



**THE LAW SOCIETY
OF SOUTH AUSTRALIA**

THE VOICE OF THE SOUTH AUSTRALIAN LEGAL PROFESSION

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C155, M32
JG; rp

The Hon Jane Lomax-Smith MP
Minister for Mental Health and Substance Abuse
GPO Box 778
ADELAIDE SA 5001

Dear Minister

Re: Costs in Guardianship & Mental Health Jurisdiction

Thank you for your letter of 20 March 2009. I am very pleased to hear that the scale of fees paid in these appeals, and the issues of travelling time and mileage, will be addressed when the regulations are drafted for the *Mental Health Bill*. Are you able to advise the timetable for drafting and passage of the Bill and promulgation of the Regulations? The Law Society will be happy to provide any assistance which you may find useful during the drafting phase.

With respect to the need for disbursements for medical reports, the Society is not surprised that other stakeholders have not raised this as an issue. It is a problem that becomes pressing during the appeal process but not, we suspect, at other times during the reception, diagnosis and treatment stages of mental illness. At appeal, it is not unusual for persons subject to orders to question the expert opinion of the detaining doctors. In other areas of law, where a party seeks to put forward an opposing expert opinion, the cost of that opinion (the disbursement) is allowed. In the Mental Health jurisdiction in this State, persons appealing against orders are not permitted, in any circumstances, to recover from the scheme (or to be charged by their lawyers) for the cost of the report of a different expert who may well disagree with the opinion put forward by the Crown. The present arrangement may give the appearance that the regulations are designed to prevent appealing parties from preparing their appeals on an equal footing with the State.

The Society notes that in other areas of law, such as WorkCover and CTP claims, limits have been placed on the amounts which reporting medical practitioners may charge for preparing reports and attending courts to give evidence. We suggest that regulations be drafted to permit expert medical reports to be obtained in appropriate cases, but with limits placed on the amounts which the medical practitioners may charge.

We would be most grateful if you would ensure that the draft regulations cover this aspect also.

Yours sincerely

John Goldberg
PRESIDENT