

Our ref: LLPC/Costs:RMsh270726

27 July 2026

Dr James Popple
Chief Executive Officer
Law Council of Australia
PO Box 5350
Braddon ACT 2612

By email: [REDACTED]

Dear Dr Popple,

JOINT COSTS ADVISORY COMMITTEE INQUIRY 2026

The Law Society appreciates the opportunity to contribute to a possible Law Council submission to the Joint Costs Advisory Committee (**JCAC**) in relation to its 2026 Inquiry into Legal Practitioners' Scale of Costs. The Law Society's Litigation Law and Practice and Costs Committees have contributed to this submission.

We agree with the Law Council that some of the scales of costs across the federal courts have failed to keep pace with actual costs incurred by parties, and do not reflect the value of the intellectual work undertaken by lawyers, current charging practices, current market conditions, and changes in the technology used by practitioners.

Federal Circuit and Family Court of Australia

Our members support an increase to the Federal Circuit and Family Court of Australia (**FCFCOA**) scales to similar scale charges as detailed in the Federal Court scales, with increases implemented to those scale charges applying on an ongoing basis. We consider that the current FCFCOA scales do not ensure successful parties obtain a reasonable recovery for party/party costs when they obtain the benefit of a costs order. Our members have also observed that while the general rule in family law proceedings is that each party pays their own costs, more costs orders are being made by the Court in family law proceedings than in the past. In our view, that trend underscores the importance of ensuring that the scales are effective in facilitating reasonable recovery of costs both for the benefit of the parties in favour of which the costs orders are made and to give proper effect to the making (or risk) of an adverse costs order.

Updating of Fees

We suggest that scales and fees generally require more regular and objective review to ensure allowable costs/fees keep pace with developments in the market. We note, for example that the Federal Court's National Guide to Counsel Fees has not been updated for more than 12 years, with the last version issued by the Court in 2013. This increases the risk of a disproportionate 'gap' in the recovery of fees payable to counsel, which becomes the responsibility of the solicitor engaging counsel and, ultimately, their client.

Impact of AI and technological change on the costs landscape

In our members' experience, artificial intelligence (AI) and other legal technologies are changing the way legal work is undertaken and legal services are delivered. Consistent with the Law Council's previous submissions, the Law Society considers that costs scales should remain responsive to technological developments and should reflect the work reasonably required in contemporary legal practice. However, this does not necessarily mean that work involving the use of AI requires new or separate scale items.

We note the Federal Court scale already includes an item for "Electronic Document Management" (scale item 6). That item was introduced to address technology-enabled work associated with voluminous discovery, including database creation and related work often undertaken by information technology teams within law firms. It illustrates that the scales can accommodate changes in litigation practice where particular categories of technology-related work become sufficiently established and distinct.

At this stage, the Law Society does not suggest that AI should be addressed by a discrete scale item in the federal courts' costs scales. Where use of AI reduces the time required for a particular task, the amount charged should ordinarily reflect the actual reduced time spent. At the same time, practitioners remain responsible for the accuracy, reliability and appropriateness of work undertaken with the assistance of AI. The use of AI does not remove the need for, and time spent in, applying professional judgment and undertaking supervision and verification of work performed with the assistance of AI. Our members also hold the view that AI-related expenses should not necessarily be automatically treated as recoverable disbursements. Although practitioners may now incur costs such as AI software licencing, those costs may often be properly characterised as office overheads. If a party seeks to recover a software-related expense as a disbursement, that claim should be assessed on its own facts.

For these reasons, the Law Society considers that the preferable approach at this time is ongoing monitoring of the impact of AI and other technological change on litigation costs. Costs scales should continue to operate as practical, contemporary instruments that reflect the work reasonably required in modern litigation, while avoiding premature or overly prescriptive treatment of technologies the cost implications of which are still developing.

Thank you for seeking the Law Society's views. Questions at first instance may be directed to Sonja Hewison, Policy Lawyer, at (02) 9926 0219 or sonja.hewison@lawsociety.com.au.

Yours sincerely,



Ronan MacSweeney
President