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LEGAL PROFESSION ACT 2008

**LEGAL PRACTITIONERS (SUPREME COURT)
(CONTENTIOUS BUSINESS) REPORT AND
DETERMINATION 2010**

**LEGAL PRACTITIONERS (DISTRICT COURT
APPEALS) (CONTENTIOUS BUSINESS) REPORT
AND DETERMINATION 2010**

**LEGAL PRACTITIONERS (SUPREME COURT
AND DISTRICT COURT) (CRIMINAL) REPORT
AND DETERMINATION 2010**

**LEGAL PRACTITIONERS (MAGISTRATES
COURT) (CIVIL) REPORT AND
DETERMINATION 2010**

**LEGAL PRACTITIONERS (MAGISTRATES
COURT) (CRIMINAL) REPORT AND
DETERMINATION 2010**

LEGAL PROFESSION ACT 2008**LEGAL PRACTITIONERS (SUPREME COURT) (CONTENTIOUS BUSINESS) REPORT 2010**

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 2010*.
- (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 2010*.

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 2010*, 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 2009, and for the September 2009, December 2009 and March 2010 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 2010*. 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) 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 2008*¹ as the basis for the recommended scale of costs which have been generally rounded up or down to represent various, increases of between 5.55% and 8.33% inclusive of the Goods and Services Tax and for administrative convenience, divisible by 11. Those rates are set out in the Table to clause 10 of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2010*.
- (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 the Table to clause 11 of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2010*.
- (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* 26 June 2008.

*Schedule***LEGAL PROFESSION ACT 2008****LEGAL PRACTITIONERS (SUPREME COURT) (CONTENTIOUS BUSINESS) DETERMINATION 2010**

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 2010*.

Commencement

2. This Determination comes into operation on 1 July 2010.

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 2010*.
- (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 July 2010.

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. From the Committee's enquiries, it has determined that Items 1(b), 3(a), 7(a), 14, 23(a), 25(b) and 29(a) in the Table to clause 11 should be fixed amounts.

Entry for Trial Documentation

6. The Committee considered that there is a need for a specific Item in the Table to clause 11 to deal with the requirements of the Courts to file Entry for Trial and Entry for Hearing documentation in accordance with the Rules of the Courts.

Consequently, it is noted that—

- (a) the new Item 16(a) of the Table to clause 11 is intended to create a maximum allowance to cover the time spent in advising upon and preparing the documentation for entry of a case for trial or hearing—
- (1) in the Supreme Court of Western Australia, the item is intended to cover the preparation of a case evaluation checklist (where applicable), entry for trial form and certificate of readiness (as required under Order 33 of the Rules of the Supreme Court) and Papers for the Judge. The allowance is intended to include the time spent in giving attention to all matters to be certified by the legal practitioner signing the certificate of readiness. Item 16(a) is not intended to cover the time spent in conferral relating to any case evaluation conference checklist or the attendance at a case evaluation conference before a case management registrar (which would be dealt with under items 10(a) and 24(a) respectively); and
 - (2) in the District Court of Western Australia, the item is intended to cover the preparation of a Form 1 entry under Rule 37 of the District Court Rules 2005 (including the time spent in giving attention to all the matters to be certified in Form 1), the notification to client under Rule 36, Papers for the Judge under Rule 45 and the index of any expert witnesses under Rule 45E;
- (b) the new Item 16(b) of the Table to clause 11 is intended to create a maximum allowance to cover the time spent in preparing any schedule required under Rules 45C and 45D of the District Court Rules 2005; and
- (c) the new Item 16(c) of the Table to clause 11 is intended to cover the preparation of a written advice on evidence by counsel required by certification in a certificate of readiness or where necessary in all of the circumstances.

Single Judge Appeals and Appeals to the Court of Appeal

7. Item 23 of the Table to clause 11 is intended to apply to applications for leave to appeal and appeals to a single judge of the Supreme Court and to appeals to the Court of Appeal.

