

# Legal Costs - your right to know

## *Legal Profession Act 2007 – Queensland*

This notice does not apply to costs in **Family Court matters**. The rules for disputing costs in those matters are summarised in the Family Court of Australia Costs Notice, which is available at [www.familycourt.gov.au](http://www.familycourt.gov.au). Different time limits may apply, please speak to the Family Court for further information.

### **Part 1 Your right to negotiate**

You can negotiate with your lawyer about the amount that your lawyer will charge you. Make sure that you understand what you are agreeing to, and ask questions if you are unsure about the costs agreement. You will have to pay the costs that you have agreed to, unless the agreement is set aside (see Part 5 below).

There will be 2 types of cost agreements:

- Conditional Cost Agreement – this agreement will advise of the fees and outlays you will be required to pay **ONLY** if there is a successful outcome to your matter. These agreements are known as “no win no fee”.
- Cost Agreement – For all other legal work and will set out the fees and outlays you will be required to pay as the matter proceeds irrespective of the outcome.

Further your lawyer must, in writing make disclosure of:

- the basis on which the legal costs you will pay will be calculated (this includes notification of any scale of costs);
- A realistic estimate of the total legal costs (or a range of estimates) with an explanation of the major variables affecting the calculation of the costs;
- Your right to:
  - Negotiate the costs agreement
  - Receive a bill (see Part 2 below)
  - Request and itemised bill (see Part 2 below)
  - Be notified of any substantial changes to the matters already disclosed (see Part 3 below)
  - Be provided with Progress Reports (see Part 4 below)
  - Have a cost assessment if you dispute the bill and the time limits that apply (see Part 5 below)
  - To apply to the Supreme Court to set aside the costs agreement
- The intervals at when you will be billed;
- The rate of interest you will be charged for overdue legal costs;
- The identity of the person in the legal practice for you to contact to discuss costs;
- The rate of the uplift fee (*conditional cost agreements only*) and the reasons why the uplift fee is warranted. An uplift fee must not exceed 25% of the costs excluding disbursements;
- A cooling-off period of 5 clear days (*conditional cost agreements only*);
- If your matter is a litigious matter (*a matter where proceedings are to be commenced in a Court or tribunal*) then the legal practice must also disclose the range of costs that you may expect to

recover if successful and the range of costs you may expect to pay if your matter is unsuccessful;

Your lawyer does not have to make disclosure to you if the legal work is less than \$750 exclusive of GST.

## **Part 2 Your right to receive bills**

You have a right to receive a bill before you pay for legal work. Usually, the bill gives a summary of the work and asks you to pay the full amount. If you want more information about how the costs were calculated, you can ask for a detailed account (an itemised bill) that sets out what work your lawyer did and how much your lawyer has charged for each item of work. Your lawyer cannot charge for preparing the itemised bill, however, it is possible that the total amount of the bill may increase once each piece of work is itemised. Your lawyer is to provide the itemised bill within 28 days of your request.

Your lawyer may take court action against you if you fail to pay your bill. However, your lawyer cannot start legal action against you until 30 days after giving you the bill (or 30 days after giving you an itemised bill, if you have requested one) or during a costs assessment. A notice telling you about your rights to challenge legal costs must be sent with the bill.

You also have the right to accept or reject any notification your lawyer gives requesting interstate cost laws to apply to your matter and alternatively you have the right to notify your lawyer if you require interstate costs laws to apply to your matter. (This right only applies when matters extend across state boundaries – see Part 6).

## **Part 3 Your right to be notified of changes**

It can be difficult to predict the exact cost of litigation in advance. The cost of a court case will vary depending on the actions of other parties, orders made by the court and other factors. Your lawyer must give you a realistic estimate, but often cannot tell you the exact cost up front.

If there is a *substantial* change to anything that your lawyer has told you previously about your costs, the lawyer must tell you of the change as soon as s/he can.

## **Part 4 Your right to request written progress reports**

You can ask your lawyer for a written report about (a) the progress of your matter, and (b) the legal costs you have run up in total, or since your last bill. Your lawyer can charge for the progress reports, but is not allowed to charge for the update on legal costs.

## **Part 5 What to do if you are unhappy with your legal costs**

There are **time limits** that apply to taking particular action in relation to legal costs. You should read this fact sheet carefully, and seek advice if you are unsure about anything in it.

*Discuss your concerns with your lawyer.* Most clients resolve their concerns about their legal costs simply by discussing their concerns with their lawyer. If you are not happy with a bill, your first step should be to do this, either before or after receiving an itemised bill. Once your lawyer has understood your concerns s/he may agree to review the bill.

*Mediation:* If negotiating with your lawyer does not work you should consider costs mediation. Costs mediation may be formal or informal, and provides you with an opportunity to discuss your concerns with the assistance of an independent facilitator. Mediation is generally a quicker and cheaper alternative to costs assessment. Mediators cannot give legal advice during the mediation, and cannot

decide on the fairness or reasonableness of the costs. Contact the Dispute Resolution Centre at the Department of Justice & Attorney-General on 32396269 (if phoning from Brisbane) or 1800 017288 (other than Brisbane) for more information.

**Costs assessment:** This is where an independent court-appointed person considers the bill and your objections to it. The costs assessor will decide what is a fair and reasonable amount for you to pay. You have **12 months** from the bill being given to you (or a request for payment being made, or when you paid the costs) to apply for costs assessment. Extensions of time will only be granted in special circumstances.

**Setting aside the costs agreement:** If you believe that your costs agreement is not fair or reasonable, you can apply to the Supreme Court to have the agreement set aside. If the costs agreement is set aside, the costs assessor will then decide how much you should pay for the legal work.

There may be other ways you can resolve your concerns about legal costs. You should seek legal advice if you feel that the avenues set out above are not appropriate for you.

A separate fact sheet: *Legal Costs – your right to challenge legal costs* provides further information.

## **Part 6 Which law will apply?**

Ordinarily, the law that will apply to your dealings with your lawyer will be the law of the State or Territory in which you first engaged the lawyer. However, the law of another State or Territory may apply if your matter has a substantial connection to that other State or Territory, and you and your lawyer agree that law of that other State or Territory will apply.

## **Part 7 Who to contact for more information**

### ***Courts of Queensland***

A full list of the Courts in Queensland giving locations and contact details can be found at the Queensland Government's Courts website at:

[www.courts.qld.gov.au](http://www.courts.qld.gov.au).

### ***Legal profession regulators***

**Office of the Legal Services  
Commissioner**

Ph: (07) 34067737  
Freecall: 1300 655 754  
[www.lsc.qld.gov.au](http://www.lsc.qld.gov.au)

More fact sheets available.

**Client Relations Centre of the Queensland Law  
Society**

Ph: (07) 38425843  
[www.qls.com.au](http://www.qls.com.au)

***Legal and procedural advice*** - the following organisations provide free legal advice:

#### **Community Legal Centres (CLCs)**

A list of CLCs in your area is available by visiting their website at

[www.qails.org.au](http://www.qails.org.au)