

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (NON-CONTENTIOUS PROBATE COSTS) REPORT 2015

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 (Non-Contentious Probate Costs) Report 2015*.
- (b) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (Non-Contentious Probate Costs) Determination 2015*.
- (c) The citation for this Report (compared to previous Reports) has been amended to be consistent with the title of the Act.

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 (Non-Contentious Probate Costs) Determination 2015*, the Legal Costs Committee:

- (a) reviewed submissions of the Law Society of Western Australia Inc received as a result of the notice given under section 277 of the Act;
- (b) consulted with the Supreme Court of Western Australia; and
- (c) reviewed the impact of movements in the Consumer Price and Wage Price Indices for the period between 1 July 2013 to 31 March 2015 (inclusive) as being an appropriate period given the time elapsed between the commencement of the previous Review and the commencement of this Review.

PART 3 – REPORT OF THE LEGAL COSTS COMMITTEE'S CONCLUSIONS

4 Maximum hourly rates changed – scale of costs amended

- (a) 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 paragraph (b) of clause 4 are varied from the hourly rates used in the *Legal Practitioners (Non-Contentious Probate Costs) Determination 2013* published in the

Government Gazette on 18 June 2013 pp 2327-2329. Those rates are set out in paragraph (e) of clause 4 of the *Legal Profession (Non-Contentious Probate Costs) Determination 2015*.

(b) The Legal Costs Committee:

(1) resolved to amend the text in paragraph (d) of clause 4 of the *Legal Profession (Non-Contentious Probate Costs) Determination 2015* to clarify that the fee relates to a law practice engaged to act as agent for a law practice outside the Perth Metropolitan Area; and

(2) noted that under paragraph (d) of clause 4 of the *Legal Profession (Non-Contentious Probate Costs) Determination 2015*, it expects the law practice engaging an agent in the manner contemplated by that paragraph, will include the agent's costs in any bill of costs rendered to the client.

(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.

(d) The Legal Costs Committee has concluded that its Determination does not apply to:

(1) those areas of business performed by law practices in connection with the administration and winding up of deceased persons' estates (including the gathering in and distribution of assets and satisfaction of liabilities) which can be properly chargeable under the provisions of the *Legal Profession (Solicitors Costs) Determination 2015* ^{to be published on or about the date of this Report} or any subsequent determination in substitution for, or by way of variation to the same; or

(2) any contentious work associated with a deceased estate which can be properly chargeable under the provisions of the *Legal Profession (Supreme Court) (Contentious Business) Determination 2014* ^{published in the Government Gazette 20 June 2014} or any subsequent determination in substitution for, or by way of variation to the same; for example:

(A) an application to prove a Will in solemn form; or

(B) an application to prove an informal Will under Part X of the *Wills Act 1970*.

TED SHARP, Chairman

ANGELA GAFFNEY, Member

CLARE THOMPSON, Member

MARCUS COCKER, Member

JANICE DUDLEY, Member

MATTHEW CURWOOD, Member

Schedule

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (NON-CONTENTIOUS PROBATE COSTS) DETERMINATION 2015

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

1 Citation

- (a) This Determination may be cited as the Legal Profession (Non-Contentious Probate Costs) Determination 2015.
- (b) The citation for this Determination (compared to previous Determinations) has been amended to be consistent with the title of the Act.

2 Commencement

This Determination comes into operation on 1 July 2015.

3 Application

- (a) This Determination applies to the remuneration of law practices in respect of:
 - (1) Applications for Grants of Probate and Letters of Administration within Western Australia or reseals of Grants and Letters of Administration made outside Western Australia;
 - (2) Agency allowances where the law practice acting 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 engages a law practice in Perth as agent in connection with the application; and
 - (3) Other instances which do not come under the above categories or are otherwise of a complex nature.
- (b) This Determination does not apply to the remuneration of law practices based on a written agreement with a client as to costs under the Act.
- (c) 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.
- (d) This Determination does not apply:
 - (1) to those areas of business performed by law practices in connection with the administration and winding up of deceased persons' estates (including the gathering in and distribution of assets and satisfaction of liabilities) which can be properly chargeable under the provisions of the *Legal Profession (Solicitors Costs) Determination 2015* ^{to be Published} on or about the date of this Determination or any subsequent determination in substitution for, or by way of variation to the same; or
 - (2) any contentious work associated with a deceased estate which can be properly chargeable under the provisions of the *Legal Profession (Supreme Court) (Contentious Business) Determination 2014* ^{published in}

