

4 August 2016

The Honourable Yvette D'Ath MP  
Attorney-General  
Department of Justice and Attorney-General  
GPO Box 149  
BRISBANE QLD 4001

By post and by email: [attorney@ministerial.qld.gov.au](mailto:attorney@ministerial.qld.gov.au)

Our ref BP/LD/MD

Dear Attorney

### **Legal Profession Act 2007 – Sophisticated clients contracting into costs provisions**

I write to propose an amendment to *Legal Profession Act 2007* (Qld) (the Act) relating to sophisticated clients and cost disclosure.

This matter has been considered by the Society's Litigation Rules Committee.

The consumer protection provisions of Division 7 (ss334 to 344) create a structure for reviewing of legal costs outside the normal laws of contract. This structure requires lawyers to:

- (a) follow a strict process for non-sophisticated clients; and
- (b) for sophisticated clients, follow a similar structure with an opting out provision if the client wishes.

For sophisticated clients, section 344 provides as follows:

*"A sophisticated client of a law practice, or an associated third party payer who would be a sophisticated client if the third party payer were a client of the law practice concerned, may contract out of this division."*

"Sophisticated clients" are defined in the Act and its subsidiary legislation to include: Australian Legal Practitioners and law firms, public companies and their subsidiaries, large proprietary companies and large professional services partnerships, foreign companies and subsidiaries, financial services licensees, and registered bodies corporate, as well as liquidators, administrators and receivers, Government entities, overseas-registered foreign lawyers and law practices, and corporations where a majority of shares are held beneficially for the Commonwealth or State.

Within the profession in general, most lawyers working with sophisticated clients appear to follow the opt-out process. This necessitates an additional clause in the agreement. Whilst not a source of significant concern, it seems more appropriate to give effect to the norm and allow sophisticated clients to "opt in". The Legal Profession Uniform Law (the Uniform Law), enacted in Victoria and adopted by New South Wales, provide that commercial and government clients (akin to sophisticated clients) are excluded from the provisions that relate to costs, subject to some minor exceptions. 'Commercial and government clients' do not have to actively contract out of the relevant provisions and may more easily set their terms with their clients.

Accordingly, the Society submits that section 344 of the Act might be amended to provide as follows:

*This division does not apply to a sophisticated client of a law practice, or an associated third party payer who would be a sophisticated client if the third party payer were a client of the law practice concerned, unless they enter into a contract with the law practice that this division applies to them.*

The effect of such an amendment would be to give 'sophisticated clients' the ability to 'opt in' to the costs regime rather than have to take active steps to 'opt out'.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Government Relations Principal Advisor, Mr. Matt Dunn, on 3842 5862 or [m.dunn@qls.com.au](mailto:m.dunn@qls.com.au).

Yours faithfully



Bill Potts  
**President**