Proceedings by way of prerogative writ

8. Item 28 of the Table to clause 11 is intended to cover all necessary procedural steps involved in the handling of prerogative writs, both in respect of an application for a motion to show cause and return before the Court of Appeal.

Other amendments noted

9. (a) The Committee considers it reasonable to allow for preparation of submissions by Counsel under Item 20 of the Table to clause 11 by increasing the time allowed under paragraph (a) of Item 20 by half a day from 3 days to 3.5 days.
- (b) The Committee considers that Order 59 Rule 9 of the Rules of the Supreme Court of Western Australia and any other rule in substitution for it, supports the expansion of the provisions in Item 24 of the Table to clause 11.
- (c) The Committee notes that the allowance for copies in Item 31 of the Table to clause 11 is intended to cover all forms of electronic reproduction and copying.
- (d) The Committee considers it reasonable to increase the maximum time allowed for getting up case for trial under Item 17 of the Table to clause 11 by 20 hours given the increasing complexity of written witness statements that are required in civil trials and the need for all witnesses in Supreme Court civil trials to provide a written statement of their proposed evidence in chief.

Maximum hourly and daily rates

10. (a) The hourly and daily rates set out in the Table to this clause 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 the Table to clause 11. 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 2010*.
- (c) The daily rates set out in the table 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.

Table to Clause 10

Fee Earner	Maximum allowable hourly and daily rates
Senior Practitioner (admitted for 5 years or more) (SP) ° hourly rate	\$429
Junior Practitioner (admitted for less than 5 years) (JP) ° hourly rate	\$297
Clerk/Paralegal (CPL) hourly rate	\$209
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel—	
Counsel (C)* hourly rate	\$341
	daily rate \$3,410
Senior Counsel (SC)** hourly rate	\$605
	daily rate \$6,050

° 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

11. (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 the Table to this clause (except as otherwise provided in item 33 of the Table).
- (b) Allowances made under item 33 of the Table to this clause 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 to Clause 11
SUPREME COURT SCALE OF COSTS 2010

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	638 77 4,290
2.	Next friend or guardian <i>ad litem</i>	3 hours	JP	891
3.	Defence— (a) Memorandum of appearance (b) Defence (c) Counterclaim	 10 hours 10 hours	 SP SP	 99 4,290 4,290
4.	Reply and other pleadings Reply (if necessary), defence to counterclaim, or any other pleading	10 hours	SP	4,290
5.	(a) Third party notice (b) Pleadings in third party proceedings	2 hours 6 hours	SP SP	858 2,574
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	891 1,485
7.	Discovery— (a) Notice requiring discovery (b) Giving discovery of documents	10 hours	SP	66 4,290
8.	Inspection Inspection and giving inspection of discovered documents whether by personal attendance or otherwise	per hour	SP	429
9.	Interrogatories— (a) Delivery of interrogatories (b) Answers to interrogatories	5 hours 10 hours	SP SP	2,145 4,290
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	10,230 429 440
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 Getting up— 50 hours per hour	C SP C SP	 31,680 3,410
12.	Proceedings in Court not otherwise provided for, including appeals from a Registrar	2 days preparation ½ day hearing	C	8,525
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	429

