

LEGAL PRACTITIONERS ACT 1893

LEGAL PRACTITIONERS (SOLICITORS NON-CONTENTIOUS PROBATE COSTS) REPORT 2003

PART 1 – PRELIMINARY

Citation

1. (1) This report may be cited as the *Legal Practitioners (Solicitors Non-Contentious Probate Costs) Report 2003*.

(2) The determination set out in the Schedule to this report is referred to in this report as the *Solicitors Non-Contentious Probate Costs Determination 2003*.

PART 2 – NOTICE AND ENQUIRIES

Notice under section 58Y of the Act

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

Enquiries and submission under section 58Y of the Act

3. Before making the *Solicitors Non-Contentious Probate Costs Determination 2003*, the Legal Costs Committee:

- (a) reviewed all submissions received as a result of the notice given under section 58Y of the Act;
- (b) reviewed the impact of movements in the Consumer Price Index for the financial years ending 30 June 1998 to 30 June 2002 (inclusive); and
- (c) had regard to the impact of the Goods and Services Tax on the level of fees charged by Practitioners.

4. The Committee noted that there has been no increase in the maximum hourly and daily rates chargeable by practitioners for over 5 years.

PART 3 – REPORT OF COMMITTEE'S CONCLUSIONS

Maximum hourly rates changed – scale of costs amended

5. (1) The information gained as a result of the inquiries and submissions described in clause 3 satisfied the Legal Costs Committee that the existence of competition for the supply of legal services made it appropriate to continue to adopt hourly rates charged by practitioners as the basis for the rates used in the *Solicitors Non-Contentious Probate Costs Determination 2003* which have been generally rounded up or down to represent an increase of 16% inclusive of the Goods and Services Tax.

(2) It is the recommendation of the Legal Costs Committee as a result of the inquiries and submissions described in clause 3 that the hourly rates referred to in subclause 5 (1) are varied from the hourly rates used in the *Solicitors Non-Contentious Probate Costs Determination 2000* published in the Government Gazette on 6 December 2000 pp6851 – 685. Those rates are set out in the Table to clause 5 of the *Solicitors Non-Contentious Probate Costs Determination 2003*.

(3) It is the further recommendation of the Committee that given the amendments to the scale of costs in the manner set out in the Table to clause 5 of the *Solicitors Non-Contentious Probate Costs Determination 2003* are inclusive of any provision for the Goods and Services Tax, that from and including the date of that determination coming into operation, the *Legal Practitioners (Effect on Costs of a New Tax System) (Goods and Services Tax) Determination 2000* published in the Government Gazette on 15 September 2000 p5411 will no longer apply to the *Solicitors Non-Contentious Probate Costs Determination 2003* scale of costs from that date.

(4) The recommendations of the Legal Costs Committee are not intended to override the entitlement of a practitioner to make a written agreement as to costs with a client under the *Legal Practitioners Act 1893*.

TED SHARP, Chairman
MICHAEL McPHEE, Deputy Chairman
ANGELA GAFFNEY, Member
JANINE FREEMAN, Member
CLARE THOMPSON, Member
MARCUS COCKER, Member

Schedule

LEGAL PRACTITIONERS ACT 1893

SOLICITORS NON-CONTENTIOUS PROBATE COSTS DETERMINATION 2003

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

Citation

1. This determination may be cited as the Solicitors Non-Contentious Probate Costs Determination 2003.

Commencement

2. This determination comes into operation on 3 June 2003.

The Solicitors Non-Contentious Probate Costs Determination 2000

3. The determination cited as the *Solicitors Non-Contentious Probate Costs Determination 2000* published in the *Government Gazette* on 6 December 2000 p6851 - 6853 does not apply to business carried out by practitioners after the commencement of this determination.

Application

4. (1) This determination applies to the remuneration of practitioners in respect of –
 - (a) applications for grants of probate and letters of administration within Western Australia or reseals of grants and letters of administration made outside Western Australia; and
 - (b) agency allowances where the solicitor for the applicant for a grant of probate or letters of administration or to reseal a grant does not carry on practice in the Perth metropolitan area and employs a practitioner in Perth as agent in connection with the application.
- (2) This determination does not apply to the remuneration of practitioners based on a written agreement as to costs under section 59 of the *Legal Practitioners Act 1893*.
- (3) 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.
- (4) This determination does not apply to those areas of business performed by practitioners in connection with the administration and winding up of deceased persons' estates which can be properly chargeable under the provisions of the *Solicitors Costs Determination 1998* published in the *Government Gazette* on 12 August 1998 p4385 – 4389 or any subsequent determination in substitution for or by way of variation to the same.

Costs

5. Unless a practitioner has made a written agreement as to costs with a client under the provisions of section 59 of the *Legal Practitioners Act 1893*, the costs payable by the client to the client's solicitor shall be such amount as is reasonable in the circumstances calculated on the basis of the time reasonably taken to perform the work described in clause 4 above and charged at an hourly rate which does not exceed the hourly rates set out below.

(a) General	Maximum rates
Junior Clerk	\$75 per hour
Senior Clerk	\$174 per hour
Articled Clerk	\$151 per hour
Restricted Year Practitioner	\$203 per hour
Practitioner (less than 5 years)	\$232 per hour
Practitioner (5 years or more)	\$325 per hour

Travel is to be calculated in the same manner as above, with a maximum of 8 hours in any one day.

(b) Specific

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

Where a practitioner acts on instructions or performs a service in respect of a matter that is complex, or involves a high degree of skill or urgency, the practitioner is entitled to charge a fee or charge (as the case requires) that is reasonable in the circumstances.

Legal Practitioners (Effect on Costs of a New Tax System (Goods and Services Tax)) Determination 2000 (the GST Determination)

6. From and including the date of commencement of this determination, the GST Determination insofar as it affects the costs specified in clause 5 will cease to be of any further force or effect.

Made by the Legal Costs Committee on 15 April 2003.