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LEGAL PROFESSION ACT 2008

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**LEGAL PRACTITIONERS (FAMILY  
COURT OF WESTERN AUSTRALIA)  
REPORT AND DETERMINATION 2010**

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**LEGAL PRACTITIONERS (STATE  
ADMINISTRATIVE TRIBUNAL)  
REPORT AND DETERMINATION 2010**



**LEGAL PROFESSION ACT 2008****LEGAL PRACTITIONERS (FAMILY COURT OF WESTERN AUSTRALIA) REPORT 2010**

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 Practitioners (Family Court of Western Australia) Report 2010*.
- (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 2010*.

**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 Practitioners (Family Court of Western Australia) Determination 2010* 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) 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.

**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) 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.

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

*Schedule***LEGAL PROFESSION ACT 2008****LEGAL PRACTITIONERS (FAMILY COURT OF WESTERN AUSTRALIA) DETERMINATION 2010**

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 Practitioners (Family Court of Western Australia) Determination 2010*.

**Commencement**

2. This Determination comes into operation on 1 October 2010.

**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 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) <sup>a</sup> —hourly rate	\$429
Junior Practitioner (admitted for less than 5 years) (JP) <sup>a</sup> —hourly rate	\$297
Clerk/Paralegal (C/PL) —hourly rate	\$209
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel	
Counsel (C) <sup>*</sup> —hourly rate	\$341
	daily rate
	\$3,410
Senior Counsel (SC) <sup>β</sup> —hourly rate	\$605
	daily rate
	\$6,050

<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.

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

<sup>β</sup> 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.

**Costs**

6. 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 17 August 2010.

**LEGAL PROFESSION ACT 2008****LEGAL PRACTITIONERS (STATE ADMINISTRATIVE TRIBUNAL) REPORT 2010**

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 Practitioners (State Administrative Tribunal) Report 2010*.
- (2) The Determination set out in the Schedule to this report is referred to in this report as the *Legal Practitioners (State Administrative Tribunal) Determination 2010*.

**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 Practitioners (State Administrative Tribunal) Determination 2010* 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 Tribunal;
  - (3) consulted with The Law Society of Western Australia (Inc) and the Western Australian Bar Association (Inc); and
  - (4) had regard to relevant provisions of the *State Administrative Tribunal Act 2004*.
- (b) The Legal Costs Committee acknowledges that the overriding philosophy of the Tribunal, as expressed through its enabling legislation, is that parties appearing before the Tribunal are to bear their own costs of proceedings.

However, the Legal Costs Committee also recognises that there are many types of matters heard before the Tribunal which are of a substantial nature in respect of which legal advice may be sought, but not necessarily made the subject of any costs orders in the Tribunal.

Consequently, and in light of the costs disclosure obligations contained in the Act, the Legal Costs Committee considers it is appropriate to determine a scale of fees on a legal practitioner/client basis as established under the *Legal Practitioners (State Administrative Tribunal) Determination 2008*<sup>1</sup>.

**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 as a result of the inquiries and submissions described in clause 3, and having regard to the provisions of the *State Administrative Tribunal Act 2004* and the *State Administrative Tribunal Rules 2004*—
  - (a) it is unnecessary as at the date of this Report to recommend the implementation of a scale of fees in the Tribunal in respect of party/party costs; but
  - (b) as a consequence of the costs disclosure provisions in the Act, it is appropriate to continue to determine a scale of fees applicable to the work of legal practitioners, clerks and paralegals in, and in connection with the Tribunal 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.

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<sup>1</sup> Published in *Government Gazette* dated 16 December 2008

*Schedule***LEGAL PROFESSION ACT 2008****LEGAL PRACTITIONERS (STATE ADMINISTRATIVE TRIBUNAL) DETERMINATION 2010**

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

**Citation**

1. This Determination may be cited as the *Legal Practitioners (State Administrative Tribunal) Determination 2010*.

**Commencement**

2. This Determination comes into operation on 1 October 2010.

**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 State Administrative Tribunal.

**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 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 clients in respect of proceedings and potential proceedings in the State Administrative Tribunal under the *State Administrative Tribunal Act 2004*.

**Table**

Fee Earner	Maximum allowable rates
Senior Practitioner (admitted for 5 years or more) (SP) <sup>a</sup> —hourly rate	\$352
Junior Practitioner (admitted for less than 5 years) (JP) <sup>a</sup> —hourly rate	\$253
Clerk/Paralegal (C/PL) —hourly rate	\$121
Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel	
Counsel (C) <sup>*</sup> —hourly rate	\$275
—daily rate	\$2,750
Senior Counsel (SC) <sup>β</sup> —hourly rate	\$462
—daily rate	\$4,620

<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.

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

<sup>β</sup> 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.

**Costs**

6. 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 Tribunal 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 17 August 2010.