Item		Time	Fee earner	\$
14.	Entry of judgment without trial			209
15.	Offers of compromise, notices, practice directions, etc—			
	(a) Payment into or out of Court	2 hours	JP	594
	(b) Offer of compromise under O.24A	4 hours	SP	1,716
	(c) Acknowledgment of offer under O.24A			66
	(d) Acceptance of offer of compromise under O.24A	4 hours	SP	1,716
	(e) Notice of offer to consent to judgment	2 hours	SP	858
	(f) Other notices and certificates referred to or required by the Rules or procedures of the court (including practice directions)			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	2 hours	SP	858
	(b) Preparation of Schedules (if any) required by District Court Rules 45C and 45D	8 hours	SP	3,432
	(c) Advice on evidence	per hour	C/SC	
17.	Getting up Getting up case for trial (includes work reasonably and necessarily undertaken prior to commencement of proceedings)	120 hours	SP	51,480
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	297
20.	Trial Counsel fees—			
	(a) Fee on brief, i.e. first day of trial and preparation (including submissions)	3.5 days preparation 1st day of trial	C	15,345
	(b) Fee on brief for Senior Counsel, i.e. first day of trial and preparation (including submissions)	3.5 days preparation; 1st day of trial	SC	27,225
	(c) Counsel fee for the second and each successive day of hearing		C	3,410
	(d) Counsel fee for Senior Counsel for second and each successor day of hearing	per hour	SC	6,050
	(e) instructing legal practitioner attending trial	per hour	SP	429
	(f) Clerk attending trial	per hour	C/PL	209
	(g) Attending on reserved judgment (including preparation, consideration of reasons for decision and all necessary work and attendances to obtain final orders)		SP	429
21.	Re-trial or Re-hearing—			
	(a) Getting up case for re-trial or re-hearing			Such amounts as are reasonable in the circumstances
	(b) Re-trial or re-hearing			

Item		Time	Fee earner	\$
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) Getting up 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)			
			SP	429
		40 hours	SC	24,200
		10 hours	SC	6,050
		8 hours	JP	2,376
		10 hours	C	3,410
		10 hours	SP	4,290
		2 days preparation; 1 day hearing	C	10,230
		2 days preparation; 1 day hearing	SC	18,150
			C	3,410
			SC	6,050
		per hour	SP	429
		per hour	SP	429
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	SP/SC/ C	
		per hour	SP/SC/ C	
		per hour	SP/SC/ C	
		per hour	C	
		per hour	SP/SC/ C	
25.	Orders Settling and extracting judgment or order— (a) With appointment (b) Without appointment			
		2 hours	JP	594
				209
26.	Arbitration proceedings			The same costs as in an action

Item		Time	Fee earner	\$
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) Getting up 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) Solicitor 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	8,580 4,290 10,230 18,150 3,410 6,050 429 429
29.	(a) Execution (b) If against land, additional	3 hours	JP	286 891
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	per page		0.11
32.	Accounts and inquiries Taking accounts, inquiries		SP	Such amounts as are reasonable in the circumstances
33.	Other work— (a) Time reasonable 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 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	

Item		Time	Fee earner	\$
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.			

Made by the Legal Costs Committee on 15 June 2010.

LEGAL PROFESSION ACT 2008**LEGAL PRACTITIONERS (DISTRICT COURT APPEALS) (CONTENTIOUS BUSINESS) REPORT 2010**

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 (District Court Appeals) (Contentious Business) Report 2010*.
- (2) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2010*.

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 (District Court Appeals) (Contentious Business) Determination 2010*, 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 2009, and for the September 2009, December 2009 and March 2010 quarters; and
 - (c) conferred with other legal practitioners.

PART 3—REPORT OF COMMITTEE’S CONCLUSIONS**Maximum hourly and daily rates—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 rates used in the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2010*. 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) 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 5(a) be varied from the hourly and daily rates used in the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2008*¹ as the basis for the recommended scale of costs which have been generally rounded up or down to represent various, increases of between 5.55% and 8.33% 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 (District Court Appeals) (Contentious Business) Determination 2010*.
- (c) As a result of the information gained from the inquiries and submissions described in clause 3 it is the recommendation of the Legal Costs Committee that the scale of costs as set out in the Table to clause 5 of the *Legal Practitioners (District Court Appeals) (Contentious Business) Determination 2010* be adopted for appeals in the District Court.
- (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* 26 June 2008.

*Schedule***LEGAL PROFESSION ACT 2008****LEGAL PRACTITIONERS (DISTRICT COURT APPEALS) (CONTENTIOUS BUSINESS) DETERMINATION 2010**

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 (District Court Appeals) (Contentious Business) Determination 2010*.

Commencement

2. This Determination comes into operation on 1 July 2010.

Application

3. This Determination applies to the remuneration of law practices in respect of appeals to a Judge of the District Court of Western Australia, whether from a Registrar of that Court or from another Court or Tribunal.

