

**LEGAL PROFESSION ACT 2008****LEGAL PROFESSION (OFFICIAL PROSECUTIONS) (ACCUSED'S COSTS) REPORT 2016**

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

**PART 1—PRELIMINARY****1. Citation**

- (a) This Report may be cited as the *Legal Profession (Official Prosecutions) (Accused's Costs) Report 2016*.
- (b) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2016*.

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

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

**3. Inquiries and submissions under section 277 of the Act**

Before making the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2016*, 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;
- (b) consulted with a range of people and organisations within the legal profession in respect to the impact of structural changes in the profession;
- (c) considered the impact of changes in relevant Australian Bureau of Statistics data for the period; and
- (d) reviewed a submission from the Law Society of Western Australia.

**PART 3—REPORT OF THE COMMITTEE'S CONCLUSIONS****4. Maximum hourly and daily rates changed**

- (a) 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 Table A and Table B of the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2016* be adopted for the supply of legal services for an official prosecution and the awarding of costs to a successful accused under sections 5 or 7 of the *Official Prosecutions (Accused's Costs) Act 1973*.
- (b) The hourly rates referred to in sub clause (a) are set out in Table A of the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2016*.
- (c) The daily rates referred to in sub clause (a) are set out in Table B of the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2016*.
- (d) 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 Table C of the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2016* be adopted.
- (e) It is the further recommendation of the Legal Costs Committee given that the amendments to the hourly and daily rates set out in the Tables to clause 5 and the scale of costs 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.
- (f) 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.

- (g) The recommendation of the Legal Costs Committee in sub clause (f) is not intended to affect the generality of item 8 of the scale of costs set out in Table C of the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2016*.
- (h) It is the recommendation of the Legal Costs Committee, as a result of the consultations described in clause 3, that the new category of Restricted Practitioner should be introduced in the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2016*.

CLARE THOMPSON, Chair.  
ANGELA GAFFNEY, Member.  
MARCUS COCKER, Member.  
JANICE DUDLEY, Member.  
MATTHEW CURWOOD, Member.  
BRENDAN ASHDOWN, Member.

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### *Schedule*

## LEGAL PROFESSION ACT 2008

### LEGAL PROFESSION (OFFICIAL PROSECUTIONS) (ACCUSED'S COSTS) DETERMINATION 2016

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

#### 1. Citation

This Determination may be cited as the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2016*.

#### 2. Commencement

This Determination comes into operation on 1 July 2016.

#### 3. Interpretation

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

#### 4. Application

- (a) This Determination applies to the remuneration of legal practitioners, clerks and paralegals in respect of an official prosecution in or for the purposes of proceedings before a Magistrates Court or an Appeal Court, as defined in the *Official Prosecutions (Accused's Costs) Act 1973* and the amount of costs ordered to be paid to a successful accused under sections 5 or 7 of the *Official Prosecutions (Accused's Costs) Act 1973*.
- (b) This Determination does not apply to the remuneration of legal practitioners or the calculation of costs to be awarded to a successful accused for costs incurred in respect of business carried out before the commencement of this Determination.

#### 5. Introduction of new Restricted Practitioner category

- (a) This determination introduces the new category Restricted Practitioner. This category includes all Australian legal practitioners engaging in restricted legal practice pursuant to section 50 of the Act, during the period when that person is undertaking the "required experience", as defined in section 50 of the Act, and whilst an endorsement to that effect remains on their practising certificate.
- (b) A Restricted Practitioner is not intended to include an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practise under supervision for disciplinary, medical or other reasons.
- (c) The Legal Costs Committee consulted the profession regarding the necessity for amendments to the levels of practitioner set out in Table A, in light of the changing nature of legal practice in this State. In particular the Legal Costs Committee was conscious of the changes to admission requirements and pathways to admission, which have resulted in practitioners being admitted to practise without the close supervision of legal practice formerly afforded by articles of clerkship but with a longer period of restricted practice. The effect of this is that practitioners become senior practitioners with less experience than they previously have had, which has the effect of increasing the legal costs to consumers of their services.
- (d) It is the Legal Costs Committee's view, as expressed in this Determination, that the Determination should as far as possible reflect the regulated structure of the profession and thereby provide consumers of legal services with additional transparency as to the experience of the practitioner providing the legal services.
- (e) So as not to adversely affect clients of legal services provided by those practitioners who would, but for this change, have been Junior Practitioners or Senior Practitioners, transitional arrangements apply so that—
  - (1) practitioners admitted after 1 July 2014, but before 1 July 2016, are entitled to recover their legal costs as if they were Junior Practitioners until 30 June 2018, or the date on

which they would, but for this clause, become Junior Practitioners under this Determination; and

- (2) practitioners admitted after 1 July 2011, but before 1 July 2014, are entitled to recover their legal costs as if they were either Junior Practitioners or Senior Practitioners, whichever category would have applied but for this change, until 30 June 2018, or the date on which they would, but for this clause, become Senior Practitioners under this Determination.

