

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (MAGISTRATES COURT) (FAMILY LAW) REPORT 2020

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 (Magistrates Court) (Family Law) Report 2020*.
- (b) The Determination set out in the Schedule to this Report is referred to in this Report as the *Legal Profession (Magistrates Court) (Family Law) Determination 2020*.

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 (Magistrates Court) (Family Law) Determination 2020* the Legal Costs Committee:

- (a) reviewed all submissions received as a result of the notice given under section 278 of the Act including those made by The Law Society of Western Australia (Inc) and the Family Law Practitioners Association of Western Australia;
- (b) considered the comments and suggestions made at a seminar with members of the legal profession held on 13 February 2020;
- (c) considered the advice of the Australian Government Treasury in respect to the COVID-19 pandemic, published at <https://treasury.gov.au/coronavirus>;
- (d) consulted with the Family Court of Western Australia;
- (e) reviewed the *Legal Practitioners (Magistrates Court) (Family Law) Determination 2018*¹; and
- (f) had regard to relevant provisions of the *Family Law Rules 2004*.

PART 3 – REPORT OF LEGAL COSTS COMMITTEE'S CONCLUSIONS

4 Maximum hourly and daily rates changed – scale of costs

- (a) 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*:
 - (1) it is unnecessary as at the date of this Report to recommend the implementation of a scale of fees for family law work done in the Magistrates Court of Western Australia in respect of party/party costs; but
 - (2) it is appropriate to determine a scale of fees applicable to the work of legal practitioners, clerks and paralegals in, and in connection with for family law work

done in the Magistrates Court of Western Australia on a legal practitioner/client basis; and

- (3) it is appropriate to continue to adopt the same hourly and daily rates (inclusive of GST) set out in Table A of the *Legal Profession (Family Court of Western Australia) Determination 2020* to be published on or about the same date as this Report and Determination, as the hourly and daily rates applicable to legal practitioners and clerks/paralegals for family law work done in the Magistrates Court of Western Australia, as set out in Table A in the *Legal Profession (Magistrates Court) (Family Law) Determination 2020*.
- (b) It is appropriate to take into consideration the impact of the COVID-19 pandemic and its projected impact on the Australian economy.
- (c) 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.

CLARE THOMPSON, Chair

ANGELA GAFFNEY, Member

MARCUS COCKER, Member

JANICE DUDLEY, Member

MATTHEW CURWOOD, Member

BRENDAN ASHDOWN, Member

Schedule

LEGAL PROFESSION ACT 2008

LEGAL PROFESSION (MAGISTRATES COURT) (FAMILY LAW) DETERMINATION 2020

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 (Magistrates Court) (Family Law) Determination 2020*.

2 Commencement

This Determination comes into operation on 1 July 2020.

3 Application

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 family law proceedings before a Magistrate in Western Australia, whether in the Magistrates Court at 150 Terrace Road, Perth or in the Magistrates Court of Western Australia sitting anywhere within the State of Western Australia.

4 No minimum charge

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

5 Hourly rates

- (a) 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 family law proceedings and potential proceedings before a Magistrate in Western Australia, whether in the Magistrates Court at 150 Terrace Road, Perth or in the Magistrates Court of Western Australia sitting anywhere within the State of Western Australia.
- (b) The daily rates set out in Table A are intended to cover all work done on a hearing or trial day, whether in or out of court, including preparation of written submissions and are not intended to be supplemented in any way by additional hourly charges given that the maximum number of hours allowed for the daily rate is 10 hours per day.

Table A

Fee Earner	Maximum allowable hourly and daily rates
Senior Practitioner (permitted to practise on his or her own account for 5 years or more) (SP) ^o	
hourly rate	\$495
Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) ^o	
hourly rate	\$352
Restricted Practitioner (RP) ^{o, #}	
hourly rate	\$297

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	\$451
	daily rate	\$4,510
Senior Counsel (SC) ^{**}	hourly rate	\$682
	daily rate	\$6,820

- ° The reference to Restricted Practitioner, Junior Practitioner or Senior Practitioner in this Determination includes all legal practitioners even if the services were rendered in another State or Territory. Where a local practitioner has held an interstate practising certificate, the length of unrestricted legal practice in that other jurisdiction is to be counted in assessing that practitioner's years of practice for the purposes of this Determination.
- # 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.
- ## The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.
- * The reference to Counsel in this Determination means a practitioner acting as a barrister other than a Senior Counsel and includes a practitioner appearing in court who does not practise in accordance with Supreme Court Practice Direction 10.5.
- ** 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).

6 Restricted Practitioners

Clause 5 of the *Legal Profession (Family Court of Western Australia) Determination 2020* applies to this Determination.

7 Disbursements

Clause 6 of the *Legal Profession (Family Court of Western Australia) Determination 2020* applies to this Determination.

8 Counsel fees

Clause 7 of the *Legal Profession (Family Court of Western Australia) Determination 2020* applies to this Determination.

9 Travel

Clause 9 of the *Legal Profession (Family Court of Western Australia) Determination 2020* applies to this Determination.

10 Costs

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 a family law proceeding (inclusive of GST and Counsel fees but exclusive of other disbursements) in the Magistrates Court of Western Australia, whether in the Magistrates Court at 150 Terrace Road, Perth or sitting anywhere within the State of Western Australia, 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 10 June 2020.