Maximum hourly and daily rates

4. (a) The hourly and daily rates set out in the Table to this clause 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 the Table to clause 5. 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 2010*.
- (c) The daily rates set out in the table 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.

Table to clause 4

Fee Earner		Maximum allowable hourly and daily rates
Senior Practitioner (admitted for 5 years or more) (SP) ^α	hourly rate	\$429
Junior Practitioner (admitted for less than 5 years) (JP) ^α	hourly rate	\$297
Clerk/Paralegal (C/PL)	hourly rate	\$209
Counsel fees charged as a disbursement to practitioners or charged by in-house counsel—		
Counsel (C) [*]	hourly rate	\$341
	daily rate	\$3,410
Senior Counsel (SC) [†]	hourly rate	\$605
	daily rate	\$6,050

^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

5. 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)—

- (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 the Table to this clause.

Table to Clause 5
DISTRICT COURT APPEALS SCALE OF COSTS 2010

Item	Description	\$ Amount
1.	Notice of appeal	1,034
2.	Proceedings in Chambers	3,410
3.	Getting up appeal for hearing	3,410
4.	Counsel fee on hearing including preparation (see Notes 1 and 2)	6,820
5.	Counsel fee for second and each successive day of hearing (see Notes 1 and 2)	3,410
6.	Attendance at appeal by instructing legal practitioner—per hour	429
7.	Attending on reserved decision	429
8.	Settling and extracting order disposing of appeal— (a) With appointment (b) Without appointment	 550 209
9.	Drawing bills of costs, copies and service	440
10.	Attending taxation (including time spent in preparing for the taxation)—per hour	297
11.	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.	

Note 1 In cases for which the Taxing Officer considers that the briefing of Senior Counsel or of two or more counsel was reasonably necessary the allowance is the amount shown increased by 50%.

Note 2 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.

Made by the Legal Costs Committee on 15 June 2010.

LEGAL PROFESSION ACT 2008**LEGAL PRACTITIONERS (SUPREME COURT AND DISTRICT COURT)
(CRIMINAL) REPORT 2010**

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 2010*.
- (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 2010*.

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 2010*, 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 2009, and for the September, December 2009 and March 2010 quarters as they impacted on the hourly rates for legal practitioners set out in the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2008*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 2010*. 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 2010* 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 Jurisdictions) Determination 2009*² as the basis for the recommended scale of costs which have been generally rounded up or down to represent various increases of between 5.55% and 8.33% inclusive of the Goods and Services Tax and for administrative convenience, divisible by 11. Those rates are set out in the Table to clause 5 of the *Legal Practitioners (Supreme Court and District Court) (Criminal) Determination 2010*.
- (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, Chairman.
ANGELA GAFFNEY, Member.
CLARE THOMPSON, Member.
MARCUS COCKER, Member.
JANICE DUDLEY, Member.
MATTHEW CURWOOD, Member.

¹ Published in *Gazette* 26 June 2008

² Published in *Gazette* 30 September 2009

*Schedule***LEGAL PROFESSION ACT 2008****LEGAL PRACTITIONERS (SUPREME COURT AND DISTRICT COURT)
(CRIMINAL) DETERMINATION 2010**

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 2010*.

Commencement

2. This Determination comes into operation on 1 July 2010.

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 the Table to this clause 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 to clause 5

Fee Earner		Maximum allowable rates
Senior Practitioner (admitted for 5 years or more) (SP) ^a	hourly rate	\$429
Junior Practitioner (admitted for less than 5 years) (JP) ^a	hourly rate	\$297
Clerk/Paralegal (C/PL)	hourly rate	\$209
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel—		
Counsel (C) [*]	hourly rate	\$341
	daily rate	\$3410
Senior Counsel (SC) ^B	hourly rate	\$605
	daily rate	\$6050

^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.

^B 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 clause 5.

(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 2010* will apply to law practice/client costs on such appeals.

