

Understanding your cost disclosure obligations

Knowing when to take appropriate steps will help prevent problems down the track.

Disputes with clients about payment of your legal costs and disbursements can sometimes lead to a civil claim for negligence against your law practice. Unfortunately, claims of this nature are not covered by your Lawcover Professional Indemnity Insurance policy unless the claim is for, or includes, payment of fees relating to barristers and experts.

It is important for a solicitor to understand their obligations under the *Legal Profession Uniform Law (NSW)* (LPUL) in relation to costs and disbursements. Note:

1. **Your client has the right to have a negotiated costs agreement with your law practice¹**
2. **Your disclosure of costs must be in writing.** You must provide your clients with information disclosing the basis for legal cost calculations and an estimate of total legal costs²

3. **Your duty to provide written disclosure of costs is ongoing.**

If there is any significant change to your costs you must, as soon as practicable, provide the client with information disclosing:

- ▼ Any changes to your previous disclosure
- ▼ Sufficient information about the impact of that change to allow the client to make an informed decision regarding further conduct of the matter³.

4. **You must inform your client of their rights to:**

- ▼ Negotiate a costs agreement with you
- ▼ Negotiate the billing method
- ▼ Receive an itemised bill
- ▼ Seek the assistance of the NSW Legal Services Commissioner in the event of a dispute over costs⁴

5. **You must ensure that your client has given informed consent.**

You must take reasonable steps to satisfy yourself that your client has understood the information provided and given consent to the proposed course of action for the conduct of the matter and the proposed costs⁵.

Is costs disclosure always required?

No, cost disclosure is not required if total legal costs amount to less than \$750.00 (excluding GST and disbursements)⁶.

What if initial cost estimates are below \$750.00 and then rise above that figure?⁷

When you become aware, or ought to have reasonably become aware, that total legal costs are likely to exceed \$750.00 (excluding GST and disbursements) you must disclose that information to your client. Remember, you must monitor your costs and make continuous disclosure to your client as the situation changes.

What if the costs are going to be over \$750.00 but less than \$3,000.00 excluding GST and disbursements?

Disclosure of costs is required by either:

- ▼ Making full disclosure as above
- ▼ Providing the client with the uniform standard disclosure form as prescribed by the Uniform Rules

As stated above, when you become aware, or ought to have reasonably become aware, that total legal costs are likely to exceed \$3,000.00 (excluding GST and disbursements), then full disclosure will be required.

What if the costs exceed \$3,000.00 excluding GST and disbursements?

As soon as practicable after you become aware, or ought to have reasonably become aware, that total legal costs (excluding GST and disbursements) are likely to exceed \$3,000.00 you must:

- ▼ Inform the client in writing of that expectation
- ▼ Make the disclosure required by S174(1) above

I am trying to settle a litigious matter; are there any other considerations?

Yes. If you negotiate the settlement of a litigious matter for a client, before the settlement is executed you must disclose to the client:

- ▼ A reasonable estimate of the costs payable by the client if the matter is settled (including the legal costs of another party that the client will be required to pay)
- ▼ A reasonable estimate of any contributions towards those costs likely to be received from another party.

What if I have not complied with my disclosure obligations?

- ▼ The costs agreement with your client is void.
- ▼ The client, or an associated third-party, is not required to pay your legal costs until they have been assessed, or any dispute has been determined, by the designated local regulatory authority.
- ▼ You must not commence, or maintain, proceedings for the recovery of any or all legal costs until they have been assessed or any related dispute has been determined either by the designated local regulatory authority or under jurisdictional legislation.
- ▼ Failure to disclose may constitute unsatisfactory professional conduct or professional misconduct on the part of any principal of the law practice, legal practitioner associate or foreign associate involved in the contravention.

Jennifer Baker
Claims Solicitor



¹ s179 Legal Profession Uniform Law (NSW)

² s174(1)(a) Legal Profession Uniform Law (NSW)

³ s174(1)(b) Legal Profession Uniform Law (NSW)

⁴ s 174(2) Legal Profession Uniform Law (NSW)

⁵ s 174(3) Legal Profession Uniform Law (NSW)

⁶ s 174(4) Legal Profession Uniform Law (NSW)

⁷ s174(7) Legal Profession Uniform Law (NSW)