

*LEGAL PROFESSION UNIFORM LAW APPLICATION ACT 2022*  
**LEGAL PROFESSION (NON-CONTENTIOUS PROBATE) REPORT 2023**

Made by the Legal Costs Committee under Division 1 of Part 6 of the *Legal Profession Uniform Law Application Act 2022 (Act)*

**PART 1 – PRELIMINARY**

**1. Citation**

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- (a) This Report may be cited as the *Legal Profession (Non-contentious Probate<sup>1</sup>) Report 2023*.
- (b) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (Non-contentious Probate) Determination 2023*.

**PART 2 – NOTICE AND INQUIRIES**

**2. Notice under section 139 of the Act**

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The Legal Costs Committee (**Committee**) has complied with the notice provisions of section 139 of the Act.

**3. Inquiries and submissions under section 139 of the Act**

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Before making the *Legal Profession (Non-contentious Probate) Determination 2023*, the Committee:

- (a) reviewed submissions of the Law Society of Western Australia Inc. received as a result of the notice given under section 139 of the Act;
- (b) met with the Registrars of the Supreme Court of Western Australia;
- (c) held a seminar with members of the Law Society of Western Australia Inc;
- (d) considered the responses to a survey of the legal profession in Western Australia; and
- (e) considered the impact of changes in relevant Australian Bureau of Statistics data for the period.

**PART 3 – REPORT OF THE COMMITTEE'S CONCLUSIONS**

**4. Maximum hourly rates changed – scale of costs amended**

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- (a) It is the determination of the Committee, as a result of the inquiries and submissions described in clause 3 and in keeping with the Committee's preference for fixed maximum fees which are not referable to hourly rates when those are reasonably practicable for the work to be done, that the rates referred to in paragraphs (a), (b) and (c) of clause 4 are varied from the rates used in the *Legal Practitioners (Non-Contentious Probate Costs) Determination 2021*<sup>2</sup>. The rates which will apply under this Determination are set out in paragraphs (a), (b) and (c) of clause 4 of the *Legal Profession (Non-contentious Probate) Determination 2023*.

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<sup>1</sup> See the definition of contentious business in section 3 of the Act

<sup>2</sup> published in the *Government Gazette* on 25 May 2021

- (b) It is the determination of the Committee, as a result of the inquiries and submissions described in clause 3, that the hourly rates referred to in paragraph (d) of clause 4 are varied from the hourly rates used in the *Legal Practitioners (Non-Contentious Probate Costs) Determination 2021*. 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) Determination 2023*.
- (c) The Determination of the Committee does not override the entitlement of a law practice to make a written agreement as to costs with a client under the Act.
- (d) The Committee has determined that it is appropriate to include a separate item for the passing of accounts undertaken in the non-contentious probate jurisdiction of the Court.
- (e) Subject to 4(d) above, the 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 (Non-Contentious Business) Determination 2023*<sup>3</sup> 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 and District Courts) (Contentious Business) Determination 2022*<sup>4</sup> 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;
    - (B) an application to prove an informal Will under Part X of the *Wills Act 1970*;
    - (C) advising or acting in proceedings under the *Family Provision Act 1970*;  
or
    - (D) any proceedings to which Order 73 of the Rules of the Supreme Court 1971 applies.

CLARE THOMPSON SC Chair

JANICE DUDLEY Member

MATTHEW CURWOOD SC Member

CRAIG MCKIE Member

ANNETTE MORGAN Member

GREG RICKIE Member

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<sup>3</sup> to be published on or about the date of this Report

<sup>4</sup> published in the Government Gazette on 24 June 2022

## Schedule

### LEGAL PROFESSION UNIFORM LAW APPLICATION ACT 2022

#### LEGAL PROFESSION (NON-CONTENTIOUS PROBATE) DETERMINATION 2023

Made by the Legal Costs Committee under section 133 of the *Legal Profession Uniform Law Application Act 2022 (Act)*.

## 1. Citation

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This Determination may be cited as the *Legal Profession (Non-contentious Probate)<sup>5</sup> Determination 2023*.

## 2. Commencement

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This Determination comes into operation on 1 July 2023.

## 3. Application

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- (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, including the preparation of all necessary supporting documents, or reseals of Grants and Letters of Administration made outside Western Australia; and
  - (2) All other work undertaken under the *Non-contentious Probate Rules*, including the passing of accounts, unless that work is properly chargeable under items 10 or 11 of Table B of the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2022*.
- (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 advising executors, the gathering in and distribution of assets and satisfaction of liabilities) which can be properly chargeable under the provisions of the *Legal Profession (Non-Contentious Business) Determination 2023* 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 and District Courts) (Contentious Business) Determination 2022* 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;
    - (B) an application to prove an informal Will under Part X of the *Wills Act 1970*;

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<sup>5</sup> See the definition of contentious business in section 3 of the Act

- (C) advising or acting in proceedings under the *Family Provision Act 1970*;  
or
- (D) any proceedings to which Order 73 of the Rules of the Supreme Court 1971 applies.

#### 4. Costs in probate applications

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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 - \$1936;
- (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 - \$2706;
- (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 - \$3300;

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 items 11 or 12 of Table B of the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2022*, 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.

##### Maximum rates

Senior Practitioner - permitted to practise on his or her own account for 5 years or more	\$517 per hour
Junior Practitioner - permitted to practise on his or her own account less than 5 years	\$374 per hour
Restricted Practitioner	\$330 per hour
Clerk/Paralegal	\$253 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.

## 5. Costs in the passing of accounts

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Where the Court undertakes a passing of accounts in a deceased estate, whether on the Court's own motion or by reason of a request by an interested party, costs may be awarded as follows:

<b>Activity</b>	<b>Fee earner</b>	<b>\$</b>
Attendance at the passing of accounts including the time spent in preparing and time required to be spent attending any conference convened by the Court or attending to any matter required by the Non-contentious Probate Rules or a Practice Direction	C SP	An amount which is reasonable in the circumstances, calculated on the basis of:  C: \$473 per hour  Otherwise: in accordance with the rates set out in clause 4(d)

## 6. Effect on costs of Goods and Services Tax (GST)

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The rates set out in clause 4 and 5 above are inclusive of GST.

Made by the Legal Costs Committee on 21 June 2023.