Made by the Legal Costs Committee on 15 June 2010.

LEGAL PROFESSION ACT 2008**LEGAL PRACTITIONERS (MAGISTRATES COURT) (CIVIL) REPORT 2010**

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 2010*.
- (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 2010*.

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 2010* 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;
 - (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 Jurisdiction) Determination 2008*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, the Western Australian Bar Association and other individuals; 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 Jurisdiction) Determination 2008* (supra) as the basis for the recommended scale of costs which have generally been rounded up or down to represent various increases of between 6.66% and 9.52% inclusive of the Goods and Services Tax and for administrative convenience, divisible by 11. Those rates are set out in the Table to clause 8 of the *Legal Practitioners (Magistrates Court) (Civil) Determination 2010*.

(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 2010*; 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.

(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*.

¹ Published in *Gazette* 26 June 2008 pp 2968-2974.

(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 2010

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 2010*.

Commencement

2. This Determination comes into operation on 1 July 2010.

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 \$2,816 for the work involved. The figure of \$2,816 is a maximum, but on taxation less than \$2,816 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 the Table to this clause 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 the Table to clause 9. 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 the table 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.

Table to clause 8

Fee Earner		Maximum allowable rates
Senior Practitioner (admitted for 5 years or more) (SP) ^α	hourly rate	\$352
Junior Practitioner (admitted for less than 5 years) (JP) ^α	hourly rate	\$253
Clerk/Paralegal (CPL)	hourly rate	\$121
Counsel fees charged as a disbursement to law practices or charged by in-house Counsel—		
Counsel (C)*	hourly rate	\$275
	daily rate	\$2,750
Senior Counsel(SC)†	hourly rate	\$462
	daily rate	\$4,620

^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

9. 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 the Table to this clause.

Table to clause 9**MAGISTRATES COURT CIVIL SCALE OF COSTS 2010**

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			352
	For each additional defendant			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	2,816
3.	Appointment of litigation guardian	2 hours	JP	506
4.	Response—			
	(a) Lodgement of a response to a claim			176
	(b) Statement of defence (including preparation and lodgement of a statutory declaration)	8 hours	SP	2,816
	(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	2,816
5.	Third party claim, including instructions and list of documents	8 hours	SP	2,816
6.	Disclosure			
	Giving additional disclosure where ordered by the Court	3 hours	JP	759

Item		Time	Fee Earner	Maximum Amount \$
7.	Inspection Inspection and giving inspection whether by personal attendance or otherwise	per hour	JP	253
8.	Interrogatories— (a) Delivery of interrogatories (b) Answers to interrogatories including affidavit	5 hours 5 hours	SP SP	1,760 1,760
9.	Interpleaders Interpleader proceedings— (a) where uncontested (b) where contested	1 hour	JP	253 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	4,125
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	352
12.	Application for entry of judgment by default (<i>without trial</i>)			121
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	704 704 121 352 506 2,112 253
14.	Getting up Preparation for trial (includes work reasonably and necessarily undertaken prior to commencement of proceedings)	50 hours	SP	17,600
15.	Examination of witness before trial by a practitioner, pursuant to an order			An allowance in accordance with item 16(c) or (d)
16.	Trial— (a) Fee on brief for Counsel ie first day of trial and preparation (b) Fee on brief for Senior Counsel ie first day of trial and preparation (where two or more Counsel are certified for)	2 days preparation 1st day of trial 2 days preparation 1st day of trial	C SC	8,250 13,860

