

25 August 2025

The Rules Committee | Te Komiti mō ngā Tikanga Kooti
Wellington

By email: RulesCommittee@justice.govt.nz

Tēnā koutou e te komiti

Updating daily recovery rates for costs: consultation with the legal profession

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to provide the Rules Committee (**Committee**) with feedback on its proposal to increase daily recovery rates for costs of represented parties in the High Court and District Court Rules.
- 1.2 The Law Society supports the proposal. As noted in the proposal, the rates have not been updated since 2018.
- 1.3 The brief following remarks, expanding on reasons for supporting the proposal and other policy considerations, have been prepared with the assistance of the Law Society's Civil Litigation and Tribunals Committee.¹
- 1.4 In the Law Society's view, the proposed changes to the daily recovery rates appear appropriate, having regard to the objective of the costs regime. On the available evidence, it is difficult to identify a preferable approach. The significant jump this review will bring does give reason for pause to consider whether more frequent reviews or automatic indexing would be appropriate. However, the present jump appears to simply reflect the inflationary environment of recent years, and there is reason not to move to an automatic indexing approach.
- 1.5 The purpose of a costs award and of the schedular costs regime is well-established. Together, they provide an expedient and predictable means of enabling successful litigants to recover a reasonable contribution from the unsuccessful party or parties, to reflect expenditure incurred or (in the case of successful litigants-in-person) effort expended in connection with the court process. Reasonableness, as is also well-established, is to be measured objectively based on what ought to have been expended having regard to the nature, complexity, and extent of a matter — rather than on actual

¹ More information about our law reform committees is available on the Law Society's website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/>.

expenditure (subject to the cap on costs not exceeding actual costs for represented parties).

- 1.6 Though it is not a perfect or foolproof measure, the Rules Committee's process of periodically adjusting daily recovery rates based on changes to the Producer Price Index (**PPI**) for legal services in New Zealand appears to be the most appropriate (and predictable) means of ensuring the regime continues to achieve that policy over time.
- 1.7 Potential difficulties may emerge. For example:
 - (a) If there was evidence to suggest the cost of conducting litigation — which is the only type of legal service to which the costs regime relates — substantially differed from the cost of conducting other legal services (all of which are bundled together under the Stats NZ metrics), there would be reason to say another measure should be used. One could, in the abstract, identify reasons to think that litigation services may differ in cost from transactional services. However, absent a more granular metric, the PPI for all legal services is likely the most appropriate measure.
 - (b) The approach of indexing the previous rates, as has been done since the current regime was established in 2000, assumes that the rates have been correctly set to achieve the objectives of the costs regime on each previous occasion. In this respect, the Committee will be aware of long-standing criticisms by some in the profession that suggest the daily recovery rates have been out of date, in the sense of providing for inadequate awards, for some years. However, as set out above the Committee has affirmed that the purpose of the regime is to provide notional awards based on what ought to have been spent, and which are only a default. Where costs reasonably materially exceed scale, the Court has a discretion to reflect that.
- 1.8 The need for the Committee to satisfy itself that these, or other similar, factors are not acting to cause the daily recovery rates to diverge from a 'reasonable' level tends to support the continued practice of the Committee exercising judgement, following consultation, when periodically reviewing the rates. The most obvious alternative approach, of having the rates automatically change each year to track the PPI for legal services, thus avoiding significant jumps when reviews are as far as 7 years apart, with significant interim inflation, may allow any factors 'skewing' the PPI to creep in over time. The desirability of the predictability and transparency of a purely PPI-based adjustment (with slight rounding of end figures) is ultimately outweighed by the need for these figures to enable the costs regime to achieve its overall goal.
- 1.9 There may be some merit, however, in the Committee undertaking these reviews more often. This will avoid the potential for backlash to a headline increase in rates of about 40 per cent, and assist in responding to concerns that rates have become divorced. Reviews being undertaken triennially could balance avoiding burdening the Committee with maintaining relevance.
- 1.10 Similarly, moving forward, it may also be desirable for the Committee to consider reviewing the allocations for self-represented litigants at regular intervals, for the same reason. \$500 for a notional 'day' of work has a certain relation to median salaries in New Zealand today, whether that 'day' is thought of as a sitting day's length or longer, but that

will inevitably be eroded over time, removing the sense of a 'reasonable' contribution (which is necessarily harder to fix for litigants-in-person, as the Committee recognised). It may be desirable for the Committee to think ahead to identify when, within the next few years (after allowing some time for 'bedding in' of the initial rate to allow for testing of whether it is correctly geared to achieve the policy objectives), it should undertake a first review of that figure. However, it is agreed this review is too soon for this.

2 Next steps

- 2.1 We hope this feedback is useful. Please feel free to get in touch with me via the Law Society's Senior Law Reform and Advocacy Advisor, Claire Browning (claire.browning@lawsociety.org.nz), if you have any questions or wish to discuss this feedback further.

Nāku noa, nā

A handwritten signature in black ink, appearing to read 'Jesse Savage', with a stylized, cursive script.

Jesse Savage
Vice-President