

## LEGAL PROFESSION UNIFORM LAW APPLICATION ACT 2022

### LEGAL PROFESSION (MAGISTRATES COURT) (FAMILY LAW) REPORT 2024

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

#### PART 1 – PRELIMINARY

### 1 Citation

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- (a) This Report may be cited as the *Legal Profession (Magistrates Court) (Family Law) Report 2024*.
- (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 2024*.

#### PART 2 – NOTICE AND INQUIRIES

### 2 Notice under section 139 of the Act

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The Legal Costs Committee has complied with the notice provisions of section 139 of the Act.

### 3 Inquiries and submissions under section 139 of the Act

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Before making the *Legal Profession (Magistrates Court) (Family Law) Determination 2024* the Legal Costs Committee:

- (a) reviewed submissions received as a result of the notice given under section 139 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 5 February 2024;
- (c) consulted with the Family Court of Western Australia;
- (d) reviewed the *Legal Practitioners (Magistrates Court) (Family Law) Determination 2020*<sup>1</sup>;
- (e) had regard to relevant provisions of the *Family Law Rules 2004*;
- (f) considered the impact of changes in Australian Bureau of Statistics consumer price index and wage price index data for the period since 1 July 2022;
- (g) considered all responses and comments made by legal practitioners in response to a survey prepared by the Legal Costs Committee for the 2024 review of Contentious Business Determinations;
- (h) the Committee also wishes to note that since the publication of the *Legal Profession (Magistrates Court) (Family Law) Determination 2022*:
  - i) Chair of the Committee, Ms Clare Thompson SC resigned with effect from 30 June 2023 and was replaced as Chair by Matthew Curwood SC (as his Honour then was);
  - ii) Mrs Carolyn Meighan was appointed as a member of the Committee on 12 December 2023 to fill the vacant member position;
  - iii) Chair of the Committee, his Honour Judge Matthew Curwood SC resigned with effect from 31 May 2024; and

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<sup>1</sup> Published in Gazette 18 June 2020

- iv) Since 1 June 2024, Mr Craig McKie has acted as Chair of the Committee.

### **PART 3 – REPORT OF LEGAL COSTS COMMITTEE’S CONCLUSIONS**

#### **4 Maximum hourly and daily rates changed – scale of costs**

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- (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 2024* 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 2024*.
- (b) 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

JANICE DUDLEY Member

ANNETTE MORGAN Member

GREG RICKIE Member

CAROLYN MEIGHAN Member

## Schedule

### LEGAL PROFESSION UNIFORM LAW APPLICATION ACT 2022

#### LEGAL PROFESSION (MAGISTRATES COURT) (FAMILY LAW) DETERMINATION 2024

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

## 1 Citation

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This Determination may be cited as the *Legal Profession (Magistrates Court) (Family Law) Determination 2024*.

## 2 Commencement

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This Determination comes into operation on 1 July 2024.

## 3 Application

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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

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

## 5 Increase generally

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- (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.

## 6 Maximum hourly and daily rates

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- (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**

<b>Fee Earner</b>	<b>Maximum allowable hourly and daily rates</b>
Senior Practitioner (permitted to practise on his or her own account for 5 years or more) (SP) <sup>1</sup>	hourly rate \$572
Junior Practitioner (permitted to practise on his or her own account for less than 5 years) (JP) <sup>1</sup>	hourly rate \$418
Restricted Practitioner (RP) <sup>1, 2</sup>	hourly rate \$352
Clerk/Paralegal (C/PL) <sup>3</sup>	hourly rate \$264
<u>Counsel fees charged as a disbursement to practitioners or charged by in-house Counsel:</u>	
Counsel (C) <sup>4</sup>	hourly rate \$528 daily rate \$5,280
Senior Counsel (SC) <sup>5</sup>	hourly rate \$781 daily rate \$7,810

**Notes:**

- 1 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.
- 2 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 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.
- 3 The reference to Clerk/Paralegal in this Determination includes a law graduate prior to their admission to practise as an Australian lawyer.
- 4 The reference to Counsel in this Determination means a practitioner acting as a barrister other than a Senior Counsel, including, for the purposes of items 10, 11, 17, 22, 25 and 26, a practitioner appearing in court who does not practise in accordance with Supreme Court Practice Direction 10.5.
- 5 The reference to Senior Counsel in this Determination means a person within the meaning of item 5 or item 6 of Rule 9 of the Legal Profession Uniform General Rules 2015(WA).

## 7 Restricted Practitioners

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Clause 5 of the *Legal Profession (Family Court of Western Australia) Determination 2024* applies to this Determination.

## 8 Disbursements

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Clause 6 of the *Legal Profession (Family Court of Western Australia) Determination 2024* applies to this Determination.

## 9 Counsel fees

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Clause 7 of the *Legal Profession (Family Court of Western Australia) Determination 2024* applies to this Determination.

## 10 Travel

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Clause 9 of the *Legal Profession (Family Court of Western Australia) Determination 2024* applies to this Determination.

## 11 Costs

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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 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 13 June 2024.