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Lawyers to warn clients of risks of crowdfunding

Lawyers have been warned to be aware of the risks of crowdfunding and the professional and ethical issues they need to consider when navigating this complex issue with clients.

To assist the legal profession deal with the emerging use of crowdfunding in litigation the Law Council of Australia has today released guidance for legal practitioners.

Law Council President Arthur Moses SC said crowdfunding can be a useful tool to provide access to justice but it is not without significant risks.

“Crowdfunding is not inherently unethical. The crowdfunding of legal expenses has developed as a means to provide access to the courts and legal redress, particularly as the public funding of legal aid has been restricted by successive governments,” Mr Moses SC said.

“However, like anything, the crowdfunding of legal expenses needs to be managed so that it is not misused. This involves striking a balance. Regulation that is too restrictive could have a dampening effect on access to justice.”

Mr Moses SC said the Law Council had developed a *Guidance Note for Australian Legal Practitioners* that promotes an ethical approach to crowdfunding rather than limiting access.

The Guidance Note reminds practitioners to be mindful that their conduct in relation to crowdfunding does not discredit the profession.

“Lawyers have ethical and professional obligations to which they must adhere when engaging in legal practice. These ethical obligations have formed the foundation for the Guidance Note,” Mr Moses SC said.

“The Guidance Note does not dictate how clients should use their funds, it merely outlines relevant regulatory and ethical frameworks and how crowdfunding of legal expenses fits into those frameworks.”

In providing advice to clients, lawyers should tell clients about:

- the applicable regulations specific to the crowdfunding model to be used;
- any other applicable legislation or regulations;
- the consequences of disclosing information about the case — including privilege/waiver of privilege, the law of confidential information, and the requirement not to disclose information provided by another party under compulsion; and
- the risks and ramifications of making misrepresentations when seeking crowdfunding.

Practitioners should also address with clients how funds should be managed. This includes any surpluses and what happens if insufficient funds are raised, and the possibility and impact of adverse costs orders.

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