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## Show me the money: cost disclosure requirements cont...

Again, the term “successful” is not defined and must be treated with some caution. Cases where the fees significantly outweigh the amount of any award or settlement may not be construed as “successful”.

Conditional costs agreements cannot relate to criminal proceedings, Family Law proceedings or “prescribed” proceedings (see above).

The conditional costs agreement must be in writing and contain certain disclosures. For a full list of the requirements see section 129E.

### REVIEW OF AGREEMENTS

Section 129H enables the Law Society as well as the Court to review a costs agreement. If the Law Society or Court is satisfied that the agreement is “not fair and reasonable” it may order that the amount payable under the Agreement be reduced or declare the agreement not binding on the parties.

In the latter case it may make any other orders necessary to restore the parties to the position in which they would have been if the agreement had not been made.

### OTHER MATTERS

There are practitioners who, in their communications with clients, still use the term “costs” somewhat loosely, leading to a misapprehension on the part of the client that the term includes disbursements.

The terms “costs”, “disbursements” and “outlays” are technical terms and should be explained precisely.

Costs are the professional fees charged by the practitioner for time spent on the client’s matter.

Disbursements are actual charges incurred on behalf of the client for the express purpose of pursuing the client’s matter, such as expert reports, title searches, courier expenses.

Outlays are those charges incurred by the firm as a business which only indirectly impact on the client’s matter, such as registration fees, file opening fees, archival fees, use of research tools.

The disclosure requirements of the Legal Practitioners Act mean that all these types of charges must be explained to the client, otherwise they may not be payable by the client.

Unfortunately, some practitioners are still using the terms “quote” and “estimate” interchangeably, which has led to a number of complaints to the Society.

A quote is a fixed price and once agreed between practitioner and client cannot be deviated from without

the client’s consent. An estimate is an educated guess, based on the type of matter, complexity and any other relevant factor which may need to be updated regularly as the matter progresses. It should be noted that the Act imposes an ongoing obligation to keep the client regularly informed of costs and disbursements: s.118B(3).

Practitioners who use the terms indiscriminately may well be restricted to the “quote” rather than the “estimate”.

The Legal Profession Act 2006 will not come in to effect until 1 April 2007. It will replace the Legal Practitioners Act 1979. However, the costs disclosure requirements will remain.

Further articles will focus on the new trust account requirements which will be much more onerous than the current provisions.

## Regional law association speaks out on Fiji

LAWASIA, the Law Association for Asia and the Pacific, has strongly condemned the actions of the Fiji’s military in seizing executive power from the elected government. It has described the actions taken by Commodore Bainimarama as “a gross assault on the rule of law, which is unacceptable in a democratic country”.

LAWASIA President Mr Mah Weng Kwai of Malaysia said “We add our voice to others from both inside and outside Fiji in calling for an immediate return to rule of law through restoration of power to the elected government, for an immediate return of troops to barracks and for military leaders to use legal means to resolve their differences with the government.”

In a recent statement, LAWASIA noted its support for the right of the Fiji people to be governed by a lawfully elected government as provided for under its constitution.

“As a regional organisation of lawyers, we endorse the views of our member organisation, the Fiji Law Society, that the constitution is supreme law in Fiji and any attempts to abrogate it cannot be supported,” said Mr Mah.

LAWASIA represents the peak legal bodies of 24 countries of the Asia Pacific region.