

18 July 2024

Victoria State Government
Department of Justice and Community Safety
By email only: court.fees@justice.vic.gov.au

To the Department of Justice and Community Safety,

RE: Endorsement of the STEP Victoria-Tasmania Submission on ‘Review of Probate Fees– a Death Tax?’

We the Society of Trust & Estate Practitioners Australia Pty Limited (STEP Australia) represent professionals from across Australia who are specialists in trusts, estate planning and in supporting the needs of families (young and old, wealthy and modest). The objective of a STEP Professional is to advance the interests of families across generations. This often involves us in identifying issues of relative importance to families and bringing these to the attention of those who can make a positive difference. This is the purpose of this submission.

STEP Australia’s membership includes lawyers, accountants, financial wealth advisors and trustee company professionals from across Australia; our members bring a multi-disciplinary approach to the benefit of their clients. It is this unique multi-disciplinary approach that STEP Australia brings to the support of this submission.

STEP Australia endorses the submission prepared by STEP Victoria-Tasmania dated 17 July 2024 concerning the “Review of Probate Fees– a Death Tax?”.

More detailed information is contained in the STEP Victoria-Tasmania Submission attached.

If you would like to discuss any of the above, please contact myself, Julie Van der Velde TEP, STEP Australia Board Chair, on email julie@vdvlegal.com.au.

Yours sincerely

Julie Van der Velde TEP
Chair of STEP Australia

STEP Victoria Tasmania – Submission - Review of Probate Fees– a Death Tax?

The Victorian Government recently requested a review of Probate fees, details of which have been circulated in a Regulatory Impact Statement (RIS) in June by Engage Victoria at:

<https://engage.vic.gov.au/review-of-probate-fees>

In our opinion, the proposals in the RIS appear to conflate cost recovery at the Probate Office with cost recovery of the Supreme Court as a whole and can best be described as be a poorly camouflaged Death Tax.

Key points:

The 61-page RIS can be distilled to:

The Base Case is to maintain fees at existing levels. Under the Base Case:

- The Probate Office currently has a positive cost recovery level of **310%**. [at p.18]
- The Supreme Court (as a whole) has a cost recovery of approx. 25%. [at p.20 – Table 3.1]

The proposed Probate Office fee increases range as follows:

Option 1 – Would raise an additional **\$33.6** million dollars over the base case.

This option represents **1205%** of the costs of the Probate Office or **45%** for the entire Court.

Option 2 - Would raise an additional **\$38.7.8** million dollars over the base case.

Option 3 - Would raise an additional **\$33.5** million dollars over the base case,

Government has a duty to provide access to justice to the community as part of its core responsibilities.

The objectives in the RIS are said to be:

- Fiscal Sustainability
- Access to Justice
- Reflective of Costs
- Simplicity

The proposed fee increases:

- Fail to meet the RIS objectives; and
- Fail to conform with the Government's own **Pricing for Value Guide** and **Cost Recovery Guidelines**; and

The proposed increases also contradict efforts by Courts and Parliament to cap Court fees, particularly as:

1. The proposed increases are not a fee recovery related to the cost of administering the Probate Office, rather they appear to be a death tax raised to cross subsidise other activities of the Court.
2. Noting the present Probate Office cost recovery of **310%**, the fees are not reasonable and proportionate to the work of processing an application for a grant of representation;
3. The Government has a duty to provide basic fabric of legal services in Victoria. Cost recovery for Probate Office is appropriate, however conflating cost recovery for the entire Court and seeking to introduce what is effectively a taxing measure is inapposite.

4. It is unreasonable to expect Executors or Administrators (or their Solicitors) to pre-pay a necessary estate expense, especially when such high fees are mooted.
5. The review does not address any framework for payment of the fees out of estate funds, (which remain locked up until a Grant of probate issues), especially where there are asset rich/cash poor estates. **For example**, Funeral expenses are generally allowed out of an estate bank account before probate is granted. A similar provision should be considered for payment of Probate fees.

Advertisement fees:

Proposed Re- Advertising Fee

The Review also proposes that a higher fee should apply if a Notice of Intention to apply for probate is required to re-readvertised.

This proposal appears to be a “penal provision” which more likely to be borne out of irritation at incorrect advertisements, rather than any cost recovery.

Adding further to the total cost of re-advertising adds nothing substantial to the (already positive) cost recovery of the Probate Office.

The cost of administration of another fee level will well exceed any likely benefit.

If there is a perceived need to adjust Advertising requirements and fees in relation to Probate related matters, rather than “tacking” the current proposal to the proposals in the RIS, this issue would be better dealt with in a broader review of current advertising practices, including Notices to Creditors, mentioned below.

Notices to Creditors

At present a Notice to Creditors may be advertised in the Government Gazette and a local newspaper circulating in the district where the deceased resided.

The Notice to Creditors offers protection to Executors and Administrators who choose to advertise from later claims of which they did not have notice.

It is not compulsory to advertise, and the cost of the advertisements is substantial.

To streamline the Probate and estate Administration process, consideration should be given to mandating publication of Notices to Creditors on the Court Website, immediately after a grant is issued.

STEP Victoria - Tasmania proposes:

1. No change to the published Base Case fees.
2. Amendments to current legislation/regulation to:
 - a. Enable Probate Office fees to rank as a **first charge** on the Estate, payable within 90 days of the Grant. (To enable the Executor to access or source funds); and
 - b. Provide for compulsory advertising of Notices to Creditors on the Court Website immediately after the Grant is issued; and
3. A more focussed review on an appropriate level of Probate Office fees - based on cost recovery in the Probate Office, without reference to the general public interest functions of the Court, funding of which is a core Government responsibility.

STEP Victoria -Tasmania Branch

About STEP

The Society of Trust and Estate Practitioners (STEP) is an international professional body for advisers who specialise in inheritance and succession planning.

STEP members are mainly solicitors, barristers, attorneys, accountants, tax advisers, trust officers and trust administrators as well as banking, wealth management, financial planning, investment, and insurance professionals operating in the trust field.

The main objective of STEP is to promote high professional standards within the profession, to provide educational and networking opportunities for its members and to contribute to debate and public policy in its specialist field.

STEP has more than 100 branches and chapters in 56 countries with a current membership in excess of 20,000.