



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: LLP:PWeh:1263795

10 April 2017

The Hon. Mark Speakman, SC MP  
Attorney General  
GPO Box 5341  
Sydney NSW 2000

Dear Attorney <sup>Mark</sup> General,

### **Refund of hearing allocation fees and hearing fees – Civil Procedure Regulation 2012**

I am writing to you in relation to hearing allocation fees and hearing fees in the NSW District and Supreme Courts.

The *Civil Procedure Regulation 2012* (NSW) (“the Regulation”) provides for the payment of hearing allocation fees and hearing fees in the both the District and Supreme Courts. According to cl 9(5) of the Regulation a hearing allocation fee becomes payable (a) immediately after a date is allocated for the hearing of the proceedings or (b) when the court or registrar first notifies the parties in writing of the court’s intention to allocate a date for hearing the proceedings, whichever comes first.

Clause 10 of the Regulation provides for the payment of hearing fees. These fees become payable when the court or a registrar gives written notice to the person liable to pay the hearing fee of the amount of the fee payable. The Law Society understands that this may occur in advance of the hearing.

Neither the hearing allocation fee nor the hearing fee is refunded by the Court if the matter is settled before the hearing or if all of the allocated days are not required, despite the fact that the judge may have the opportunity to proceed with another matter or matters on those days.

The Law Society considers that these fees can act as a barrier to parties resolving disputes early and in advance of a court hearing as parties are aware that they will not be able to obtain a full or partial refund. These provisions do not serve the end of a “just, quick and cheap” litigation process and do not benefit the administration of justice.

The Law Society draws your attention to the *Federal Court and Federal Circuit Court Regulation 2012* (Cth) which provides at cl 2.19 for the refund of hearing fees as follows:

#### *Hearing fees—hearings not commenced*

- (5) A person is entitled to the refund of the amount paid by the person as a hearing fee for a hearing that has not commenced in relation to a proceeding if:
- (a) the person notifies the Registrar or an authorised officer of the relevant court, in accordance with subsection (6), that the hearing will not occur or will occur only for the purpose of making formal orders; and
  - (b) the hearing does not occur or occurs only for the purpose of making formal orders

THE LAW SOCIETY OF NEW SOUTH WALES

170 Phillip Street, Sydney NSW 2000, DX 362 Sydney  
ACN 000 000 699 ABN 98 696 304 966

T +61 2 9926 0333 F +61 2 9231 5809  
www.lawsociety.com.au

  
Law Council  
OF AUSTRALIA  
CONSTITUENT BODY

- (6) The person must notify the Registrar or authorised officer in writing:
  - (a) if the hearing day was fixed less than 10 business days before the hearing day— at least 2 business days before the hearing day; an
  - (b) in any other case—at least 10 business days before the hearing day.
- (7) Despite subsection (5), a Registrar or authorised officer may refund a hearing fee for a hearing that has not commenced if:
  - (a) the person who paid the hearing fee has not notified the Registrar or authorised officer in accordance with paragraph (5)(a) and subsection (6); and
  - (b) the Registrar or authorised officer is satisfied that the reason the person has not notified the Registrar or authorised officer is not the fault of the person; and
  - (c) the hearing does not occur or occurs only for the purpose of making formal orders
- (8) For subsections (5) and (7), *formal orders* means orders finalising the proceedings that were to be the subject of the hearing.

The Law Society considers that similar provisions for refunds should be available in the District and Supreme Courts.

The Law Society also notes that partial refunds are available in Queensland and Western Australia. The *Uniform Civil Procedure (Fees) Regulation 2009* (Qld) provides for a refund of 75% of the setting down fee and the hearing fee paid by a party if a request for a refund is made at least 10 business days before the first day set down for the hearing or trial of the proceeding, stating that the hearing or trial will not occur.<sup>1</sup> The relevant Western Australian Regulations provide that if a matter is settled and the court received written notice a certain refund amount is available: if the court receives notice 42 days or more before the first day allocated for hearing 75% of the allocation fee will be refunded; and if the court receives notice 28 days or more before that date, 50% of the allocation fee will be refunded.<sup>2</sup>

The Law Society considers that provisions such as those operating in the Federal, Queensland and Western Australian Courts reward and encourage the earlier resolution of disputes and reduce the cost to litigants.

We look forward to hearing from you about this proposal. Please do not hesitate to contact me on (02) 9926 0216 or the Chief Executive Officer, Michael Tidball, on (02) 9926 0215 if you would like to discuss this matter further.

Yours sincerely,



Pauline Wright  
**President**

<sup>1</sup> *Uniform Civil Procedure (Fees) Regulation 2009* (Qld) cl 4C.

<sup>2</sup> *Supreme Court (Fees) Regulations 2002* (WA) cl 9; *District Court (Fees) Regulations 2002* (WA) cl 9.