

Made by the Legal Costs Committee under Division 1 of Part 6 of the *Legal Profession Uniform Law Application Act 2022* ().

1 Citation

- (a) This Report may be cited as the

- (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.

4 Maximum hourly and daily rates changed

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;
- (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 2024* 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 2024*; and
- (d) taking into account the incidental administrative implications of the calculation of the Goods and Services Tax, the hourly and daily rates referred to in subclause 5(a) be varied from the hourly and daily rates used in the *Legal Profession (Family Court of Western Australia) Determination 2022*². Those rates are set out in Table A of the *Legal Profession (Family Court of Western Australia) Determination 2024*.
- (e) 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.

CRAIG MCKIE Acting Chair

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Made by the Legal Costs Committee under section 133 of the *Legal Profession Uniform Law Application Act 2022* ().

1 Citation

This Determination may be cited as the *Legal Profession (Family Court of Western Australia) Determination 2024*.

2 Commencement

This Determination comes into operation on 1 July 2024.

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 proceedings or potential proceedings before the Family Court 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 Restricted Practitioner category

The amendments brought in by the *Legal Profession (Family Court of Western Australia) Determination 2016* remain in effect, other than clause 5(e) of that Determination.

6 Increase generally

- (a) The Committee is of the view that increases in the cost of practice over the past several years have justified an increase in the rates in Table A.
- (b) The Committee made no general increase in the 2020 review as a result of the uncertain economic climate at that time due to the COVID-19 pandemic. Given a period of significant inflation since 2022 and the fact that rate rises were modest in the decade of 2012 to 2022, the Committee determined it was appropriate to include a general increase.
- (c) In making its decision, the Committee is particularly cognisant of the increased costs to law practices occasioned by costs of subscriptions for legal resources, investment in technology and training for the purpose of cyber security, to enable legal practitioners and staff to work remotely, and investments made by law practices in staff well-being initiatives.
- (d) The increase in the rates in this Determination are not uniform but have been calculated, generally, on the basis of a 12% increase since 1 July 2022, with a rounding so that each amount is divisible by 11 in accordance with the long-standing policy of the Committee.

7 Maximum hourly and daily 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 proceedings and potential proceedings in the Family Court.
- (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.

Senior Practitioner (permitted to practise on his or her own account for 5 years or more) (SP) ¹	hourly rate	\$572
Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) ¹	hourly rate	\$418
Restricted Practitioner (RP) ^{1, 2}	hourly rate	\$352 (C)
Clerk/Paralegal (C)		

- (e) Whilst the Legal Costs Committee recognises that during a travel period a law practice may not necessarily utilise legal skill and knowledge, there is a recognition of a loss of opportunity for the time spent travelling.
- (f) The Legal Costs Committee notes that, having regard to the above:
 - (1) it is the responsibility of a law practice to allocate the cost of time spent on travel fairly and reasonably where the travel is necessary to service more than one client on the day of travel; and
 - (2) whilst nothing contained in this Determination prevents a law practice from charging time spent on a client matter or client matters in the course of travel (air travel by way of example), the law practice is not entitled to charge a client or clients for both time spent on a client matter (regardless of whether that time relates to the client for whom the travel is being undertaken) and the amount allowed for travel under this determination.

11 Costs

Unless a practitioner has made a written agreement as to costs with a client under the provisions of section 180 of the Legal Profession Uniform Law (WA), 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 13 June 2024