

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (NON-CONTENTIOUS PROBATE COSTS) REPORT 2017

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 2017*.
- (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 2017*.

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 2017*, 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 2015 to 31 March 2017 (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 unchanged – 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 not varied from the hourly rates used in the *Legal Practitioners (Non-Contentious Probate Costs) Determination 2015* published in the *Government Gazette* on 26 June 2015. The rates which will continue to apply under this Determination are set out in paragraph (d) of clause 4 of the *Legal Profession (Non-Contentious Probate Costs) Determination 2017*.
- (b) The Legal Costs Committee resolved to delete paragraph (d) of clause 4 of the *Legal Profession (Non-Contentious Probate Costs) Determination 2015* because of changes in legal practice which have resulted in a substantial decline in the use of town agents.
- (c) The Legal Costs Committee has resolved to amend the categories of practitioner whose work is able to be remunerated under the *Legal Profession (Non-Contentious Probate Costs) Determination 2017*, in line with the amendments introduced in the *Legal Profession (Supreme Court) (Contentious Business) Determination 2016* published in the *Government Gazette* 24 June 2016.
- (d) 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.
- (e) 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 2017* 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 2016* published in the *Government Gazette* 24 June 2016 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*.

CLARE THOMPSON, Chair

ANGELA GAFFNEY, Member

MARCUS COCKER, Member

JANICE DUDLEY, Member

MATTHEW CURWOOD, Member

BRENDAN ASHDOWN, Member

Schedule

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (NON-CONTENTIOUS PROBATE COSTS) DETERMINATION 2017

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 (Non-Contentious Probate Costs) Determination 2017*.

2. Commencement

This Determination comes into operation on 1 July 2017.

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; and
 - (2) All other work undertaken under the *Non-Contentious Probate Rules*, unless that work is properly chargeable under item 10 or item 11 of Table B of the *Legal Profession (Supreme Court) (Contentious Business) Determination 2016* published in the *Government Gazette* on 24 June 2016.
- (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 2017* 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 2016* published in the *Government Gazette* on 24 June 2016 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 (d)(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 (d)(1) below);

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 (d)(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

- (d) for all other work undertaken under the *Non-Contentious Probate Rules*, and subject to that work not being properly chargeable under item 10 or item 11 of Table B of the *Legal Profession (Supreme Court) (Contentious Business) Determination 2016*, an amount that 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 - permitted to practice on his or her own account for 5 years or more	\$484 per hour
Junior Practitioner - permitted to practice on his or her own account for 5 years or more	\$341 per hour
Restricted Practitioner	\$297 per hour
Clerk/Paralegal	\$231 per hour

Notes:

- (A) 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.
- (B) 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.
- (C) 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.

(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 (d)(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 June 2017.