

**DEED OF AGREEMENT
(SETTLING A SOLICITOR/CLIENT OR UNIFORM LAW COSTS DISPUTE)**

The Deed of Compromise is intended to operate as an accord and satisfaction when settling a solicitor/client or uniform law costs dispute. It is not intended to be used routinely but in those cases where there is a genuine compromise of the costs in dispute such that the practitioner is able to evidence a significant concession as the consideration for bringing the costs dispute to a complete end. Practitioners should consider the below and the cases upon which the Deed is based prior to entering into the Deed.

The Deed is based upon the principles outlined in [GLS v Goodman Group Pty Ltd \[2015\] VSC 627](#) and these principles have yet to be specifically applied in a New South Wales Court with jurisdiction to determine such an issue. However, in [Amirbeaggi and 2 others -v- Business in Focus \(Australia\) Pty Limited \[2008\] NSWSC 421](#) Brereton J made comments about such agreements, quoting with approval from the judgment of Hodgson JA in [Koutsourais v Metledge & Associates \[2004\] NSWCA 313](#):

36. In [Koutsourais v Metledge & Associates...](#)

[9] So the question is, did this accord and satisfaction mean that proceedings to enforce it were not proceedings for the recovery of costs. In my opinion, this accord and satisfaction was insufficient to have that effect, for these reasons. First, the amount to be paid was still the precise amount claimed for costs. Second, the entity identified as liable for the whole was one of two entities which were together previously liable for the whole of the costs, albeit in undetermined shares. In my view, in substance it was still the recovery of costs that was being sought in the proceedings.

[10] In my opinion, this case is distinguishable from [Connolly Suthers v Frost \[1995\] 2 Qd R 117](#). In that case, it was conceded that the Queensland equivalent of s 192 had no application. This is understandable, where the contract sued upon was twice removed from the contract pursuant to which the solicitor became entitled to costs; and the contract actually sued on was a compromise of litigation that had actually been commenced.

[11] In my opinion, factors which would tend to make proceedings ultimately based, at least in part, on a lawyer's entitlement to costs, other than proceedings for recovery of costs, would include: a compromise of previous legal proceedings; a compromise involving other matters as well as costs; a compromise accepting in respect of costs a substantially lesser sum; and legal advice to the client at the time of the compromise. Each and all of these factors would in my opinion tend towards changing the character of proceedings based on the compromise from being proceedings for the recovery of costs. None of these factors was present in this case.

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41. In *Koutsourais*, Hodgson JA helpfully identified factors which pointed one way and the other. Significant considerations in favour of the conclusion that, despite the accord and satisfaction represented by the instalment agreement, the proceedings were still for the recovery of costs, included (1) that the amount to be paid was still the precise amount claimed for costs, and (2) that the entity identified as liable for the whole was one of two entities together previously liable for the whole of the costs, albeit in undetermined shares. Those two factors are present in the instant case: the amount claimed under the deed is the precise amount of the legal costs outstanding as at the date of the deed; and the parties against whom it is claimed are the parties who were previously liable for those costs.

42 None of the factors which his Honour identified as potentially rendering a proceeding ultimately based on a lawyer's entitlement to costs as one other than a proceeding for recovery of costs are present: there has been no compromise of previous legal proceedings in respect of those costs, let alone one involving other matters as well as costs; there has been no acceptance in respect of costs of a substantially lesser sum; and, although there is reference in the agreement to an opportunity to obtain legal advice, there is no evidence that legal advice was in fact obtained at the time of the deed.

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THIS DEED Is made this day of 2016

Parties

(“Lawyer”)

(“Client”)

Recitals

- A. Client has been a client of Lawyer;
- B. Lawyer has undertaken legal services for Client;
- C. Lawyer has rendered bills of costs to Client;
- D. Disputes have arisen between Lawyer and Client;
- E. Both Client and Lawyer have the right to have the costs assessed pursuant to the *Legal Profession Act 2004* (the Act) or the *Legal Profession Uniform Law (NSW) 2014* (the Uniform Law) but neither wishes to apply for a determination of the costs; OR
- E. Client is aware that Client can make a costs complaint about the costs pursuant to the Uniform Law but does not wish to make such a complaint and Lawyer is aware that Lawyer has the right to have the costs assessed pursuant to the *Legal Profession Act 2004* (the Act) or the *Legal Profession Uniform Law (NSW) 2014* (the Uniform Law) but does not wish to apply for a determination of the costs;
- F. Client and Lawyer have agreed that Lawyer will accept the Settlement Sum in full and complete satisfaction of the amount of costs owing to Lawyer;
- G. The parties have further agreed that acceptance by Lawyer of the Settlement Sum will absolutely release and discharge the Client from all claims suits and proceedings of all kinds which the Lawyer may now have against the Client;
- H. Client agrees that the Settlement Sum is a significant compromise on the amount claimed by Lawyer;
- I. The parties have agreed to settle and end their disputes on the terms set out herein.

Agreement

Payment

- 1. Client must pay Lawyer the sum of \$ (Settlement Sum).
- 2. Payment must be effected not later than days from the date of this Deed.

Discharge

3. On payment of the Settlement Sum, Lawyer absolutely and completely releases and discharges Client from all sums which Client owes to Lawyer as at the date hereof.

Acknowledgment

4. Client and Lawyer acknowledge that by entering into this Deed of Compromise, they are settling all matters in dispute between them and that they are respectively waiving their right to assessment of the costs claimed by Lawyer pursuant to the the Act or to the Uniform Law) or (in the case of Client) to make a complaint which is a costs dispute arising out of a consumer matter under Part 5 of the Uniform Law or to commence and maintain proceedings of any kind in respect of those costs (as the case may be) and that upon execution of this Deed, no application may be made by either party to the Manager Cost Assessment for determination of any of the costs claimed by Lawyer.

No assessment or complaint

5. Lawyer acknowledges that by entering into this Deed Lawyer may not commence or maintain any proceedings for the recovery of any amount of legal costs claimed from Client and that thereafter the only amount which Lawyer is entitled to claim from Client is the Settlement Sum.
6. Client acknowledges that by entering into this Deed Client may not make a complaint about Lawyer which is a costs dispute arising out of a consumer matter in respect of those costs pursuant to the Uniform Law, nor apply for assessment of the costs claimed by Lawyer.

Agreement not a costs agreement

7. (a) The parties expressly agree that this is a deed by which the parties have compromised their rights against each other and is not a costs agreement for the purposes of the Uniform Law (as the case may be) and not being a costs agreement will operate as an accord and satisfaction in any later proceedings or applications in relation to the costs.
(b) Client agrees that Lawyer would not have accepted the Settlement Sum if Client had refused to enter into this Deed of Compromise.

Understanding

8. Client acknowledges that Client has received legal advice in respect of this Deed and its effect and has understood that advice.

OR

8. Client acknowledges that
- (a) Client has been advised to get independent legal advice in respect of this Deed, but has elected not to get that advice; and
 - (b) Client understands the effect of this Deed.

Execution

Executed as a Deed by

Lawyer, in the presence of

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Client, in the presence of

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