

LEGAL PRACTITIONERS ACT 1893

**LEGAL PRACTITIONERS (OFFICIAL PROSECUTIONS) (DEFENDANTS' COSTS)
REPORT 1999**

Made by the Legal Costs Committee under section 58ZA of the Act.

PART 1 - PRELIMINARY

Citation

1. (1) This report may be cited as the *Legal Practitioners (Official Prosecutions) (Defendants' Costs) Report 1999*.

(2) The determination set out in the Schedule to this report is referred to in this report as the *Official Prosecutions (Defendants' Costs) Determination 1999*.

PART 2 - NOTICE AND INQUIRIES

Notice under section 58Y of the Act

2. The Legal Costs Committee has complied with the notice provisions of section 58Y of the Act.

Inquiries and submissions under section 58Y of the Act

3. (1) Before making the *Official Prosecutions (Defendants' Costs) Determination 1999*, the Legal Costs Committee reviewed all submissions received as a result of the notice given under section 58Y of the Act.

(2) The Legal Costs Committee consulted with the Court.

(3) The Legal Costs Committee consulted with the Crown Solicitor who provided information with respect to the number of orders made for the 3 preceding financial years and the total costs paid out in each of those years.

(4) The Legal Costs Committee received submissions from the Criminal Law Association and conducted oral hearings with representatives from the Association.

(5) The Legal Costs Committee received submissions from Legal Aid Western Australia.

(6) The Law Society of Western Australia (Inc.) did not submit an independent comment but endorsed the submissions of the Criminal Law Association.

PART 3 - REPORT OF THE COMMITTEE'S CONCLUSIONS

Hourly and daily rates introduced and scale of costs amended

4. (1) Subject to subclause (3), 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 hourly rates charged by practitioners under the *Legal Practitioners (Local Court) (Contentious Business) Determination 1997** should be adopted as the basis for costs for the supply of legal services covered by the *Official Prosecutions (Defendants' Costs) Determination 1999*.

(2) The hourly rates referred to in subclause (1) are set out in the Table to clause 5(1) of the *Official Prosecutions (Defendants' Costs) Determination 1999*.

(3) 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 daily rates charged by counsel under the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 1999*** should be adopted as the basis for costs for counsel fees on appeal as set out in items 3 and 4 of the scale of costs in the Table to clause 6 of the *Official Prosecutions (Defendants' Costs) Determination 1999*.

(4) The daily rates referred to in subclause (3) are set out in clause 5 (2) of the *Official Prosecutions (Defendants' Costs) Determination 1999*.

(5) 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 *Official Prosecutions (Defendants' Costs) Determination 1999* be adopted.

(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.

(7) The recommendation of the Legal Costs Committee under subclause (6) is not intended to affect the generality of item 7 of the scale of costs set out in the Table to clause 6 of the *Official Prosecutions (Defendants' Costs) Determination 1999*.

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***[Published in Gazette 15 June 1999 pp. 2563-69]*

Ted Sharp, Chairman
Chris Pullin QC, Deputy Chairman
Angela Gaffney, Member
Jill Vander Wal, Member
Janet Davidson, Member
Patrick Coward, Member

SCHEDULE

LEGAL PRACTITIONERS ACT 1893

OFFICIAL PROSECUTIONS (DEFENDANTS' COSTS) DETERMINATION 1999

Made by the Legal Costs Committee under section 58W of the Act.

Citation

1. This determination may be cited as the *Official Prosecutions (Defendants' Costs) Determination 1999*.

Commencement

2. This determination comes into operation on 1 October 1999.

Interpretation

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

Application

4. (1) This determination applies to the remuneration of practitioners in respect of an official prosecution carried out by practitioners in or for the purposes of proceedings before a Court.
(2) This determination does not apply to the remuneration of practitioners based on costs incurred in respect of instructions taken before the commencement of this determination.

5. (1) The hourly rates set out in the table to this subclause are the hourly rates 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 6.

Table

Fee Earner			Rates
Practitioner (admitted for more than 5 years)	(SP)	-- hourly rate	\$215
Junior Practitioner (admitted for less than 5 years)	(JP)	-- hourly rate	\$150
Clerk/Paralegal	(CPL)	-- hourly rate	\$65

(2) The daily rates set out in the Table to this subclause are the daily rates which the Legal Costs Committee determines shall be used to calculate the dollar amounts in items 3 and 4 of the scale of costs set out in the Table to clause 6.

Table

Fee Earner		Rates
Junior Counsel	-- daily rate	\$2300
Queen's Counsel	-- daily rate	\$3500

Scale of costs

6. The costs recoverable by a successful defendant 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

OFFICIAL PROSECUTIONS (DEFENDANTS' COSTS) SCALE OF COSTS

Item No	Item	Time	\$
1	First day of trial including preparation of case for trial and counsel fee	10 hours	2150
2	Second or subsequent day of trial	5 hours	1075
3	Appeal:		
	(a) Junior Counsel	1 day preparation))	4600
		1 day hearing)	
	(b) Queen's Counsel (if 2 or more counsel certified for)	1 day preparation))	7000
		1 day hearing)	
4	Second or subsequent day of appeal:		
	(a) Junior Counsel	1 day	2300
	(b) Queen's Counsel (if 2 or more counsel certified for)	1 day	3500
5	Counsel fee for attending court for reserved decision on appeal	1 hour	215
6	Notice of appeal or motion for order <i>nisi</i>	10 hours	2150
7	Disbursements:		
	In addition to the fees allowed under this determination disbursements may be allowed as are necessarily or reasonably incurred.		

Made by the Legal Costs Committee on the fourteenth day of September 1999.