



Our ref: ElderLaw:JD:VK:643888

17 August 2012

Mr Brendan Thomas  
Acting Director General  
Department of Attorney General & Justice  
DX 1227 SYDNEY

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Dear Mr Thomas

**Draft Civil Procedure Regulation 2012 (NSW)**

The Elder Law & Succession Committee of the Law Society of NSW ("Committee") represents the Law Society in the areas of elder and succession law as they relate to the legal needs of people in NSW. The Committee is comprised of experienced and specialist practitioners drawn from the ranks of the Society's members.

The Committee thanks you for your invitation to comment on the draft *Civil Procedure Regulation 2012* ("draft Regulation") and for the extension of time to provide a response.

The Committee agrees that the current fee structure for filing originating process for probate matters should be reconsidered for currency and relative fairness.

However, the Committee considers that the increase of fees should result in a significant corresponding increase in the service level provided by the Supreme Court. This is a topical issue as the Committee has heard from a significant number of the legal profession over the course of the last several years, particularly in relation to protracted processing delays at the Probate Registry and the inadequacy of the Court's estate accounts system.

The Committee notes that the Productivity Commission's 2012 Government Services Report indicates that in 2010-2011, the Probate Registry's recurrent expenditure (excluding payroll tax) was \$1,287,000.00 (Table 7A.10). In the same period, the Probate Registry's real income (excluding fines) was \$24,365,000.00 (Table 7A.11), resulting in a real net current gain of \$23,078,000.00 (Table 7A.13). These Tables are enclosed for your information.

Given the above, the Committee respectfully submits that the changes brought by the draft Regulation should be accompanied by a very meaningful increase in terms of service such as a designated Probate Registrar, efficient registry service and a consumer protection oriented system of estate accounts. As a final point, the Committee notes that in some estates, funding the increased quantum of filing fees may in some cases present practical difficulty where liquidity is an issue.

Yours sincerely,

Justin Dowd  
President

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Table 7A.10

Table 7A.10 Real recurrent expenditure, civil, 2010-11 dollars (\$'000)

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust cts	Total
Coroners' courts (g), (m), (n), (o)										
2010-11	5 718	13 532	10 622	4 147	2 945	531	1 511	1 087	..	40 093
2009-10	5 347	11 702	10 311	3 659	2 985	615	844	1 725	..	37 190
2008-09	5 404	9 167	11 334	5 365	2 547	840	855	1 081	..	36 592
2007-08	4 946	8 821	11 592	5 820	2 361	1 028	819	947	..	36 335
2006-07	5 518	7 691	10 703	4 982	2 894	395	1 251	911	..	34 346
Probate (q)										
Supreme courts										
2010-11	1 287	717	255	386	530	130	32	38	..	3 375
2009-10	1 304	697	271	429	585	120	30	31	..	3 467
2008-09	1 394	370	277	314	552	136	33	34	..	3 111
2007-08	1 487	389	121	294	856	112	26	24	..	3 310
2006-07	1 493	699	129	311	697	138	16	24	..	3 508
Including payroll tax where applicable										
Supreme (excl. probate)/Federal Court (b), (c), (d), (e), (f), (g)										
2010-11	74 453	41 651	16 389	27 232	10 607	4 227	5 146	5 397	92 765	277 867
2009-10	76 203	39 181	18 722	25 163	13 332	4 247	4 209	5 901	96 496	283 453
2008-09	68 820	31 706	19 879	25 116	9 826	4 078	5 035	5 085	95 994	265 537
2007-08	68 917	32 129	17 578	28 227	10 243	3 831	4 320	5 922	107 628	278 796
2006-07	74 296	31 158	19 267	25 470	11 642	3 923	4 495	5 812	105 532	281 596
District/county courts (c), (f)										
2010-11	29 208	25 490	9 847	20 267	7 796	..	..	..	..	92 608
2009-10	32 080	28 345	10 064	20 195	8 776	..	..	..	..	99 460
2008-09	32 317	27 418	11 173	21 568	9 604	..	..	..	..	102 080
2007-08	32 356	26 213	9 784	20 267	9 952	..	..	..	..	98 573
2006-07	32 591	26 197	10 035	17 135	10 276	..	..	..	..	96 234

Table 7A.11

Table 7A.11 Real income (excluding fines), criminal and civil, 2010-11 dollars (\$'000) (a)

