28 August 2020

Ms Megan Pitt
Chief Executive Officer
Legal Services Council
Commissioner for Uniform Legal Services Regulation
Level 3, 19 O'Connell Street
SYDNEY NSW 2000

Dear Megan,

Consultation paper on the interest rate payable on fidelity fund claims

The Law Institute of Victoria (LIV) welcomes the opportunity to comment on the Legal Services Council's (LSC) consultation paper on interest rates payable on fidelity fund claims.

The LIV supports the LSC establishing an interest formula which provides ongoing consumer protection and reflects individual economic loss. Any interest should be determined based on the relevant economic conditions at the time of act or occurrence and the claim finalisation.

While LIV acknowledges the paying out disproportionately high amounts of interest on high value claims may be problematic and decrease the sustainability of the fund it is important that all claimants have redress for actual economic loss. The following responses to the consultation questions attempt to balance ongoing sustainability of the fund and consumer protection and transparency.

1. *Is it appropriate to reduce the interest rate payable on fidelity fund claims?*

   The interest rate payable on fidelity fund claims should be transparent and provide claimants with redress for actual economic loss. The current rate of 5% prescribed in s242 (2) of the *Legal Professional Uniform Application Act 2014* is flawed as it is not aligned with any economic indicators.

   The Fidelity Fund, like other consumer protection schemes should provide transparency on how any interest rates are determined and calculated and have the agility to represent economic circumstances when a loss was incurred.

2. *Should the interest rate payable on fidelity fund claims be determined by reference to a formula based on the RBA cash rate?*

   Yes, providing reference to a common understood formula improves consumer protections and transparency.

3. *If the interest rate payable on fidelity fund claims is determined by reference to a formula based on the RBA cash rate, is the RBA cash rate plus 1% appropriate?*

   No. LIV does not agree that the proposed rate provides transparency on the basis of calculation and appropriate consumer readdress for losses. Fidelity funds should continue to be independent and at arm's length from the profession. The LIV recommends more justification for the proposed 1% increase be provided. Alternative benchmarks could be the ATO deeming rate or ATO Division 7A benchmark interest rate.

   To illustrate our view, we have compared the application of interest rates currently applied across government and different sectors.

Table 1. Interest rates calculations.

For illustrative purposes only 2 years compound interest on $250k based on a calculation made 20/08/2020		
Commonwealth Government		
Australia Financial Complaints Authority (AFCA)	10 yr. Treasury Bond Interest rate +3%	$19,225
Corporations Act - Security Exchange Fidelity Fund	5%	$26,235
Safety, Rehabilitation and Compensation Act 1988	5%	$26,235
ATO Deeming rate (interest deemed to be earnt)	Below $88k = 0.25% Above $88k = 2.25%	$7,890
Family Court of Australia	Reserve bank rate + 6% (6.25%)	$33,195
ATO – General Interest Charges Rate for late payment	7.1%	$38,024
State Government		
Victorian Penalty Rate	10%	$75034
NSW Civil Administrative Tribunal (NCAT)	6% above the cash rate	$33,195
Current Fidelity Fund rate		
Current rate	5%	$26,235
Proposed rate	1.25% (0.25% cash + 1%)	$6,325

4. *Should the interest rate payable on fidelity fund claims be determined by reference to a formula based on CPI?*

No. We suggest referencing a formula based on the CPI in isolation is flawed as it is only one of the economic indicators used to determine interest rates and therefore, is not the most appropriate indicator to compensate consumers for economic loss arising from a fidelity claim.

Should you have any queries in relation to our response, please do not hesitate to contact [redacted].

Yours sincerely,

[redacted]

Adam Awty
Chief Executive Officer

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