the Act.

Citation

1. This determination may be cited as the *Legal Practitioners (Official Prosecutions) (Accused's Costs) Determination 2009*.

Commencement

2. This determination comes into operation on 1 June 2009.

Interpretation

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

Application

4. (1) This determination applies to the remuneration of practitioners 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*.

(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 sub clause 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 ^a (admitted for 5 years or more) (SP) -- hourly rate	\$330
Junior Practitioner ^a (admitted for less than 5 years) (JP) -- hourly rate	\$231
Clerk/Paralegal (CPL) -- hourly rate	\$110

^a The reference to Junior Practitioner or to Senior Practitioner in this Determination includes all Australian legal practitioners even if the services were rendered in another State or Territory. 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.

(2) The daily rates set out in the table below 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

Fee Earner	Rates
Counsel [§] -- daily rate	\$2,772
Senior Counsel* -- daily rate	\$4,290

[§] 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.

(3) The daily rates set out in the table above 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 is 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.

(4) The Legal Costs Committee acknowledges that the implementation of clause 5(3) will result in no increase for Counsel daily rates and a proportionally smaller increase for Senior Counsel daily rates in contrast to the general increase being applied. The Legal Costs Committee considers that the anomaly of the Counsel daily rate being calculated at slightly more than 10 hours per day and the Senior Counsel rate previously being calculated at a slightly less than 10 hours per day needs to be

corrected and for that reason, the disproportionate increases in each of the two rates appear in this Determination.

Scale of costs

6. Subject to clause 7, 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 the Table to this clause.

Table
LEGAL PRACTITIONERS (OFFICIAL PROSECUTIONS) (ACCUSED'S COSTS)
SCALE OF COSTS

Item No.	Item	Maximum Time	Maximum Amount
1	Adjournment	1 hour	\$330
2	Bail application, including preparation	5 hours	\$1,650
3	Directions hearing, including preparation	4 hours	\$1,320
4	First day of trial including preparation of case for trial and counsel fee	1½ days preparation; 1st day of trial	\$6,325
5	Second or subsequent day of trial		\$2,530
6	A reasonable 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	\$759
8	Appeals	As per the rates specified in item 22 of the <i>Legal Practitioners (Supreme Court) (Contentious Business) Determination 2008*</i>	
9	Disbursements— Photocopying 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.		\$1.00 per page

* Published in the Government Gazette on 26 June 2008 (pp2952—2957).

Complex matters, and matters involving a high degree of skill or urgency or require Senior Counsel

7. (1) Where a matter is complex, or involves a high degree of skill or urgency or requires Senior Counsel, notwithstanding the rates or scale 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.

(2) Work undertaken by Senior Counsel shall be allowable in accordance with the rates in the Table to clause 5 of this Determination.

Made by the Legal Costs Committee on 21 April 2009.

LEGAL PROFESSION ACT 2008**LEGAL PRACTITIONERS (PUBLIC NOTARIES) REPORT 2009**

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

PART 1—PRELIMINARY**Citation**

- (1) This report may be cited as the *Legal Practitioners (Public Notaries) Report 2009*.
- (2) The determination set out in the Schedule to this report is referred to in this report as the *Legal Practitioners (Public Notaries) Determination 2009*.

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

- 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

- Before making the *Legal Practitioners (Public Notaries) Determination 2009* the Legal Costs Committee—
 - reviewed all submissions received as a result of the notice given under section 277 of the Act;
 - consulted with the Courts, Law Society of Western Australia and the Public Notaries Committee of the Law Society of Western Australia; and
 - had regard to the hourly and daily rates applicable under the *Solicitors Costs Determination 2007*.*

PART 3—REPORT OF COMMITTEE'S CONCLUSIONS**Adjustment in fees**

- The Legal Costs Committee, for the purposes of administration and accounting convenience, amends all fees in the Scale so that they are divisible by 11 (except photocopying charges).