the *Government Gazette* on 20 June 2014 or any subsequent determination in substitution for, or by way of variation to the same; for example:

- (A) an application to prove a Will in solemn form; or
- (B) an application to prove an informal Will under Part X of the *Wills Act 1970*.

4 Costs

Unless a law practice has made a written agreement as to costs with a client under the provisions of the Act, the maximum costs payable by the client shall be as follows:

- (a) in the case of an application for a Grant of Probate to the Supreme Court of Western Australia or to reseal a Grant of Probate made outside Western Australia within another Australian jurisdiction - \$1749 (inclusive of GST);
- (b) in the case of an Application for Letters of Administration with the Will annexed to the Supreme Court of Western Australia or to reseal Letters of Administration with the Will annexed made outside Western Australia within another Australian jurisdiction - \$2420 being the equivalent of 5 hours of a Senior Practitioner's time at the hourly rate described in sub-paragraph (e)(1) below);
- (c) in the case of an Application for Letters of Administration to the Supreme Court of Western Australia or to reseal Letters of Administration made outside Western Australia within another Australian jurisdiction - \$2904 being the equivalent of 6 hours of a Senior Practitioner's time at the hourly rate described in sub-paragraph (e)(1) below);
- (d) subject to paragraph (e) below, where the law practice for an applicant for a Grant or to reseal a Grant of Probate or Letters of Administration does not carry on practice in the Perth Metropolitan Area and engages a law practice in Perth, to act as its agent, the law practice for the applicant may charge an additional amount up to \$968, being the equivalent of 2 hours of a Senior Practitioner's time at the hourly rate described in sub-paragraph (e)(1) below to cover the actual costs of the agent and limited to the actual costs charged to the law practice by its agent;

PROVIDED THAT in all of the above cases, where the application for a Grant or reseal of a Grant requires more than a primary affidavit, then up to a further hour of a Senior Practitioner's time at the hourly rate described in paragraph (e)(1) below for each affidavit required (other than where the law practice has by its own act or omission caused the need for that additional affidavit); and

- (e) in all other cases (including Applications for resealing Grants of Probate and Letters of Administration made outside Western Australia and any other Australian jurisdiction), subject to the qualification in paragraph (b) of clause 4 of the *Legal Profession (Non-Contentious Probate Costs) Report 2015* and the proviso above, such amount as is reasonable in the circumstances calculated on the basis of the time reasonably taken to perform the work described in clause 3 above and charged at an hourly rate (inclusive of GST) which does not exceed the hourly rates set out below:

(1) **General Maximum rates**

| | |
|--|----------------|
| Senior Practitioner (admitted 5 years or more) | \$484 per hour |
| Junior Practitioner (admitted less than 5 years) | \$341 per hour |
| Clerk/Paralegal | \$231 per hour |

Note: The reference to Practitioner in this Determination includes all Australian legal practitioners even if the services were rendered in another State or Territory. 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 legal practitioner's years of admission for the purposes of this Determination.

(2) **Complex matters and matters involving a high degree of skill**

Where a law practice acts on instructions or performs a service in respect of a matter that is complex or involves a high degree of skill, the law practice is entitled to charge a fee or charge at a rate (as the case requires) that is reasonable in the circumstances, provided that the relevant service is charged at an hourly rate (inclusive of GST) which does not exceed the hourly rates set out in paragraph (e)(1) above.

5 Effect on costs of Goods and Services Tax (GST)

The hourly rates set out above are inclusive of GST.

Made by the Legal Costs Committee on 20 May 2015.