



5 September 2011

Caroline Anderson
Clerk to the Rules Committee
Auckland High Court
PO Box 60
Auckland 1140

Dear Dr Anderson

Rules Committee Consultation on Time Allocations and Daily Recovery Rates

The New Zealand Law Society (Law Society) is grateful for the opportunity to comment on the Rules Committee's proposed reforms to the time allocation rules contained in Schedule 3 of the High Court Rules, as well as its regular review of the appropriate daily recovery rates contained in the Second Schedule to the High Court Rules, and the Second Schedule to the District Court Rules. The comments have been prepared with assistance from the Law Society's Civil Litigation and Tribunals Committee.

Proposals for reform of Schedule 3 High Court Rules (Time Allocations)

The Law Society is pleased to note that the Rules Committee has accepted the need for a more realistic approach to the costs of preparation for hearings, and particularly endorses the revised scale of costs for appeals and interlocutory hearings.

Review of Schedule 2 High Court Rules and Schedule 2 District Court Rules (Daily Recovery Rates)

In principle, the Law Society agrees with the Rules Committee's proposal that the rates should be increased to reflect changes in the producer price index. However, one point of a practical nature concerns GST.

While costs awards are GST neutral the practical effect of the recent GST increase is to increase the cost of legal services to an unregistered person by 2.5%. The net return that an award of costs provides is therefore eroded in this situation.

It seems that where the object of the costs regime is to reimburse a successful litigant, it is artificial to ignore the economic effect that a GST increase has on actual legal fees when the scale costs are GST-neutral in nature.

Changing costs rules so as to ease the burden of judgment enforcement

The Law Society's final comment is in relation to the proposed "uplift" on enforcement costs. The Committee considers that there is merit to this proposal, although any presumption of a 50% uplift should be rebuttable to allow for the fact that there may be genuine issues raised by the debtor.

Lawyers have generally experienced a marked difficulty in the enforcement of judgments in the current economic climate. A regime which sees judgment creditors adequately reimbursed for the often significant costs of enforcement, coupled with a healthy disincentive to judgment debtors, has a distinct measure of attraction.

The Law Society hopes that the above comments are of assistance to the Rules Committee. If you wish to discuss any matters raised in this letter please contact the Civil Litigation and Tribunals Committee convenor, Andrew Beck, through the Civil Litigation and Tribunals Committee secretary, Rhyn Visser (phone (04) 463 2962 or email rhyn.visser@lawsociety.org.nz).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jonathan Temm', written in a cursive style.

Jonathan Temm
President