



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: LLP:JvdPsl250222

25 February 2022

Paul McKnight  
Deputy Secretary  
Locked Bag 10  
Strawberry Hills NSW 2012

By email: [kimberlee.hunter@justice.nsw.gov.au](mailto:kimberlee.hunter@justice.nsw.gov.au)

Dear Mr McKnight,

### **Consultation regarding proposed changes to court fees**

Thank you for the opportunity to contribute feedback regarding proposed changes to court fees. The Law Society's Litigation Law and Practice and Elder Law Committees have contributed to this submission.

While the Law Society understands the need to ensure court fees recover some of the costs of the justice system, and is generally supportive of the proposal to annually increase court fees in-line with the Sydney Consumer Price Index (CPI) rate (except in relation to the *Succession Regulation 2020* (NSW), as set out below), we strongly oppose the fee increases proposed to merely bring the fees in line with other States. It is the Law Society's view that large increases to court fees have adverse effects on the justice system and the community's access to justice.

#### **Adjustment of certain court fees to bring them in line with other States**

We note that, despite the purported rationale for the increase being cost recovery, or, at least, defraying the cost of delivering services, it does not appear that any analysis has been made of what the actual cost of delivering the relevant services is. Indeed, basing changes to court fees on a simple averaging of fees in 'comparable' jurisdictions seems designed to overlook the benefits that might accrue from delivering services in the highest volume jurisdiction in the country, with all its, at least theoretical, efficiency dividends.

We note that the table of proposed increases identifies the 'highest fee' from another State, but does not identify which. It appears to us that the highest fees tend to be from Western Australia in most instances.<sup>1</sup> We question whether Western Australia is in fact comparable in this regard, noting both the significant differences in population size and density, and that the scales for solicitors' costs in Western Australia are significantly higher,<sup>2</sup> and costs determinations are reviewed on a biennial basis.<sup>3</sup>

---

<sup>1</sup> We refer to the *Supreme Court (Fees) Regulations 2002* (WA) sch 1; *Supreme Court (Fees) Amendment Regulations 2015* (WA); *District Court (Fees) Regulations 2002* (WA) sch 1.

<sup>2</sup> *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2020* (WA); *Legal Profession (Non-Contentious Probate Costs) Determination 2021* (WA).

<sup>3</sup> *Legal Profession Act 2008* (WA) s 276(1).

If one were to desire setting fees with reference to a comparable state (rather than in relation to cost recovery), it is our view that Victoria is probably the 'most comparable' jurisdiction. We provide the following table comparing some of the civil court filing fees in New South Wales and Victoria. While we note that several of the fees in Victoria do sit higher than in NSW, this is at least a more comparable jurisdiction than an average of all the, very different, jurisdictions across the country.

New South Wales		Victoria		
Local Court General Division		Magistrates' Court <sup>4</sup>		
Filing originating application				
Standard	Corporation	Over \$500 under \$1000	Over \$1000 under \$10 000	Over \$40 000
\$259	\$518	\$153.30	\$320.10	\$730.50
District Court		County Court <sup>5</sup>		
Filing originating application				
Standard	\$709	\$736.50		
Corporation	\$1,418	\$1,472.95		
Allocating a date for hearing of the proceedings by a judge, a judge and jury or a judicial registrar				
Standard	\$758	\$677.90		
Corporation	\$1,516	\$1,355.70		
Hearing of proceedings by one or more judges, for each day of hearing or part of a day of hearing				
<i>On the 2nd, 3rd or 4th day</i>				
Standard	\$443	\$751.50		
Corporation	\$886	\$1,503		

<sup>4</sup> The following amounts are calculated according to the fee units specified in the *Supreme Court (Fees) Regulations 2018* (Vic) sch 1. Under the *Monetary Units Act 2004* (Vic), the value of a fee unit for the financial year commencing 1 July 2021 through 1 July 22 is \$15.03; see Treasurer of the State of Victoria, 'Notice Under Section 6: Notification of Values of Fee and Penalty Units' in Victoria, *Victoria Government Gazette*, No. S 233, 20 May 2021. See also Magistrates' Court Victoria, 'Fees and Costs Ready Reckoner' <<https://www.mcv.vic.gov.au/sites/default/files/2021-12/Court%20Fees%20and%20Costs%20Ready%20Reckoner%20-%20201%20January%202022%20.pdf>>.

