

LEGAL PROFESSION ACT 2008

LEGAL PRACTITIONERS (FAMILY COURT OF WESTERN AUSTRALIA) REPORT 2009

Made by the Legal Costs Committee under Part 10 Division 5 of the Act.

PART 1 – PRELIMINARY

Citation

1. (1) This Report may be cited as the *Legal Practitioners (Family Court of Western Australia) Report 2009*.
- (2) The Determination set out in the Schedule to this report is referred to in this report as the *Legal Practitioners (Family Court of Western Australia) Determination 2009*.

PART 2 – BACKGROUND

Background

2. Prior to commencement of the *Legal Profession Act 2008* (Act), the Legal Costs Committee had no jurisdiction to determine legal costs in connection with matters undertaken or heard in the Family Court of Western Australia (Family Court).

The Legal Costs Committee has initiated its inquiries and sought submissions in connection with this Report and the Determination in advance of the proclamation of the relevant provisions of the Act in order to ensure this Report and the Determination is published in a timely manner.

PART 3 - NOTICE AND INQUIRIES

Notice under section 278 of the Act

3. 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

4. (a) Before making the *Legal Practitioners (Family Court of Western Australia) Determination 2009* 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;
 - (3) consulted with The Law Society of Western Australia (Inc), the Western Australian Bar Association (Inc), The Family Law Practitioners' Association of WA; and
 - (4) had regard to relevant provisions of the *Family Law Rules 2004*.
- (b) As part of its enquiries, members of the Legal Costs Committee met with His Honour, Judge Stephen Thackray, Chief Judge of the Family Court and Mr David Monaghan, Principal Registrar of the Family Court.
- (c) The Legal Costs Committee notes 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 recent rule changes in the Family Court of Australia, the Family Court will 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.

PART 4 – REPORT OF COMMITTEE'S CONCLUSIONS

Hourly rates and scale of costs established

5. The Legal Costs Committee has determined that as a consequence of the information gained as a result of the inquiries and submissions described in clause 4, 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) the recommendations of the Legal Costs Committee are not intended to override the entitlement of a 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

Schedule
LEGAL PROFESSION ACT 2008
LEGAL PRACTITIONERS (FAMILY COURT OF WESTERN AUSTRALIA)
DETERMINATION 2009

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

Citation

1. This Determination may be cited as the *Legal Practitioners (Family Court of Western Australia) Determination 2009*.

Commencement

2. This Determination comes into operation on the date of proclamation of the relevant sections of Part 10 of the Act.

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 the Scale to be seen as providing a minimum charge for any work.

Hourly rates

5. The hourly and daily rates set out in the Table to this clause 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

Fee Earner	Maximum allowable rates
Senior Practitioner (admitted for 5 years or more) (SP) ^a – hourly rate	\$396
Junior Practitioner (admitted for less than 5 years) (JP) ^a – hourly rate	\$275
Clerk/Paralegal (C/PL) – hourly rate	\$198

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

Counsel (C)* – hourly rate	\$319
daily rate	\$3,190
Senior Counsel (SC) ^β – hourly rate	\$561
daily rate	\$5,610

^a 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 includes reference to Queens Counsel or Senior Counsel appointed in Western Australia, or appointed in any State or Territory in Australia and whose appointment is afforded recognition by the Chief Justice of Western Australia.

Made by the Legal Costs Committee on 17 March 2009.