

FACT SHEET

LEGAL COSTS – YOUR RIGHT TO KNOW

FORM 2

Legal Profession Regulations 2009

Regulation 80(1) - Form of disclosure of clients' rights

Legal Profession Act 2008 (the Act)

Section 260(5) and Section 260(1)(b)(i),(ii),(iii),(g), (i),(j) and (l)

1. Your right to negotiate a costs agreement with the law practice

The majority of law practices will ask you to sign a costs agreement. You have the right to negotiate with your lawyer about the terms of the costs agreement including the rate at which your lawyer and associates of the law practice will charge for their legal services.

You should ensure that you understand the terms of the costs agreement including when the agreement will take effect. It may not be necessary for you to sign the agreement before it takes effect.

2. Your right to receive a bill of costs from the law practice

You have a right to receive a bill before you pay for legal work (section 290 of the Act).

You will receive either:

- a bill that summarises the work that has been done and the total cost of this work (lump sum bill); or
- a bill that details each item of work, usually in units of 6 minutes at the relevant hourly rate (itemised bill).

All bills, or an accompanying letter from the law practice, must be signed on behalf of the law practice.

3. Your right to request an itemised bill after receiving a lump sum bill

If you do not receive an itemised bill, you have a right to request one (section 292 of the Act).

Your lawyer cannot charge for preparing the itemised bill.

However, it is possible that the total amount of the bill may increase when each item of work has been itemised and the cost calculated.

It is recommended that your request for an itemised bill reach the law practice within 30 days after you receive the lump sum bill. Although you are not required by law to request an itemised bill within 30 days your lawyer is entitled to sue you for unpaid legal fees after 30 days have elapsed since you were given the bill. If you request an itemised bill the 30 days will run from the date your request was complied with by the law practice.

4. Your right to know the rate of interest to be charged by the law practice

A law practice is entitled to charge interest on overdue legal costs.

You have a right to know the rate of interest that the law practice charges on overdue legal costs, whether that rate is a specific rate of interest specified in the costs agreement or a benchmark rate of interest as prescribed by the *Legal Profession Regulations 2009* (section 273 of the Act).

5. Your right to be notified of any substantial change to estimate of costs and other matters disclosed to you when retaining the law practice

It is difficult to predict the exact cost of litigation in advance. The cost of court proceedings can vary depending on a number of factors including the actions of the other party which cannot be anticipated.

Your lawyer must give you an estimate of the costs to be charged to you, the costs you are likely to get back if you win and the costs you are likely to pay if you lose, but generally your lawyer will not be able to tell you these exact costs at the outset.

If there is a substantial change to anything that your lawyer has told you, your lawyer must tell you of the changes as soon as it is reasonably practical for your lawyer to do so (section 267 of the Act).

6. Your right to progress reports

You have a right, on reasonable request, to:

- a written report of the progress of the matter;
- a written report of the legal costs incurred by you to date, or since the last bill (if any) in the matter.

The law practice may charge a reasonable amount for the report of the progress of the matter but cannot charge you for a report on legal costs that have been incurred by you (section 269 of the Act).

7. Your right to a notice telling you about your rights

A notice telling you about your rights to challenge legal costs must be sent with the bill (section 291 of the Act.)

8. Your rights in the event of a dispute in relation to legal costs

Your rights include:

- (i) the right to apply for a costs assessment;
- (ii) the right to apply to set aside your costs agreement;
- (iii) the right to make a complaint.

(i) Costs assessment

An application for assessment of a bill must be made within 12 months after the bill was received by you (section 295 of the Act).

However, if an application is made out of time, a Supreme Court Officer may determine, having regard to the delay and the reasons for the delay that it is just and fair for the application for assessment of the bill to be dealt with after the 12 month period.

(ii) Setting aside the costs agreement

On application by a client, the Supreme Court may order that a costs agreement be set aside if satisfied that the agreement is not fair or reasonable (section 288 of the Act).

There is no time limit prescribed in the Act for bringing an application to set aside a costs agreement.

In determining whether or not to set aside a costs agreement, the Supreme Court will have regard to a number of factors including:

- whether the client was induced to enter into the agreement by fraud or misrepresentation;
- whether any practitioner acting for the law practice has been found guilty of unsatisfactory professional conduct or professional misconduct in relation to the legal services to which the costs agreement relates;
- the circumstances and conduct of the parties before and after the agreement was made;
- the disclosure made by the law practice and how the costs agreement and billing under the agreement address changed circumstances that might foreseeably arise.

(iii) The making of a complaint

The Legal Profession Complaints Committee is the statutory body established under the Act to receive and investigate complaints against Australian legal practitioners.

A complaint may be made about conduct of an Australian legal practitioner irrespective of when the conduct is alleged to have occurred.

However, a complaint cannot be dealt with (otherwise than to dismiss it or refer it to mediation) if the complaint is made more than 6 years after the conduct is alleged to have occurred unless the Legal Profession Complaints Committee determines that —

- (a) it is just and fair to deal with the complaint having regard to the delay and the reasons for the delay; or
- (b) the complaint involves an allegation of professional misconduct and it is in the public interest to deal with the complaint.

