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Contingency fees opposed by Law Council

Enabling lawyers to hold a direct financial interest in the outcome of their client's case creates a serious risk of compromising a practitioner's fundamental ethical obligations to the court and their clients, the Law Council of Australia has warned.

At a recent board meeting of the Law Council, directors resolved to oppose contingency fees as a matter of principle.

At the meeting a fundamental concern was expressed that contingency fees could not be introduced without adversely affecting litigants' interests and lawyers' ethical duties.

"I am a passionate advocate of promoting access to justice, but I do not accept that contingency fees will promote that objective," Law Council President Pauline Wright said.

"Should any government in Australia propose any contingency fee arrangements, the Law Council will have to carefully consider that proposal as against all the legal profession's fundamental obligations."

The motion followed consideration by the Victorian Government to allow plaintiff lawyers to claim a percentage of the amount recovered in a successful group claim as their costs payable in the proceeding. It was considered that the model proposed could create a conflict of interest between the solicitor and the client, requiring solicitors to run the risk of adverse costs orders and security for costs.

"In most jurisdictions in Australia a 'no win – no fee' arrangement is available that enables civil claims matters to be taken on for clients without deep pockets and matters that merit litigation in the public interest," Ms Wright said.

"Public interest cases would not benefit from the introduction of percentage-based fee agreements, and neither would low income matters."

"Percentage-based fee agreements would only benefit large law firms that are already billing via conditional fee arrangements – generating a higher premium with no commensurate increase in risk," Ms Wright said.

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The Law Council of Australia is the national voice of the legal profession, promoting justice and the rule of law.