

Legal Profession Uniform Law (WA) (Uniform Law)

Costs Disclosure 'Frequently Asked Questions'

1. What does giving costs disclosure involve?

Lawyers must provide a single figure estimate of the total legal costs payable in the matter and the basis on which costs will be charged in writing.

Where the total legal costs in a matter are likely to be between \$750 and \$3,000, lawyers may use the standard form of costs disclosure.

The standard form of costs disclosure can be found in Schedule 1 of the *Legal Profession Uniform General Rules 2015*. The Uniform Law costs disclosure forms can be found on the Legal Services Council webpage [here](#) or directly [here](#).

2. Is costs disclosure always required?

Similar to the *Legal Profession Act 2008*, written costs disclosure is required as soon as possible after a lawyer is briefed about a matter. Where the total legal costs in a matter are not likely to exceed \$750, written disclosure may be given, but is not required. As soon as it is expected that costs will exceed \$750 then written disclosure is required.

A lawyer may choose to provide a client with the standard form or with full costs disclosure regardless of the expected costs. It is still best practice, and the best way to avoid misunderstandings, to inform your client of the costs you will be charging them and how you will be charging those costs prior to commencing work.

Costs disclosure is not required to be given to a commercial or government client.

3. When do I give costs disclosure?

Disclosure must be made in writing either before the law practice is retained, or as soon as practicable thereafter, in order to avoid any unwelcome surprises for the client.

4. Is there any other information that must be given to clients under the costs disclosure provisions?

Similar to current disclosure requirements, Section 174 of the Uniform Law sets out a number of clients' rights that must be disclosed, including the right:

- to negotiate a costs agreement;
- to negotiate a billing method;
- to receive a bill and to request an itemised bill; and
- to seek the assistance of the Legal Practice Board in the event of a dispute about legal costs.

5. Can I provide a range of costs as an estimate?

No. Estimates of costs under the Uniform Law must be provided as a single figure, excluding GST and disbursements.

6. How do I give a costs estimate without knowing how a matter will evolve?

Setting out standard parameters and stages in a matter will help the client to understand the legal process, the scope of work to be done and the likely cost at each stage. This will also go some way to satisfying the Uniform Law requirement to ensure that the client understands the scope and associated costs of the work proposed in their matter. It can also set up a framework where non-standard items or complications can be discussed and to ensure that the costs and benefits of continuing are regularly discussed, along with the potential final cost.

What do I do if circumstances change after initial disclosure?

Lawyers are required to provide updated written costs disclosure as soon as practicable after there is a change. The obligation is ongoing, simple to comply with and is the same as current disclosure obligations.

Updated and ongoing disclosure should be provided as soon as it is apparent that the events or costs associated with initial costs disclosure have been reached or concluded.

Do I have to give costs disclosure in a 'no win – no fee' matter?

Yes. It is not just your own professional fees you must disclose, but all other potential costs that the client may incur, for example disbursements and another party's costs. This disclosure must always be signed by the client, should clearly define what constitutes a successful outcome, and must be in plain English with a cooling off period.

How can I ensure I meet the costs disclosure requirements?

Clear and transparent communication is at the core of costs disclosure. A 'no surprises' approach is best, whereby the client is given clear notice in advance that they will be charged in a certain way. Further, a warning when costs are exceeding previous estimates and fresh instructions are sought as complications occur or costs increase.

What are the consequences of failing to provide the correct or adequate costs disclosure?

A law practice is not required to enter into a costs agreement, but is required to meet their costs disclosure obligations to their client.

Failure to meet the costs disclosure obligations or a contravention of the costs disclosure obligations may render any associated costs agreements void.

A void costs agreement does not affect the right of a law practice or lawyer to the payment of fees accrued while acting on lawful instructions from the client. It does mean that the client or an associated third party payer is not required to pay the legal costs until they have been assessed or any costs dispute has been determined.

Where a costs agreement is deemed void due to a failure by a law practice or lawyer to disclose or to meet disclosure obligations, it is important to note the effect of Rule 72A in the *Legal Profession Uniform General Rules 2015*.

Rule 72A provides that a costs dispute by the Board or a costs assessment by the Supreme Court of WA, may also determine that the costs agreement is still valid in the case where:

- the law practice took reasonable steps to comply with the disclosure obligations of the Uniform Law before becoming aware of the contravention;
- the law practice, no later than 14 days after the date on which it became aware of the contravention, rectified the contravention, by providing the client with the necessary information required to be disclosed under the Uniform Law; and
- where the contravention was not substantial and where it would not be reasonable to expect that the client would have made a different decision.