

LEGAL PROFESSION ACT 2008**LEGAL PROFESSION (NON CONTENTIOUS PROBATE COSTS)
REPORT 2021**

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 2021*.
- (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 2021*.

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 2021*, 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) met with the Registrars of the Supreme Court of Western Australia; and
- (c) considered the impact of changes in relevant Australian Bureau of Statistics data for the period.

PART 3—REPORT OF THE LEGAL COSTS COMMITTEE'S CONCLUSIONS**4. Maximum hourly rates changed—scale of costs amended**

- (a) It is the determination of the Legal Costs 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 2019*¹. 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 Costs) Determination 2021*.
- (b) It is the determination 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 (d) of clause 4 are varied from the hourly rates used in the *Legal Practitioners (Non-Contentious Probate Costs) Determination 2019*. 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 2021*.
- (c) The Determination of the Legal Costs 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 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 2021*² 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 2020*³ 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 SC, Member.
BRENDAN ASHDOWN, Member.

Schedule

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (NON-CONTENTIOUS PROBATE COSTS) DETERMINATION 2021

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 2021*.

2. Commencement

This Determination comes into operation on 1 July 2021.

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 items 11 or 12 of Table B of the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2020*.
- (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 2021* 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 2020* 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—\$1760;
- (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—\$2464;
- (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—\$2959;

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 2020*, 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 practise on his or her own account for 5 years or more	\$495 per hour
Junior Practitioner—permitted to practise on his or her own account less than 5 years	\$352 per hour
Restricted Practitioner	\$308 per hour
Clerk/Paralegal	\$242 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.

(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 rates set out in clause 4 above are inclusive of GST.

Made by the Legal Costs Committee on 12 May 2021.

Endnotes:

¹ published in the *Government Gazette* on 27 June 2019

² to be published on or about the date of this Report

³ published in the *Government Gazette* on 18 June 2020