A determination under subsection (2) is final and cannot be challenged in any proceedings by the complainant or the Australian legal practitioner concerned (Sections 411(1) - (3) of the Act).

A complaint should be made to:

The Law Complaints Officer
Legal Profession Complaints Committee
2nd Floor "Colonial Building"
55 St George's Terrace
PERTH WA 6000

Phone: (08) 9461 2299
Fax: (08) 9461 2265
Email: lpcc@bigpond.com.au

Additional information about making a complaint is available at www.lpbwa.org.au
Scroll down the Menu on the left hand side of the Legal Practice Board's home page to 'Complaints Committee'.

9. Your right to have Western Australian or interstate costs law apply to your matter

Ordinarily, the law that will apply to your dealings with your lawyer, including in relation to costs, will be the law of the State of Western Australia.

However, the law of another State or Territory may apply if your matter has a substantial connection to that other State or Territory or if you and your lawyer agree that law of that other State or Territory will apply.

FACT SHEET

YOUR RIGHT TO CHALLENGE LEGAL COSTS

FORM 3

Legal Profession Regulations 2009

Regulation 82(1) - Form of Notification of clients' rights

Legal Profession Act 2008 (the Act)
Section 291(3) and Sections 291(1)(a) and (b)

All bills issued by law practices must include or be accompanied by a written statement setting out –

- (a) That the following avenues are open to the client in the event of a dispute in relation to legal costs –
 - (i) costs assessment under Division 8;
 - (ii) the setting aside of a costs agreement under section 288;
 - (iii) making a complaint under Part 13;and
- (b) any time limits that apply to the taking of any action referred to in paragraph (a).
(sections 291(1)(a) and (b) of the Act).

Form 3 to the *Legal Profession Regulations 2009* states that clients should discuss their concerns with their lawyer.

1. Requesting an itemised bill

If you do not receive an itemised bill, you have a right to request one (section 292 of the Act).

The law practice must comply with your request within 21 days after the date on which your request is made.

Your lawyer cannot charge for preparing the itemised bill.

However, it is possible that the total amount of the bill may increase when each item of work has been itemised and the cost calculated.

It is recommended that your request for an itemised bill reach the law practice within 30 days after you receive the lump sum bill. Although you are not required by law to request an itemised bill within 30 days, your lawyer is entitled to sue you for unpaid legal fees after 30 days have elapsed since you were given the bill. If you request an itemised bill, the 30 days will run from the date your request is complied with by the law practice.

2. Discussing your concerns with your lawyer

It is prudent to discuss your concerns with your lawyer. It may be that you have misunderstood your bill or it may be that the lawyer has made a mistake. Discussing your concerns with your lawyer could lead to an early resolution of your concerns and thereby avoid the delays and costs associated with the exercise of your other rights.

3. Having your costs assessed

An application for assessment of a bill must be made within 12 months after the bill was given to you (section 295 of the Act).

However, if an application is made out of time, a Supreme Court Taxing Officer may determine, having regard to the delay and the reasons for the delay that it is just and fair for the application for assessment of the bill to be dealt with after the 12 month period.

4. Applying to set aside the costs agreement

On application by a client, the Supreme Court may order that a costs agreement be set aside if satisfied that the agreement is not fair or reasonable (section 288 of the Act).

There is no time limit prescribed in the Act for bringing an application to set aside a costs agreement.

In determining whether or not to set aside a costs agreement, the Supreme Court will have regard to a number of factors including:

- whether the client was induced to enter into the agreement by fraud or misrepresentation;
- whether any practitioner acting for the law practice has been found guilty of unsatisfactory professional conduct or professional misconduct in relation to the legal services to which the costs agreement relates;
- the circumstances and conduct of the parties before and after the agreement was made;
- the disclosure made by the law practice and how the costs agreement and billing under the agreement address changed circumstances that might foreseeably arise.

5. The making of a complaint

The Legal Profession Complaints Committee is the statutory body established under the Act to receive and investigate complaints against Australian legal practitioners.

A complaint may be made about conduct of an Australian legal practitioner irrespective of when the conduct is alleged to have occurred.

However, a complaint cannot be dealt with (otherwise than to dismiss it or refer it to mediation) if the complaint is made more than 6 years after the conduct is alleged to have occurred unless the Legal Profession Complaints Committee determines that —

- (a) it is just and fair to deal with the complaint having regard to the delay and the reasons for the delay; or
- (b) the complaint involves an allegation of professional misconduct and it is in the public interest to deal with the complaint.

A determination under subsection (2) is final and cannot be challenged in any proceedings by the complainant or the Australian legal practitioner concerned (Section 411(1) - (3) of the Act).

A complaint against a lawyer should be made to:

The Law Complaints Officer
Legal Profession Complaints Committee
2nd Floor "Colonial Building"
55 St George's Terrace
PERTH WA 6000

Phone: (08) 9461 2299
Fax: (08) 9461 2265
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