

LEGAL PRACTITIONERS ACT 1893**LEGAL PRACTITIONERS (SOLICITORS NON-CONTENTIOUS
PROBATE COSTS) REPORT 1998****PART 1—PRELIMINARY****Citation**

1. (1) This report may be cited as the *Legal Practitioners (Solicitors Non-Contentious Probate Costs) Report 1998*.

(2) The determination set out in the Schedule to this report is referred to in this report as the *Solicitors Non-Contentious Probate Costs Determination 1998*.

PART 2—NOTICE AND ENQUIRIES**Notice under section 58Y of the Act**

2. The Legal Costs Committee has complied with the notice provisions of section 58Y of the Act.

Inquiries and submissions under section 58Y of the Act

3. Before making the *Solicitors Non-Contentious Probate Costs Determination 1998*, the Legal Costs Committee—

- (a) reviewed all submissions received as a result of the notice given under section 58Y of the Act;
- (b) conducted oral hearings with interested parties; and
- (c) obtained information as to hourly rates charged by practitioners for non-contentious legal work by virtue of enquiries made in connection with the Solicitors Remuneration Order 1991.

PART 3—REPORT OF COMMITTEE'S CONCLUSIONS**Basis for fixing costs altered**

4. (1) The information obtained as a result of the enquiries and submissions described in clause 3 satisfied the Legal Costs Committee that the existence of competition for the supply of legal services to be covered by the *Solicitors Non-Contentious Probate Costs Determination 1998* made it safe to adopt the rates charged by practitioners as a guide for the rates used in that determination.

(2) It is the recommendation of the Legal Costs Committee that the basis used for fixing costs be varied in the manner set out in the *Solicitors Non-Contentious Costs Determination 1998*.

(3) The recommendation of the Legal Costs Committee is not intended to override the entitlement for a practitioner to make a written agreement as to costs with a client under the *Legal Practitioners Act 1893*.

Reasons for altering basis for fixing costs

5. Each of the items in the determination cited as the *Non-Contentious Probate Costs Scale, 1991* contains *ad valorem* charges and instruction fees. It is the opinion of the Legal Costs Committee that the determination does not now reflect the basis on which many practitioners actually charge for the provision of legal services in relation to non-contentious probate work nor do those items of work described in that determination reflect the way work is now being performed by practitioners.

In the opinion of the Committee the *Non-Contentious Probate Costs Scale 1991* is no longer relevant to current conditions and practice in that—

- (a) it has a limited number of items to which it applies;
- (b) the fees itemised in it are artificial in the sense that they do not necessarily reflect the true extent of the work involved. This can be detrimental to practitioners and their clients alike.

The *Solicitors Non-Contentious Probate Costs Determination 1998* reflects the fact that costs charged by the majority of practitioners are now, in the main, calculated by reference to time reasonably spent in providing legal services and by applying to that time a reasonable hourly charge rate; the rate varying according to the seniority and experience of the practitioner and the complexity of the work.

TED SHARP, Chairman.

CHRIS PULLAN QC, Deputy Chairman.

ANGELA GAFFNEY, Member.

JILL VANDERWAL, Member.

PATRICK COWARD, Member.

JANET DAVIDSON, Member.

Schedule

LEGAL PRACTITIONERS ACT 1893**SOLICITORS NON-CONTENTIOUS PROBATE COSTS DETERMINATION 1998**

Made by Legal Costs Committee under section 58W of the Act.

Citation

1. This determination may be cited as the *Solicitors Non-Contentious Probate Costs Determination 1998*.

Commencement

2. This determination comes into operation on 1 October 1998.

Revocation of the Non-Contentious Probate Costs Scale 1991

3. The determination cited as the *Non-Contentious Probate Costs Scale 1991* published in the *Government Gazette* on 27 March 1991 is revoked on and from the commencement of this determination.

Application

4. (1) This determination applies to the remuneration of practitioners in respect of—
- (a) 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
 - (b) agency allowances where the solicitor 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 employs a practitioner in Perth as agent in connection with the application.
- (2) This determination does not apply to the remuneration of practitioners based on a written agreement as to costs under section 59 of the *Legal Practitioners Act 1893*.
- (3) This determination does not apply to the remuneration of practitioners based on costs incurred in respect of instructions taken before the commencement of the determination.
- (4) This determination does not apply to those areas of legal work undertaken by practitioners in connection with the administration and winding up of deceased persons estates which can be properly chargeable under the provisions of the Solicitors Remuneration Order 1991 or any subsequent determination in substitution for or by way of variation to the same.

Costs

5. Unless a practitioner has made a written agreement as to costs with a client under the provisions of Section 59 of the *Legal Practitioners Act 1893*, the costs payable by the client to the client's solicitor shall be such amount as is reasonable in the circumstances such amount to be calculated on the basis of the time reasonably taken to perform the work described in clause 4 above and charged at an hourly rate which does not exceed the hourly rates set out below.

(a) General

Junior Clerk	\$65.00 per hour
Senior Clerk	\$150.00 per hour
Articled Clerk	\$130.00 per hour
Restricted Year Practitioner	\$175.00 per hour
Practitioner (less than 5 years)	\$200.00 per hour
Practitioner (5 years or more)	\$280.00 per hour

Travel is to be calculated in the same manner as above, with a maximum of 8 hours in any one day.

(b) Specific**Complex matters, and matters involving a high degree of skill or urgency.**

Where a practitioner acts on instructions or performs a service in respect of a matter that is complex, or involves a high degree of skill or urgency, the practitioner is entitled to charge a fee or charge (as the case requires) that is reasonable in the circumstances.

Made by the Legal Costs Committee on 4th August 1998.