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The ABA acknowledges the relationship between the land on which it and its members work and the First Nations' peoples of Australia

17 August 2022

Megan Pitt  
CEO Legal Services Council and Commissioner for Uniform Legal Services  
Regulation  
Level 3  
19 O'Connell Street  
Sydney, 2000

By email: [REDACTED]

Dear Megan,

**Re: Consultation Paper on Conditional Costs Agreement**

I refer to your letter of 18 July 2022 and our responses to earlier letters from the Legal Services Council in relation to this matter.

As per previous correspondence, we understand that conditional costs agreements [CCAs] are prohibited in all relevant jurisdictions in respect of Family Law Act proceedings, which in the terms of the legislation include child maintenance proceedings and proceedings for the financial support of 'children' who have attained 18 years of age.

Whilst not required as a matter of law, our members advise that the most common basis upon which proceedings pursuant to the Child Support legislation come before a Court are in conjunction with other proceedings pursuant to the *Family Law Act* (per s.116(1) of the *Child Support (Assessment) Act*) or otherwise upon (essentially) administrative review of decisions of the AAT.

The various members of the ABA Family Law Committee are not aware of any practitioners who act in relation to child support issues on the basis of CCAs.

Whilst we are not aware of any published rationale for the prohibition of CCAs in Family Law Act proceedings, their prohibition is consistent with the personal nature of the litigation and public policy relating to such arrangements in relation to issues arising from relationship breakdowns, including in relation to the welfare of children, together with the operation of Legal Aid Schemes in relation to such issues.

Similar considerations arise in relation to the Child Support legislation – which for completeness comprises not only the Child Support (Assessment) Act but also the closely intertwined Child Support (Registration and Collection) Act.



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In the result the ABA agrees that, in the interests of consistency and having regard to those policy considerations, there should be a prohibition on the use of CCAs in relation to proceedings under the listed legislation in the letter of 18 July 2022 and the continuation of the prohibition on CCAs in proceedings that involve the *Family Law Act 1997 (WA)*.

Yours sincerely



GJ Tolhurst  
CEO