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LEGAL PROFESSION ACT 2008

LEGAL PRACTITIONERS (NON-CONTENTIOUS PROBATE COSTS) REPORT 2010

Made by the Legal Costs Committee under Division 5 of Part 10 of the *Legal Profession Act 2008* ("the Act")

PART 1—PRELIMINARY

1 Citation

This Report may be cited as the *Legal Practitioners (Non-Contentious Probate Costs) Report 2010*.

The Determination set out in the Schedule to this Report is referred to in this report as the *Legal Practitioners (Non-Contentious Probate Costs) Determination 2010*.

PART 2—NOTICE AND ENQUIRIES

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 Practitioners (Non-Contentious Probate Costs) Determination 2010*, the Legal Costs Committee—

- (a) considered comments by the Chief Justice of Western Australia;
- (b) reviewed submissions of the Law Society of Western Australia Inc received as a result of the notice given under section 278 of the Act;
- (c) met with Principal Registrar K. Chapman and Registrar C. Boyle of the Supreme Court of Western Australia; and
- (d) received comment from members of the Legal Profession.

PART 3—REPORT OF COMMITTEE'S CONCLUSIONS

4 Maximum hourly rates changed—scale of costs amended

- (a) As a consequence of its enquiries and the submissions described in clause 3, the Committee is satisfied that with respect to Applications to the Supreme Court of Western Australia for—

- (1) Grants of Probate;
- (2) Letters of Administration with the Will annexed;
- (3) Letters of Administration; and
- (4) Resealing of a Grant of Probate or Letters of Administration made outside Western Australia, either within another Australian jurisdiction or outside any Australian jurisdiction,

it is reasonable to expect law practices to be able to take instructions and to apply for the Grants of the nature outlined above, within a reasonable timeframe and certain costs parameters.

Therefore, the Committee has determined that in respect of the various items detailed in paragraphs (a) to (d) inclusive in clause 5 of the Determination, it is appropriate to adopt the maximum rates set out in those paragraphs.

The Committee notes that as at the date of completing this Report, law practices undertaking the work at the cost set out in paragraph (a) of clause 5 of the Determination will pursuant to section 263(2)(a) of the Act, be exempt from the cost disclosure provisions in the Act.

- (b) The Committee recognises that there can be degrees of complexity associated with the Applications described in paragraph (a) of this clause 4.

In those cases, law practices should be entitled to charge the hourly rates described in sub-paragraphs (e)(1) or (2) (as the case requires) of clause 5 of the Determination.

However, the Committee considers it is inappropriate for law practices to be able to charge for time spent on satisfying requisitions issued by the Supreme Court of Western Australia in connection with any of the Applications described in paragraph (a) of this clause 4 where those requisitions relate to matters in respect of which a competent local legal practitioner practising in the Probate Jurisdiction of the Supreme Court of Western Australia would not have overlooked or erred.

- (c) 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 *Solicitors Non-Contentious Probate Costs Determination 2007* published in the *Government Gazette* on 27 September 2007 pp 4865-4866. Those rates are set out in paragraph (e) of clause 5 of the *Legal Practitioners (Non-Contentious Probate Costs) Determination 2010*.
- (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 *Legal Profession Act 2008*.
- (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 *Solicitors Costs Determination 2009* published in the *Government Gazette* on 30 September 2009 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 Practitioners (Supreme Court) (Contentious Business) Determination 2008* published in the *Government Gazette* on 26 June 2008 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 PRACTITIONERS (NON-CONTENTIOUS PROBATE COSTS) DETERMINATION 2010

Made by the Legal Costs Committee under section 275 of the Act

1 Citation

This Determination may be cited as the *Legal Practitioners (Non-Contentious Probate Costs) Determination 2010*.

2 Commencement

This Determination comes into operation on 31 March 2010.

3 The Solicitors Non-Contentious Probate Costs Determination 2007

The determination cited as the *Solicitors Non-Contentious Probate Costs Determination 2007* published in the *Government Gazette* on 27 September 2007 pp 4865-4866 does not apply to business carried out by law practices after the commencement of this Determination.

4 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 employ 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 *Legal Profession Act 2008*.
- (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 *Solicitors Costs Determination 2009* published in the *Government Gazette* on 30 September 2009 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 Practitioners (Supreme Court) (Contentious Business) Determination 2008* published in the *Government Gazette* on 26 June 2008 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*.

5 Costs

Unless a law practice has made a written agreement as to costs with a client under the provisions of the *Legal Profession Act 2008*, the maximum costs payable by the client to the client's law practice 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—\$1650.00 (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—\$2090.00 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—\$2508.00 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 the 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 employs a law practice in Perth as agent in connection with the application—\$836.00 being the equivalent of 2 hours of a Senior Practitioner's time at the hourly rate described in sub-paragraph (e)(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 a further hour of a Senior Practitioner's time at the hourly rate described in paragraph (e)(1) below (other than where the law practice has by its own act or omission caused the need for a further 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 Practitioners (Non-Contentious Probate Costs) Report 2010* and the proviso in paragraph (d) of this clause 5, 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 (inclusive of GST) which does not exceed the hourly rates set out below—

(1) General Maximum rates

Senior Practitioner (admitted 5 years or more)	\$418.00 per hour
Junior Practitioner (admitted less than 5 years)	\$297.00 per hour
Clerk/Paralegal	\$198.00 per hour

Note: The reference to Senior Practitioner or Junior 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.

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

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

Made by the Legal Costs Committee on 16 March 2010.