FACT SHEET
TYPES OF COSTS AND COSTS AGREEMENTS

There are two main types of costs:

- Solicitor/client costs – the costs a law practice charges you for its services; and
- Party/party costs – the costs a court orders a party to pay to another party or the costs a party agrees to pay another party as part of the terms of settlement of a court case.

Solicitor/client costs

The bill which you receive from a law practice will normally include two parts. The first part relates to what the law practice charges for work that it has actually done – these are the law practice's fees. The other part relates to money that the law practice has paid out on your behalf, for example, title searches or court filing fees – these are called disbursements.

Solicitor/client costs are charged in one of three ways:

1. By a costs agreement. A costs agreement is a contract between you and the law practice that details the arrangements for its legal fees; or
2. If a costs agreement doesn't apply, by a costs determination. Costs determinations are costs scales set by an independent body, the Legal Costs Committee, to regulate the payments a law practice receives for its 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.

Costs agreements

A costs agreement is a written agreement between you and the law practice your legal practitioner works for about costs arrangements. Usually, a law practice will require the costs agreement to be signed by you before your legal practitioner will commence working on your matter. However, some costs agreements may specifically state that they can be accepted by certain conduct on your behalf, such as giving instructions to the law practice to commence work on your matter, even though you have not signed and returned the costs agreement.

There are different types of costs agreements. The most common type of costs agreement provides for costs to be paid on a '**time costing**' basis, that is, by setting out hourly rates which will apply by reference to the time taken to perform work on your matter. Another type of costs agreement is a **fixed fee agreement**, which sets out a fixed amount for carrying out the work described in the agreement (which may be for a stage of the matter or for the whole of the matter).

A costs agreement may provide that the payment of some or all of the legal costs is conditional upon the successful outcome of the matter to which the costs relate. This is called a **conditional costs agreement** but is sometimes referred to as a '**no win – no fee**' agreement. Conditional costs agreements are not permitted in criminal, child welfare, family law or migration proceedings.

Conditional costs agreements must be signed by the client to be valid. They must also clearly set out the circumstances that constitute the successful outcome of the matter to which it relates, must inform you of the right to seek independent legal advice and must contain a cooling off period of not less than 5 clear business days. It may provide that you must pay the legal practitioner's disbursements even if you are not successful. Be aware that you may have to pay the other party's legal costs in any event.

A conditional costs agreement may also provide for the payment of an **uplift fee** – additional legal costs (excluding disbursements) payable on the successful outcome of the matter to which the agreement relates. Conditional costs agreements which include an uplift fee must identify the basis of the calculation of the uplift fee and must provide an estimate of the uplift fee (or, if this is not reasonably practical, a range of estimates and an explanation of the major variables that may affect the calculation of the fee). If the matter is litigious – a matter that involves or is likely to involve the issue of proceedings in a court or tribunal – a conditional costs agreement can only provide for the payment of an uplift fee if the law practice has a reasonable belief that a successful outcome of the matter is reasonably likely. Further, the uplift fee in a litigious matter must not exceed 25% of the legal costs otherwise payable (excluding disbursements).

A costs agreement must not include any **contingency fees** – where the amount payable to the law practice is calculated by reference to the amount of any award or settlement or property recovered in the proceedings to which the agreement relates.

If you are unhappy with your costs agreement you may make an application to the Supreme Court to have the agreement set aside. A costs agreement can be set aside if the Supreme Court is satisfied that the agreement is not fair or reasonable.

A costs agreement does not prevent you from having your legal costs assessed if you are unhappy with the costs you have been charged pursuant to that agreement (please see our '*Costs Disputes*' brochure).

Costs determinations

Costs determinations are made by the Legal Costs Committee. A costs determination may provide the way that a law practice can charge for a particular type of matter, for example, according to a scale or by imposing a maximum amount. There are different costs determinations for different types of matters. However, not all matters are covered by a costs determination.

Costs disclosure

A law practice must disclose details of its 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) the law practice must disclose details of its costs to you as soon as is practicable. Costs disclosures must be in writing and in plain English. For more information about costs disclosure see our '*Costs Disclosure*' brochure.

Billing

The legal practice must provide you with a bill outlining the legal costs you have incurred. This bill may be an interim bill (part way through your legal matter) or a final bill (at the conclusion of your legal matter). The bill (alternatively the cover letter) must be signed on behalf of the legal practice and is usually given to you personally or posted to your business or residential address.

The bill may initially be in the form of a lump sum bill – a bill that describes the legal services to which it relates and specifies the total amount of legal costs. However, if you would like further details about the bill, you may request an itemised bill – a bill that specifies in detail how the legal costs are made up. If you request an itemised bill the law practice must provide you with the itemised bill within 21 days and is not entitled to charge you for the preparation of the itemised bill. Be aware that an itemised bill may be in a sum higher than the lump sum bill.

Your bill must include or be accompanied by a written statement informing you of the avenues that are open to you if you dispute the bill and any time limits that apply to those avenues, namely:

- A costs assessment;

- Applying for the costs agreement to be set aside; and
- Making a complaint.

Please see our '*Costs Disputes*' brochure for further information.

If you do not pay your legal bill within 30 days, the law practice may charge interest on the unpaid amount. You should have been provided with information about interest charges at the time the law practice began acting for you. There should also be information about interest charges on your bill.

A law practice is not entitled to commence legal proceedings to recover its legal costs until at least 30 days after providing a lump sum bill or, if a request for an itemised bill is made, until at least 30 days after complying with that request.

You are entitled to seek a costs assessment of the interim bill at the time you receive the bill, or at the time you receive the final bill, whether or not you have paid the interim bill.

Other solicitor/client costs issues

A law practice may ask you to provide reasonable security for your legal costs incurred to date and/or for your future legal costs. This may include asking you to pay a certain amount into its trust account prior to any work being performed or asking for your consent to lodge a caveat over your property until your legal bills have been paid.

If you are awarded money by a Court or through a settlement that money will normally be forwarded to your legal practitioner. After sending you a bill the law practice can then hold in trust enough of the money to cover its professional fees and disbursements. The law practice must then pay the balance of the money to you.

Party/party costs

Party/party costs can be awarded by a court requiring one party (usually the unsuccessful party) to pay legal costs of the other party (usually the successful party). Alternatively, a costs figure may be negotiated by your legal practitioner as part of a settlement.

In practical terms, party/party costs reimburse a party for legal costs they have paid or are liable to pay to their legal practitioner. However, party/party costs may not cover *all* of your legal costs. In some cases the maximum costs payable are fixed by a costs determination. If your legal practitioner charges more than

the party/party costs you have been awarded (or accepted through a settlement) it does not necessarily mean they are overcharging.

If there is a difference, discuss the reasons for this with your legal practitioner. If you are dissatisfied with the reasons you can seek independent legal advice in respect of your legal practitioner's charges and/or apply to the court for assessment of the costs (refer to our brochure titled '*Costs Disputes*').

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