1. Overview of Submission – Probate and Administration of Estates – NSW

1.1 The filing fees charged by the Supreme Court and the fees and commissions charged by solicitors and trustee bodies for grants of probate and administration are excessive and have no reasonable relationship to the work involved.

1.2 Since the abolition of death duties the obtaining of grants of probate or administration is a simple administrative process easily handled by most members of the public if they so desired and if the courts provided them with a basic service.

1.3 Applications for grants are now simple and could be handled more economically and efficiently by lower level bodies who are experienced in dealing with the public.

1.4 The few disputed applications could be dealt with by a court but at a much lower level.

1.5 Assistance to the Public.

N.B. This submission is hampered by a lack of statistics. An offer to carry out a sample survey was rejected by the court (see attachment 1 – page 4). This lack of information allows the court only superficial scrutiny

2. The filing fees and the fees and commissions

2.1 Filing Fees

With most applications, including real estate, my assessment is that the average filing fee would be about $1,800. The Attorney Generals Department sets the fees each year and seems more a tax than a fee for service.

The NSW fee should be compared with approx $200 in WA, a Consent Order in the Family Court $145, Consumer Claim by a Senior $4.

It must be borne in mind that the filing fees are often payable in cash by a surviving partner already paying medical and funeral expenses for their deceased partner and have very little cash. They are often pensioners.

2.2 Fees and commissions

There are so-called scales of fees and commissions but they seem to have been increased from a base when death duties applied and valuations were required and the size of the estate influenced the amount of work to be done.

I can find no evidence that they are based on the current work involved. They are mostly based on the value of the assets which often have no relationship to the work and responsibility involved.

Some interesting recent happenings and comments:

2.2. a A solicitor told me 'Probate is the last area of fat available to solicitors'.

2.2. b Ads for the sale of solicitor's practices often include the number of wills held to justify the goodwill. This shows the excess profit expected from acting on the will.

2.2. c At a recent public seminar conducted by the Law Society of NSW the lawyer's answers were:
i. How long does it take to obtain a grant? 'About five months, the main reason being the delay in getting valuations'.
Comment: Since death duties were abolished valuations are not needed. A grant can reasonably be obtained in two months.
ii. Can I do it myself? (Superciliously) 'If you had a brain tumor you wouldn't try to remove it yourself'.
Comment: These examples indicate how lawyers make a simple process appear complicated to justify excessive fees.

3 & 4. A simple Administrative Process & Disputed Applications

An application involves three simple steps now that death duties have been abolished:
a. a simple advertisement
b. a simple notice of application
c. an declaration listing assets with an estimate of value and simple annexures.

If these are correctly completed a grant is made. If they are not a requisition is raised identifying the error to be corrected.

It can be compared with the simple default judgment system

In NSW there approximately 22,000 applications each year (I note your national figure of 65,787) and of these, only 150 are disputed. These could be referred to a court although the Consumer Claims Tribunal has an excellent economical and efficient history of mediation and adjudication.

The initial process does not require the formality and expense of the Supreme Court.

5. Assistance to the Public

The Supreme Court is structured to hear complicated and disputed matters dealing mainly with solicitors and in probate matters, trustee bodies. It is not structured to efficiently and economically deal with such simple default estate matters.

When I first became aware of the Court's refusal to help the public I was given reasons which turned out to be false.

With the enlightened support of the then Chief Justice Murray Gleeson a lawyer daughter and I prepared a DIY Guide which the Court published and a Deputy Registrar was rostered to help the public. The Guide was soon withdrawn as being 'so full of errors'.

The Court at first refused to say what the errors were but eventually admitted one form had changed and the filing fees increased.

It has however not been reintroduced and the Court now states ‘It is not in our business plan to help the public. We only wish to deal with solicitors and trustee bodies’.

There have been suggestions that the Law Society influenced this stance but I have no evidence of this.

The Court states it has a link on its website to a DIY Guide but the book referred to clearly states it is not a DIY Guide and merely refers reader to a solicitor or trustee body.

The Court referred me (see appendix 1) to its Probate Users Group. This has no community member, rarely meets and mainly deals with rule matters. The Law Society's Elder Law and Succession Committee of course has a vested interest in maintaining lawyer’ privileges and actively harasses the heroic campaigner The Law Consumers Association which also helped in the production and published, with initially the Court’s consent the DIY Estate Guide mentioned above.

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