

## FACT SHEET

### COSTS DISCLOSURE:

### WHAT YOUR LEGAL PRACTITIONER IS REQUIRED TO TELL YOU ABOUT COSTS

#### How are legal costs charged?

Legal costs are charged in one of three ways:

1. By a costs agreement. A costs agreement is a contract with your practitioner that details the arrangements for their legal fees; or
2. If a costs agreement doesn't apply, by a costs determination. Cost determinations are costs scales set by an independent body, the Legal Costs Committee, to regulate the payments a legal practitioner receives for their legal services. They only apply to some matters; or
3. If there is neither a costs agreement nor a costs determination, according to the fair and reasonable value of the legal services provided.

#### What should my legal practitioner tell me about legal costs?

According to Section 260 of the Legal Profession Act 2008, legal practitioners must disclose in writing details of their costs to clients. This means that your practitioner **must** tell you:

- The way that he or she intends to calculate their costs;
- Whether there are any cost determinations which apply to your type of matter;
- That you are entitled to negotiate a costs agreement;
- That you are entitled to receive a bill and, if you receive a lump sum bill and want more information, you are entitled to receive a more detailed (itemised) bill;
- Your right to be notified of any substantial changes to the anticipated costs for your matter and the other matters disclosed to you when retaining the law practice;
- An estimate of the total legal costs involved or, if that is not practicable, a range of the estimates of the total legal costs with an explanation of the major variables that may affect the calculation of those costs;
- How often you will receive a bill;
- The rate of interest that you will be charged if you don't pay your bill on time and whether that interest is a specific set rate or is a benchmark rate. (A benchmark rate is a rate equal to or

calculated by reference to a rate specified from time to time by a bank or other body, or other legislation, that is publicly available);

- That you are entitled to ask for a progress report either in relation to the matter (which you may be charged a reasonable amount for) or in relation to legal costs incurred (which you may not be charged for);
- Details of who to contact to discuss your legal costs;
- Details of your options if you dispute your legal practitioner's costs – applying for a costs assessment, applying to set aside your costs agreement and/or making a complaint. Details of any time limits that apply to those options must also be provided; and
- That the law that applies to the issue of costs will be Western Australian law, unless you elect for the law of another State or Territory to apply.

### **How should my practitioner tell me about legal costs?**

Your practitioner must disclose details of their costs to you in writing before commencing any work for you. If this is not possible (for example, if you have a matter that requires urgent attention) your practitioner must disclose details of their costs to you as soon as is practicable. Costs disclosures must be in writing and in plain English.

### **Additional disclosure for litigation matters**

If your matter is litigious (a matter that involves or is likely to involve the issue of proceedings in a court or tribunal), there are additional things your legal practitioner **must** tell you:

- An estimate of the range of costs that you may recover if you are successful;
- The range of costs that you may be ordered to pay if you are unsuccessful;
- That an order by a court for the payment of costs in your favour will not necessarily cover all of your legal costs;
- That disbursements may be payable by you even if you have a conditional costs agreement. (A conditional costs agreement means a costs agreement that provides that the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which those costs relate. Disbursements are outlays by your practitioner for items such as medical reports and counsel fees).

If your practitioner is negotiating a settlement on your behalf then before the settlement is executed your practitioner **must** tell you:

- A reasonable estimate of the legal costs you will be required to pay if the matter is settled (including any legal costs of another party that you are to pay); and
- A reasonable estimate of any contributions towards your legal costs likely to be received from another party.

### **Additional disclosure for matters involving uplift fees**

Your practitioner may ask you to sign a costs agreement involving an uplift fee. An uplift fee means additional legal costs (excluding disbursements) payable under a costs agreement on the successful outcome of a matter to which the agreement relates. If your costs agreement includes a provision for uplift fees, your practitioner **must** tell you the following **before** you enter into the agreement:

- The practice's legal costs;
- The uplift fee (or the basis for the calculation of the uplift fee); and
- The reasons why the uplift fee is warranted.

The only exceptions to this are if you are one of the clients listed in *Section 263(2)(c) or (d)* – refer below.

### **Exceptions to the requirements for costs disclosure**

Under Section 263 of the Act your legal practitioner is not required to disclose details of their costs to you if:

- The total legal costs in the matter are not likely to exceed \$1500 (excluding disbursements and GST) or the amount prescribed in the regulations (though if a law practice subsequently becomes aware that the total legal costs are likely to exceed \$1500 or the amount prescribed then costs disclosure must be made as soon as practicable);
- You have previously received disclosure of your practitioner's costs details in the previous 12 months, you have agreed in writing to waive your right to costs disclosure and the principal of your practitioner's practice decides on reasonable grounds that further disclosure is not warranted; or
- You are a law practice or an Australian legal practitioner or an individual or organisation listed in Section 263(2)(c) of the Act;
- If the legal costs or the basis on which they will be calculated have or has been agreed as a result of a tender process;
- If you will not be required to pay the legal costs or they will not otherwise be recovered by the law practice; or

- In any other circumstances prescribed by the regulations.

However, even if your legal practitioner is not required to disclose details of their costs to you, you are still entitled to:

- Seek a progress report;
- Obtain reasonable information from the law practice about costs related matters;
- Negotiate a costs agreement; and
- Obtain a bill.

### What if my legal practitioner instructs another practitioner?

If your legal practitioner intends to instruct another practitioner on your behalf, your practitioner **must** tell you in writing before the other practitioner is instructed or as soon as practicable after:

- The other practitioner's method of calculating costs;
- The other practitioner's billing practices; and
- An estimate of the other practitioner's total legal costs involved or, if that is not practicable, a range of the estimates of the other practitioner's total legal costs with an explanation of the major variables that may affect the calculation of those costs.

### Third party payers

A person is a third party payer if the person is not a client but is under a legal obligation to pay all or part of the client's legal costs or they have already paid all or part of those legal costs. A law practice required to make a disclosure to a client must also make the same disclosure to any associated third party payer, to the extent that the disclosure is relevant to that payer. An associated third party may request progress reports on the legal costs incurred to the extent that those costs are payable by the associated third party (*Section 270*).

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