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust cts	Total
<b>Family courts (e)</b>										
2010-11	..	..	..	3 494	..	..	..	..	6 512	10 006
2009-10	..	..	..	2 636	..	..	..	..	6 340	8 976
2008-09	..	..	..	2 537	..	..	..	..	6 873	9 410
2007-08	..	..	..	3 963	..	..	..	..	7 313	11 276
2006-07	..	..	..	2 461	..	..	..	..	5 807	8 268
<b>Federal Magistrates Court (e)</b>										
2010-11	..	..	..	..	..	..	..	..	30 233	30 233
2009-10	..	..	..	..	..	..	..	..	21 925	21 925
2008-09	..	..	..	..	..	..	..	..	25 971	25 971
2007-08	..	..	..	..	..	..	..	..	21 786	21 786
2006-07	..	..	..	..	..	..	..	..	18 603	18 603
<b>Coroners' courts</b>										
2010-11	161	—	157	41	35	4	11	—	..	409
2009-10	184	—	134	19	39	5	23	440	..	844
2008-09	117	—	138	13	15	—	11	—	..	295
2007-08	178	—	94	21	7	—	22	—	..	322
2006-07	186	—	134	61	14	4	43	—	..	441
<b>Probate</b>										
<b>Supreme courts</b>										
2010-11	24 365	5 531	4 351	1 174	4 836	809	516	168	..	41 751
2009-10	23 651	5 039	4 414	1 226	4 542	829	515	156	..	40 374
2008-09	21 947	5 248	4 028	3 333	3 926	829	493	167	..	39 971
2007-08	21 344	5 011	3 946	3 381	3 672	836	455	166	..	38 810
2006-07	20 645	5 368	3 314	3 089	3 730	849	427	94	..	37 516

Aust cts = Australian courts.

Table 7A.13

Table 7A.13 Real net recurrent expenditure, civil, 2010-11 dollars (\$'000) (a)

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust cts	Total
<i>Coroners' courts (b)</i>										
2010-11	5 557	13 532	10 465	4 106	2 909	527	1 501	1 087	..	39 684
2009-10	5 163	11 702	10 177	3 640	2 946	610	821	1 285	..	36 346
2008-09	5 287	9 167	11 196	5 352	2 532	840	844	1 081	..	36 297
2007-08	4 769	8 821	11 498	5 798	2 354	1 028	798	947	..	36 013
2006-07	5 332	7 691	10 569	4 922	2 881	391	1 208	911	..	33 905
<i>Probate</i>										
<i>Supreme courts</i>										
2010-11	- 23 078	- 4 814	- 4 096	- 788	- 4 306	- 679	- 484	- 130	..	- 38 375
2009-10	- 22 347	- 4 342	- 4 143	- 797	- 3 957	- 709	- 485	- 126	..	- 36 906
2008-09	- 20 553	- 4 877	- 3 751	- 3 019	- 3 374	- 693	- 460	- 133	..	- 36 860
2007-08	- 19 857	- 4 622	- 3 824	- 3 086	- 2 816	- 723	- 429	- 142	..	- 35 500
2006-07	- 19 152	- 4 669	- 3 185	- 2 777	- 3 033	- 711	- 411	- 71	..	- 34 008
<i>Including payroll tax where applicable</i>										
<i>Supreme (excl. probate)/Federal Court</i>										
2010-11	45 924	33 763	10 827	21 816	6 735	3 668	4 163	5 080	79 656	211 633
2009-10	50 670	30 371	12 275	20 355	9 758	3 691	2 328	5 506	86 016	220 971
2008-09	41 137	22 525	13 379	20 257	6 819	3 460	3 667	4 795	86 341	202 380
2007-08	40 843	23 326	14 213	24 293	7 614	3 150	2 922	5 686	96 972	219 019
2006-07	44 784	20 992	15 229	21 422	9 241	3 159	3 412	5 570	95 449	219 258
<i>District/county courts</i>										
2010-11	17 474	17 478	5 795	15 892	4 869	..	..	..	..	61 508
2009-10	19 165	19 867	6 179	16 131	5 957	..	..	..	..	67 298
2008-09	17 394	19 229	7 569	17 774	7 242	..	..	..	..	69 208
2007-08	18 731	20 034	6 986	16 687	7 592	..	..	..	..	70 029
2006-07	19 198	20 724	6 914	13 908	8 233	..	..	..	..	68 977