Item		Time	Fee Earner	Maximum Amount \$
	(c) Counsel fee for the second and each successive day of hearing		C	2,750
	(d) Counsel fee for Senior Counsel for second and each successive day of hearing		SC	4,620
	(e) Instructing practitioner attending trial	per hour	JP	253
	(f) Clerk attending trial	per hour	CPL	121
	Note: In relation to paragraphs (a)–(f) if— (1) <i>The trial lasts less than 2 hours; or</i> (2) <i>The trial does not commence and settles or adjourns on the day of the trial,</i> <i>then the Assessing Officer shall allow such amount as is reasonable in the circumstances</i>			
	(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	352
17.	Pretrial, mediation, conferrals, or other conferences (a) Where required by an Act, order of the Court, by the <i>Rules</i> or by practice direction; (b) Including informal conferences where reasonably held after commencement of proceedings; and (c) preparation reasonably undertaken for the conferences described in paragraph (b) of this item	per hour	SP	352
18.	Judgments and orders— (a) Settling and extracting judgment or order (i) with appointment (ii) without appointment (b) Request for certified copy of judgment or order	1 hour	JP	352 176 121
19.	Enforcement— (a) Execution (b) If against land, an additional	3 hours	JP	176 759
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	2,816 363
21.	Registration of judgments Registration of judgments including those under <i>Service and Execution of Process Act 1992 (Cwlth)</i>			176
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

Item		Time	Fee Earner	Maximum Amount \$
24.	Copies Copies where necessary, including of documents for which allowance is otherwise made in this Determination	per page		0.11
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	SP/JP/SC/C/CPL	
		per hour	SP/JP/SC/C/CPL	
27.	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			
28.	Allowances for witnesses 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— (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 15 June 2010.

LEGAL PROFESSION ACT 2008**LEGAL PRACTITIONERS (MAGISTRATES COURT) (CRIMINAL) REPORT 2010**

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 2010*.
- (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 2010*.

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 2010* 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;
 - (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 2008*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) As a consequence of the position stated in subclause 4(1), the Legal Costs Committee considers 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 the Western Australian Bar Association; 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 Jurisdiction) Determination 2008* (supra) as the basis for the recommended scale of costs which have generally been rounded up or down to represent various increases of between 6.66% and 9.52% 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 2010*.

(4) It is further the recommendation of the Legal Costs Committee that the hourly rates charged by law practices under the *Legal Practitioners (Magistrates Court) (Civil) Determination 2010* should be adopted as the basis for costs for the supply of legal services covered under the *Legal Practitioners (Magistrates Court) (Criminal) Determination 2010*.

(5) The hourly rates referred to in subclause 4(4) are set out in the Table to clause 4 of the *Legal Practitioners (Magistrates Court) (Criminal) Determination 2010*.

(6) It is further the recommendation of the Legal Costs Committee that the Table to clause 5 of the *Legal Practitioners (Magistrates Court) (Criminal) Determination 2010* should be adopted as the basis for costs for the supply of those legal services itemised in that Table.

¹ Published in *Gazette* 26 June 2008 pp 2978-2980.

(7) 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 2010

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 2010*.

Commencement

2. This Determination comes into operation on 1 July 2010.

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 the Table to this clause 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 the table 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.

Table to clause 4

Fee Earner		Maximum allowable rates \$
Senior Practitioner (admitted for 5 years or more)(SP) ^α	hourly rate	352
Junior Practitioner (admitted for less than 5 years)(JP) ^α	hourly rate	253
Clerk/Paralegal (C/PL)	hourly rate	121
Counsel fees charged as a disbursement to law practices or charged by in-house counsel—		
Counsel (C) [*]	hourly rate	\$275
	daily rate	\$2,750
Senior Counsel(SC) [†]	hourly rate	\$462
	daily rate	\$4,620

^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

5. (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 the Table to this clause.

(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 to clause 4 of this Determination.

Table to clause 5
MAGISTRATES COURT CRIMINAL SCALE OF COSTS 2010

Item No.	Item	Time	Maximum Amount \$
1.	Adjournment	1 hour	352
2.	Bail application, including preparation	5 hours	1,760
3.	Directions hearing, including preparation	4 hours	1,408
4.	First day of trial including preparation of case for trial and counsel fee	1½ days preparation; 1st day of trial	6,875
5.	Second and each successive day of trial		2,750
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	825
8.	Copies where reasonably necessary, including documents for which allowance is otherwise made in this Determination	per page	0.11

Made by the Legal Costs Committee on 15 June 2010.