

## LEGAL PROFESSION ACT 2008

### LEGAL PROFESSION (FAMILY COURT OF WESTERN AUSTRALIA) REPORT 2014

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

#### PART 1 – PRELIMINARY

##### Citation

1. (1) This Report may be cited as the *Legal Profession (Family Court of Western Australia) Report 2014*.
- (2) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (Family Court of Western Australia) Determination 2014*.

#### PART 2 - NOTICE AND INQUIRIES

##### Notice under section 278 of the Act

2. The Legal Costs Committee has complied with the notice provisions of section 278 of the Act.

##### Inquiries and submissions under section 277 of the Act

3. (a) Before making the *Legal Profession (Family Court of Western Australia) Determination 2014* the Legal Costs Committee:
  - (1) reviewed all submissions received as a result of the notice given under section 278 of the Act;
  - (2) consulted with the Family Court of Western Australia (**Family Court**);
  - (3) consulted with the Chief Justice of Western Australia, The Law Society of Western Australia (Inc), the Western Australian Bar Association (Inc) and The Family Law Practitioners' Association of WA; and
  - (4) had regard to relevant provisions of the *Family Law Rules 2004*.
- (b) In the *Legal Practitioners (Family Court of Western Australia) Report 2009*<sup>1</sup> (**2009 Report**) the Legal Costs Committee noted that:
  - (1) the effect of changes brought about by the Family Law Amendment Rules 2008 to the Family Law Rules 2004 is that the Supreme Court of Western Australia is now responsible for the regulation of legal practitioner/client costs in the Family Court;
  - (2) as a consequence of the rule changes in the Family Court of Australia prior to the 2009 Report, the Family Court would no longer be setting a scale for legal practitioner/client costs;
  - (3) the general rule pursuant to section 117 of the *Family Law Act 1975* (Commonwealth) is that each party to proceedings under that Act bears their own costs;
  - (4) most legal practitioners and their clients in the Family Court's jurisdiction, enter into costs agreements;
  - (5) the Act contains substantial cost disclosure obligations; and
  - (6) party/party costs are provided for under the Family Court's federal jurisdiction and therefore it is only legal practitioner/client costs that the Legal Costs Committee is concerned with.

The Legal Costs Committee considers the above matters continue to be relevant.

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<sup>1</sup> Published in Government Gazette dated 31 March 2009

### PART 3 – REPORT OF COMMITTEE’S CONCLUSIONS

#### Hourly rates and scale of costs established

4. The Legal Costs Committee has determined that as a consequence of the information gained from the inquiries, the submissions described in clause 3, and having regard to the provisions of the *Family Law Rules 2004*:

(a) it is unnecessary as at the date of this Report to recommend the implementation of a scale of fees in the Family Court in respect of party/party costs; but

(b) it is appropriate to determine a scale of fees applicable to the work of legal practitioners, clerks and paralegals in and in connection with the Family Court on a legal practitioner/client basis.; and

(c) it is appropriate to continue to adopt the hourly and daily rates (inclusive of GST) set out in Table A of the *Legal Profession (Supreme Court) (Contentious Business) Determination 2014*<sup>2</sup> as the hourly and daily rates applicable to legal practitioners and clerks/paralegals in the Family Court of Western Australia jurisdiction as set out in Table A in the *Legal Profession (Family Court of Western Australia) Determination 2014*.

5. The recommendations of the Legal Costs Committee are not intended to override the entitlement of a legal practitioner to make a written agreement as to costs with a client under the Act.

TED SHARP, Chairman

ANGELA GAFFNEY, Member

CLARE THOMPSON, Member

MARCUS COCKER, Member

JANICE DUDLEY, Member

MATTHEW CURWOOD, Member

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<sup>2</sup> Published in the Government Gazette dated 20 June 2014

## Schedule

### LEGAL PROFESSION ACT 2008

#### LEGAL PROFESSION (FAMILY COURT OF WESTERN AUSTRALIA) DETERMINATION 2014

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

#### Citation

1. This Determination may be cited as the *Legal Profession (Family Court of Western Australia) Determination 2014*.

#### Commencement

2. This Determination comes into operation on 1 January 2015.

#### Application

3. This Determination applies to the remuneration of legal practitioners, clerks and paralegals in respect of advice given by legal practitioners in or for the purposes of proceedings or potential proceedings before the Family Court of Western Australia (**Family Court**).

#### No minimum charge

4. In no respect is this Determination to be seen as providing a minimum charge for any work.

#### Hourly rates

5. The hourly and daily rates set out in Table A are the maximum hourly and daily rates, inclusive of GST, which the Legal Costs Committee determines shall be used to calculate the dollar amounts chargeable by a legal practitioner, clerk or paralegal in providing advice and services to their own clients in respect of proceedings and potential proceedings in the Family Court.

**Table A**

<b>Fee Earner</b>	<b>Maximum allowable rates</b>
Senior Practitioner (admitted for 5 years or more) (SP) <sup>a</sup> – hourly rate	\$473
Junior Practitioner (admitted for less than 5 years) (JP) <sup>a</sup> – hourly rate	\$330
Clerk/Paralegal (C/PL) – hourly rate	\$231

#### **Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel**

Counsel (C)* – hourly rate	\$385
daily rate	\$3,850
Senior Counsel (SC) <sup>β</sup> – hourly rate	\$671
daily rate	\$6,710

<sup>a</sup> The reference to Junior Practitioner or to Senior 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 practitioner's years of admission for the purposes of this Determination.

\* The reference to Counsel in this Determination means a practitioner acting as a barrister other than as Senior Counsel.

ß The reference to Senior Counsel in this Determination means a person within the meaning of item 11 or item 12 of Regulation 5(2) of the *Legal Profession Regulations 2009 (WA)*.

**Disbursements**

6. In addition to the fees and charges allowed under this Determination as between a law practice and client, a law practice may charge and be allowed disbursements necessarily or reasonably incurred.

**Costs**

7. Unless a practitioner has made a written agreement as to costs with a client under the provisions of section 282 of the Act, the costs of or in relation to a party to an action or other proceeding (inclusive of GST and Counsel fees but exclusive of other disbursements) in the Family Court are payable by a party to that party's own legal practitioner, but shall not exceed an amount calculated at the hourly rates in this Determination.

Made by the Legal Costs Committee on 19 November 2014.