

30 June 2020

The Hon Peter Quinlan
Chief Justice of Western Australia
Chief Justice's Chambers
Supreme Court of Western Australia
28 Barrack Street
PERTH WA 6000

By email: Chief.Justice.Chambers@justice.wa.gov.au

Dear Chief Justice

COSTS DISCLOSURE FOR STRATEGIC CONFERENCE

I refer to paragraphs 10A to 10C of the usual orders for CMC List matters set out in Practice Direction 4.1.2.2, which provide as follows:

COSTS DISCLOSURE (FOR STRATEGIC CONFERENCE)

- 10A. By 4.00 pm on _____ [date] the solicitors for each party give their respective clients a memorandum setting out:
- (a) the legal costs and disbursements (including any expert fees) that the party has incurred to the date of the memorandum;
 - (b) the future legal costs and disbursements (including any expert fees) that it is estimated that the party will incur to the end of trial (setting out the estimated duration of trial); and
 - (c) the estimated party and party costs recoverable by, or payable by, the party in the respective cases of success or failure at trial.
- 10B. By 4.00 pm on _____ [date] the solicitors for each party file a copy of the memorandum provided to their client in accordance with par 10A, such information to be provided on a confidential basis.
- 10C. Until further order, access to the memorandum is restricted to the Court and to the party filing the memorandum, pursuant to Order 67B rule 5, on the basis that the information contained in the document is confidential.

The Law Society of Western Australia understands that the Court is trialling the provision of costs memoranda pursuant to paragraph 10B and that it is intended that the costs memoranda will enable the Court to make an assessment of matters of proportionality required by Order 1 rule 4B of the *Rules of the Supreme Court 1971*. The Law Society would be grateful for any information regarding the progress or outcome of the trial and how the success or otherwise of the trial has been measured.

The Law Society acknowledges that information provided to the Court about costs incurred and estimated future costs can assist the Court to make efforts to reduce the costs of proceedings. However, costs memoranda are presently provided to the Court on a confidential basis and access to a costs memorandum is restricted to the Court and to the party filing the memorandum unless the Court orders otherwise.

Ordinarily, any communications a party makes to the Court in the context of litigation must be disclosed to the other party or parties to the litigation. The Law Society is concerned that this does not apply to costs memoranda provided to the Court pursuant to paragraph 10B of the usual orders.

Transparency between the parties as to costs would allow the Court to openly comment on the costs of proceedings where they are disproportionate to the value, importance and complexity of the subject matter in dispute and the financial position of each party. Transparency as to costs may assist parties to put the costs of proceedings into perspective and encourage them to settle their dispute.

If you have any queries or would like to discuss the above further please contact Mary Woodford, General Manager Advocacy on 9324 8646 or mwoodford@lawsocietywa.asn.au.

Yours sincerely

A handwritten signature in blue ink, consisting of a stylized 'N' and 'H' followed by a long horizontal line.

Nicholas van Hattem
President