Scale of costs to be adopted

(1) It is the recommendation of the Legal Costs Committee, after reviewing the information gained as a result of the inquiries and submissions described in clause 3, that the scale of costs set out in the Table to clause 4 of the *Legal Practitioners (Public Notaries) Determination 2009* be adopted for the business of Public Notaries.

(2) It is the further recommendation of the Committee given that the amendments to the scale of costs in the manner set out in the Table to clause 4 of the *Legal Practitioners (Public Notaries) Determination 2002* were inclusive of any provision for the Goods and Services Tax (GST), the scale of Public Notaries fees continues to be inclusive of GST.

*[Published in the Government Gazette 27 September 2007]

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 (PUBLIC NOTARIES) DETERMINATION 2009**

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

Citation

- This determination may be cited as the *Legal Practitioners (Public Notaries) Determination 2009*.

Commencement

- This determination comes into operation on 1 June 2009.

Application

- (1) This determination applies to the remuneration of a Public Notary for the provision of notarial services.

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

Scale of costs

4. The fee charged by a Public Notary for providing notarial services shall not exceed the fee for those services set out in the Table to this clause (inclusive of GST).

Table
SCALE OF PUBLIC NOTARIES FEES

Item No.	Matter	Maximum amount \$
1	<i>Affidavits, affirmations and declarations—</i>	
(a)	For administering an oath or affirmation or taking a declaration and for signing the jurat or its equivalent— where there is one deponent or declarant	88
	and for each additional deponent, affirmant or declarant swearing, affirming or declaring at the same time	33
(b)	For preparing an affidavit, affirmation or declaration verifying the execution of a document by a company or by a person	88
(c)	For preparing a notarial certificate in respect of an oath, affirmation or declaration and for completing the certificate	88
(d)	For completing a second and third certificate (if required)	33
(e)	For preparing an exhibit to an affidavit, affirmation or declaration and for completing an exhibit	33
2	<i>Deeds and other documents—</i>	
(a)	Witnessing and attesting the execution or signing of a deed or other document— where there is one party	88
	and for each additional party signing at the same time	33
(b)	For preparing a notarial certificate in respect of the attestation and for completing the certificate	88
3	<i>Verification of copies of documents—</i>	
(a)	For examining, with the original, a photocopy of the document for each page exceeding one	33 5.50
(b)	For examining, with the original, a copy of a document other than a photocopy	66
(c)	For preparing a notarial certificate verifying a copy of a document and for completing the certificate	88
4	<i>Certificates under seal not otherwise prescribed by this scale—</i>	
	For preparing a notarial certificate and for completing the certificate	88
5	<i>Bills of Exchange—</i>	
(a)	For noting a bill of exchange, entering in the register and supplying one copy of note	165
(b)	For presenting bill—a fee for the time so occupied calculated in accordance with the <i>Solicitors Costs Determination 2007*</i> or any subsequent determination made in substitution for that determination.	
(c)	For preparing, issuing and entering a protest of a bill of exchange and supplying one copy of protest	165
	together with the reasonable disbursements necessarily incurred in connection with any of those services	
6	<i>Ship's protests—</i>	
(a)	Preparing and attesting a ship's protest including three copies (if required)	220
(b)	Preparing and attesting extension of ship's protest	220

Item No.	Matter	Maximum amount \$
7	<p>Duplicates— Except where otherwise provided, for more than one copy of any of the above notarial documents completed at the same time— for each copy (after the first) up to ten—one half of the prescribed fee for each copy (after the tenth)—one quarter of the prescribed fee</p>	
8	<p>Miscellaneous services— For instructions, attendances, correspondence, drawing, engrossing, travel and all other services not covered by this scale, or, if so covered, for matters involving unusual work or difficulty— a fee calculated in accordance with the <i>Solicitors Costs Determination 2007*</i> or any subsequent determination made in substitution for that determination, having regard to the time skill and responsibility involved</p>	
	<p>For photocopies where necessary, including of documents for which allowance is otherwise made in this Determination</p>	1.00 per page

* [Published in the Government Gazette 27 September 2007]

Made by the Legal Costs Committee on 19 May 2009.