## 6. Rates

- (a) The hourly rates set out in Table A are the maximum hourly rates, inclusive of GST, which the Legal Costs Committee determines shall apply to the remuneration of legal practitioners and the award of costs to a successful accused (where the successful accused has been represented by a legal practitioner) in respect of an official prosecution in or for the purposes of proceedings before a Magistrates Court and shall be used to calculate the dollar amounts in the scale of costs set out in Table C.

**Table A**

Fee Earner	Maximum allowed hourly rates
Senior Practitioner $\alpha$ (permitted to practise on his or her own account for 5 years or more) (SP) $^{\circ}$	\$407
Junior Practitioner $\alpha$ (permitted to practise on his or her own account for less than 5 years) (JP)	\$308
Restricted Practitioner (RP) #, $^{\circ}$	\$231
Clerk/Paralegal (C/PL) ##	\$154

$^{\circ}$  The reference to Restricted Practitioner, Junior Practitioner or Senior Practitioner in this Determination includes all legal practitioners even if the services were rendered in another State or Territory. Where a local practitioner has held an interstate practising certificate, the length of unrestricted legal practice in that other jurisdiction is to be counted in assessing that practitioner's years of practice for the purposes of this Determination.

# The reference to Restricted Practitioner in this Determination includes practitioners undertaking restricted legal practice for the purposes of obtaining the required experience set out in section 50 of the Act and does not include a reference to an Australian legal practitioner who has a condition placed on their practising certificate by the Legal Practice Board, State Administrative Tribunal or otherwise, requiring them to practise under supervision for disciplinary, medical or other reasons.

## The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.

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

\*\* The reference to Senior Counsel in this Determination means a person within the meaning of item 11 or item 12 of Regulation 5(2) of the *Legal Profession Regulations 2009* (WA).

- (b) The daily rates set out in Table B are the maximum daily rates, inclusive of GST, which the Legal Costs Committee determines shall apply to the remuneration of legal practitioners in respect of an official prosecution in or for the purposes of proceedings before a Magistrates Court.

**Table B**

Fee Earner	Maximum allowed daily rates
Counsel $\S$	\$3,300
Senior Counsel*	\$5,390

$\S$  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 means a person within the meaning of item 11 or item 12 of Regulation 5(2) of the *Legal Profession Regulations 2009* (WA).

- (c) The daily rates set out in Table B are intended to cover all work done on a hearing or trial day whether in or out of court including preparation of written submissions and are not intended to be supplemented in any way by additional hourly charges given that the maximum number of hours allowed for the daily rate is 10 hours per day.

## 7. Scale of costs

Subject to clause 8, the costs recoverable by a successful accused in an official prosecution (inclusive of counsel fees but exclusive of other disbursements) shall not exceed the amounts set out in Table C.

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

- (a) 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.

- (b) Work undertaken by Senior Counsel shall be allowable in accordance with the rates in Table B of this Determination.

### 9. Appeals

All costs incurred in relation to an appeal to the Supreme Court of Western Australia are to be taxed in accordance with the relevant items in Table B of the *Legal Profession (Supreme Court) (Contentious Business) Determination 2016*.

**Table C**  
**Official Prosecutions (Accused's Costs) Scale of Costs 2016**

Item	Maximum time	Maximum amount
1		
<b>Adjournments</b>		
(a)	Subject to paragraphs (b) and (c), allow for one adjournment only	1 hour \$407
(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 \$407
2		
<b>Bail application</b>		
(a)	Preparation for, and appearance at, initial bail application and/or apply for bail in respect of serious offences set out in the <i>Bail Act 1982 (WA)</i>	3.5 hours \$1,430
(b)	Preparation for, and appearance at, application to vary bail conditions	1.5 hours \$616
3	Directions hearing, including preparation	4 hours \$1,628
4		
<b>Trial</b>		
(a)	Preparation of case and half day trial, including counsel fee	\$7,491
(b)	Second half day	\$836
5	Second or each successive day of trial	\$3,300
6	An allowance for preparation where the trial does not proceed or the prosecution offers no evidence	An amount which is reasonable in the circumstances
7		
<b>Counsel's fee</b>		
	For attending court for remand appearance, directions hearing, status conference, mention, callover, reserved decision or other appearance not otherwise accounted for	3 hours \$990
8		
<b>Disbursements</b>		
(a)	Copies	per page 0.165
(b)	In addition to the fees allowed under this Determination disbursements (for example transport, accommodation, meals and travel costs of an accused, solicitor, counsel or witness actually incurred by an accused as a necessary incident to defending an official prosecution) may be allowed as are necessarily or reasonably incurred.	

Made by the Legal Costs Committee on 15 June 2016.