

Fact Sheet 2 - Costs Disclosure

July 2015

The *Legal Profession Uniform Law (NSW)* requires law practices to disclose their costs to their clients.

A law practice must provide a client with information disclosing:

- The basis on which the costs will be calculated in the matter, including the costs of any other law practice intended to be retained on behalf of the client;
- An estimate of the total costs, including the costs of any other law practice intended to be retained on behalf of the client;
- The client's right to negotiate a costs agreement with the law practice;
- The client's right to negotiate the billing method;
- The client's right to receive a bill from the law practice;
- The client's right to request an itemised bill after receiving a bill that is not itemised or is only partially itemised; and
- The client's right to seek the assistance of the NSW Legal Services Commissioner in the event of a dispute about costs.

It is not unusual for unforeseen costs to arise as a matter progresses. A law practice must disclose any significant change to anything previously disclosed, providing information disclosing the change and its impact on legal costs.

Law practices must, after making costs disclosure, take steps to ensure a client understands, and has given consent to, the proposed course of action for the conduct of the matter and the proposed costs.

The client should enquire about other expenses that are likely to arise. These expenses are called disbursements. Examples of disbursements include fees for medical and other experts' reports, fees for filing documents in court, witnesses' expenses and barristers' fees. The client pays for disbursements either directly or as part of the law practice's bill.

It is often difficult to predict the final cost of legal services because most matters involve some unknown factors. The client should ask the lawyer to estimate how long the matter is likely to take and what kinds of expenses are likely to be involved.

When and How is Disclosure Made?

A law practice must disclose the required information after instructions are initially given in a matter. In matters where that is not possible, such as an urgent criminal matter or an urgent letter as a first step in a longer process, the law practice must disclose the costs as soon as practicable after doing that work.

Costs disclosure must be in writing and should be in plain English. There is no requirement that the disclosure be signed by the client.

Exception to the Requirement for Costs Disclosure

A law practice is not required to disclose costs if total legal costs in the matter (excluding GST and disbursements) are not likely to exceed \$750.00.

Alternative costs disclosure

If the total legal costs in a matter (excluding GST and disbursements) are not likely to exceed \$3,000.00, the law practice may provide a short, standard form costs disclosure rather than making full costs disclosure.

Additional Disclosure on Settlement of Litigious Matters

If a law practice negotiates the settlement of a litigious matter on behalf of a client, the law practice must disclose to the client, before the settlement is executed:

- A reasonable estimate of the amount of costs payable by the client if the matter is settled, including any costs of another party that the client is to pay; and
- A reasonable estimate of any contributions towards those costs that the client is likely to receive from another party.

In family law matters, if an offer of settlement is made during a property case, there is also a duty to inform a client about actual costs to date and estimated costs to complete the case.

Failure to Disclose

If a law practice does not provide the required costs disclosure to the client:

- Any costs agreement is void; and
- The client is not required to pay the costs, and the law practice must not commence or maintain proceedings for the recovery of the costs, until they have been assessed or any costs dispute has been determined by the NSW Legal Services Commissioner. (The Commissioner may, in some cases, refer the costs dispute to the Law Society or Bar Association); and
- The failure is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of the lawyer involved.