<sup>5</sup> The following fees for the County Court are calculated according to the fee units specified in the *Country Court (Fees) Regulations 2018* (Vic) sch 1. See <<https://www.countycourt.vic.gov.au/forms-and-fees/fees-and-costs-civil-proceedings>>

<i>On the 5th, 6th, 7th, 8th or 9th day</i>		
Standard	\$776	\$1,202.40
Corporation	\$1,552	\$2,404.80
<i>On 10th day or more</i>		
Standard	\$1,110	\$1,653.60
Corporation	\$2,220	\$3,306.70
	<b>Supreme Court</b>	<b>Supreme Court<sup>6</sup></b>
Filing notice of motion		
Standard	\$427	\$2,290.60
Corporation	\$979	\$4,581.10

### **Allocation fees**

We refer to the table provided and note that the proposed allocation fees in the District Court are to rise by 39 per cent for both standard and corporate applications. 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 payable. The Law Society understands that this may occur in advance of the hearing.

Neither the hearing allocation fee nor the hearing fee are 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 other matters on those days. The Law Society considers that these fees can create 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.

We note that the *Federal Court and Federal Circuit Court Regulation 2012* (Cth) provides at cl 2.19 for the refund of hearing fees. Similarly in Queensland, cl 4C of the *Uniform Civil Procedure (Fees) Regulation 2009* (Qld) provides for a refund of 75% of the setting down fee and the hearing fee. A request for a refund must be 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.

The Law Society considers that provisions such as those operating in the Federal and Queensland courts reward and encourage the earlier resolution of disputes and reduce the legal costs to litigants. Similar provisions for refunds should be available in the NSW Supreme and District Courts.

<sup>6</sup> See: [https://www.supremecourt.vic.gov.au/sites/default/files/2021-06/2021\\_-\\_2022\\_court\\_of\\_appeal\\_fees\\_list.pdf.pdf](https://www.supremecourt.vic.gov.au/sites/default/files/2021-06/2021_-_2022_court_of_appeal_fees_list.pdf.pdf)

### **Scales of Solicitor Costs**

The Law Society has long advocated for fixed costs, set out in Schedules 1 and 2 of the *Legal Profession Uniform Law Application Regulation 2015* (NSW), to be revised on an annual basis in accordance with CPI. The then Law Society Presidents wrote to the NSW Attorney General in 2017 and 2020, and the matter was referred to the then Department of Justice. We have discussed the proposal a number of times at officer level with your Department since, but no legislative change has been made since the introduction of the *Uniform Law*, which commenced on 1 July 2015.

We reiterate the view that the costs scales in Schedules 1 and 2 of the Regulation do not reflect the true value of the services provided to clients, and emphasise the importance of increasing the costs in those schedules annually in line with CPI, with an appropriate 'catch up' method based on comparable states. Schedule 1 fixes costs for the recovery of certain debts and enforcement of certain judgments and Schedule 2 fixes costs for legal services in workers compensation matters. A law practice is not entitled to be paid or to recover an amount for a legal service that exceeds the amount set by the Regulation.

The failure to update the costs set out in the Schedules has contributed to an increasing gap between the amounts in the Schedules and the costs of providing the relevant legal services, as the costs of running a legal practice increase over time. As a minimum step, we would be grateful if the provisions were amended so that the amounts in Schedules 1 and 2 of the Regulation are treated with an equivalent 'catch up' to court fees and increased annually in accordance with inflation, as this tends to be the practice in relation to the increase in costs levied by the courts each year.

### **CPI increases – Succession Regulation 2020 (NSW)**

We oppose the proposal to increase fees listed in the *Civil Procedure Regulation 2017* (NSW) to the extent that it applies to fees for the filing of an originating process by which an application for a grant of representation, or reseal of a grant of representation is made (Sch 1, Part 1, Item 2). Currently, the fee applicable under Sch 1, Part 1, Item 2 depends on the monetary value of the estate which is the subject of the application. Year on year, the value of estates has tended to increase by virtue of CPI and other economic factors, including the value of real estate. An automatic CPI increase would impose an extra increase onto fees which are already determined by inflationary and other economic factors.

If you have any questions in relation to this letter, please contact Stephanie Lee, Policy Lawyer on (02) 9926 0275 or by email: [stephanie.lee@lawsociety.com](mailto:stephanie.lee@lawsociety.com).

Yours sincerely,



Joanne van der Plaats  
**President**