

LEGAL PRACTICE ACT 2003

LEGAL PRACTITIONERS (SOLICITORS NON-CONTENTIOUS PROBATE COSTS) REPORT 2005

PART 1 – PRELIMINARY

Citation

1. (1) This report may be cited as the *Legal Practitioners (Solicitors Non-Contentious Probate Costs) Report 2005*.

(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 2005*.

PART 2 – NOTICE AND ENQUIRIES

Notice under section 213 of the Act

2. The Legal Costs Committee has complied with the notice provisions of section 213 of the Act.

Enquiries and submission under section 213 of the Act

3. Before making the *Solicitors Non-Contentious Probate Costs Determination 2005*, the Legal Costs Committee:

- (a) reviewed the submission of the Law Society of Western Australia Inc received as a result of the notice given under section 213 of the Act;
- (b) reviewed the impact of movements in the Consumer Price Index for the period between March 2003 to March 2005 (inclusive); and
- (c) had regard to the impact of the Goods and Services Tax on the level of fees charged by Practitioners.

PART 3 – REPORT OF COMMITTEE'S CONCLUSIONS

Maximum hourly rates changed – scale of costs amended

4. (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 2005*.

(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 4 (1) are varied from the hourly rates used in the *Solicitors Non-Contentious Probate Costs Determination 2003* published in the Government Gazette on 28 May 2003 pp1889 - 1891. Those rates are set out in the Table to clause 5 of the *Solicitors Non-Contentious Probate Costs Determination 2005*.

(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 2005* 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 2005* 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 Practice Act 2003*.

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

Schedule

LEGAL PRACTICE ACT 2003

SOLICITORS NON-CONTENTIOUS PROBATE COSTS DETERMINATION 2005

Made by the Legal Costs Committee under section 210 of the Act

Citation

1. This determination may be cited as the Solicitors Non-Contentious Probate Costs Determination 2005.

Commencement

2. This determination comes into operation on 1 October 2005.

The Solicitors Non-Contentious Probate Costs Determination 2003

3. The determination cited as the *Solicitors Non-Contentious Probate Costs Determination 2003* published in the *Government Gazette* on 28 May 2003 pp1889 –1891 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 with a client as to costs under the *Legal Practice Act 2003*.
- (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 2005* published contemporaneously herewith 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 the *Legal Practice Act 2003*, 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	\$77 per hour
Senior Clerk	\$187 per hour
Articled Clerk	\$165 per hour
Restricted Year Practitioner	\$220 per hour
Practitioner (less than 5 years)	\$253 per hour
Practitioner (5 years or more)	\$352 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.

Effect on costs of Goods and Services Tax (GST)

6. The hourly rates set out above are intended to be inclusive of GST.

Made by the Legal Costs Committee on 20 September 2005.