

Fact Sheet 4 - Regulated Costs – Personal Injury Claims

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Costs comprise the professional fees and expenses and disbursements charged by a lawyer. The costs of a solicitor, for example, include professional fees and disbursements such as fees for medical reports or other expert reports, court filing fees, fees of process servers/agents and barrister's fees.

Lawyers in New South Wales are generally free to charge for their services on any basis they choose, provided their charges are "fair and reasonable". Most lawyers either charge a fixed amount or calculate the amount they will charge their client at an hourly rate.

Certain costs are regulated by legislation. The Legal Profession Uniform Law Application Act 2014 regulates costs in claims of up to \$100,000 for "legal services" provided by solicitors and barristers in personal injury cases. Legal services do not include disbursements (for example, expert witness reports, medical reports, court filing fees, etc) incurred by the lawyer in the preparation and running of the case.

The provisions fixing maximum costs in personal injury cases are contained in Schedule 1 to the *Legal Profession Uniform Law Application Act 2014*.

Maximum Costs are fixed for claims up to \$100,000

Where the amount of personal injury damages recovered does not exceed \$100,000, there is a limit to what a lawyer can charge for legal services as follows:

- for legal services provided to the plaintiff – 20 per cent of the amount recovered or \$10,000, whichever is the greater; and
- for legal services provided to the defendant – 20 per cent of the amount sought to be recovered by the plaintiff or \$10,000, whichever is the greater.

These sums may be increased in certain circumstances.

Exceptions

- A lawyer is entitled to "contract out" which means they can enter into a costs agreement with a client in which case the costs limitations between the practitioner and client **do not apply**. A lawyer can charge for their services on any basis they choose, provided their charges are "fair and reasonable". The lawyer must disclose to the client the basis of the

costs and must enter into a written costs agreement with the client. [Further information can be found on the OLSC Fact Sheet **Costs Disclosure**] This, however, does not mean that all costs incurred by a client are recoverable from the opposing party as there may be a **gap** between what the court awards in costs and the amount that the client has to pay the lawyer.

- The court may order certain legal costs to be excluded from the maximum costs limitation if those costs were incurred because of the unreasonable or unnecessary conduct of the opposing party.
- The Act does not prevent the court awarding costs on an indemnity basis where settlement offers have been made and not accepted.

If a client is not happy with the costs charged by the lawyer they are entitled to make a complaint about the costs to the OLSC or have the bill assessed by a Costs Assessor at the Supreme Court of NSW. [Further information can be found on the OLSC Fact Sheets **Costs Disputes** and **Costs Dispute Resolution**]

Reasonable prospects of success

A lawyer must not provide legal services on a claim or a defence for damages (hence not restricted to personal injury litigation) unless they reasonably believe, on the basis of provable facts and a reasonably arguable view of the law, that the claim or defence has reasonable prospects of success.

This obligation overrides the lawyer's obligation to the client.

A lawyer may provide legal services as a preliminary matter for the purpose of proper and reasonable consideration of whether or not a claim or defence has reasonable prospects.

In the event that a court finds that a lawyer acted on a claim or defence without reasonable prospects of success, it can order the lawyer be personally liable for the costs incurred by their clients or costs incurred by another party in the proceedings.