



# THE LAW SOCIETY OF SOUTH AUSTRALIA

## MEMORANDUM

**TO:** Conference of Law Societies and Bar Associations

**FROM:** Richard Mellows, President

**DATE:** 25 November 2009

**SUBJECT:** COAG National Legal Profession Reform Project  
Discussion Paper: Legal Costs

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Further to the agreement reached by CEO's at the teleconference of 24 November 2009, please find below the Law Society of South Australia's comments in relation to COAG's Discussion Paper on Legal Costs.

The Discussion Paper is well written and demonstrates a sound understanding of the position; specifically however we draw attention to the following

***"Clients must be informed about rights to negotiate a costs agreement and to challenge legal costs." [Page 3 – dot point 4].***

Unsophisticated clients would not know how to negotiate a costs agreement favourably for themselves and they are precisely the people who need to have some protection in negotiating the agreement.

***"Reasonableness – A costs agreement is prima facie evidence of what are fair and reasonable costs." [Page 3 – dot point 9].***

Given the number of cases arising out of costs agreements, more is needed to ensure that the costs agreement is fair and reasonable than a prima facie presumption.

***"Nature of determining costs"***

***"This involves an agreement under which the legal practitioner will be paid in the event of a particular outcome, and an agreement to pay the legal practitioner a certain percentage of the final settlement." [Page 9 – Footnote 14].***

The Society's current Professional Conduct Rules forbid charging a percentage of any judgment settlement or monetary sum to be recovered by the client. There are good policy reasons for forbidding charging on such basis. Are there good reasons to justify such method of charging?

**"Disbursements" [Page 13 and Attachment A]**

Photocopying is NOT a disbursement (unless it is done by a copying company externally and paid for accordingly). Photocopying is a legitimate administrative expense for work done for a client. It is recognised as such in the scales of costs where it is treated as an item of profit cost. In time costing billing it properly should be charged as an office administrative expense. It extends to cover the work reasonably required to attend to the copying. In any discussion about disbursements photocopying should be excluded. Where there is bulk photocopying to be done then the position will be such that there should be an adjustment of the cost and the practitioner should not be permitted an excessive profit.

'Photocopying' should therefore be deleted from 'Disbursements'. So too should faxes as again, they are a proper item of profit cost and chargeable as such on scale. They should therefore be charged as an administrative cost in a time-charging agreement.

In conclusion, while we acknowledge that the paper has merit, at the end of the day the reality is that compliance will probably be more cumbersome than under current regimes.

Yours sincerely



Richard Mellows  
**PRESIDENT**