

Your rights

This information sheet aims to show how the Legal Profession Uniform Law operates in Victoria and NSW to protect your rights.

Under the Uniform Law a legal practitioner is either a solicitor or a barrister who must:

- charge no more than **fair and reasonable costs**;
- act in a way that avoids **unnecessary delays and increases in costs**;
- for work that is likely to cost more than \$750, give you a written estimate of **total legal costs** after initial instructions are given, or as soon as practicable afterward, including the **basis on which costs are calculated**. (Total legal costs includes legal practitioner's fees, barrister's fees, GST and disbursements);
- inform you about your **basic rights** to a costs agreement, progress reports, the billing method, and access to dispute resolution;
- (unless the law practice is using Alternative Disclosure, explained below) take all reasonable steps to **ensure you understand** their advice and give consent to the proposed course of action and costs;
- inform you when there is a **significant change in circumstances**, giving you a sufficient and reasonable amount of information to enable you to make informed decisions about the future conduct of your matter;
- keep you informed about **significant changes in total legal costs**; and
- manage a trust account and other monies received by them according to the requirements of the Uniform Law.

If a settlement of litigation is negotiated, before the settlement is signed you must be given a reasonable estimate of the legal costs that you are required to pay.

Note: an estimate provided by a solicitor or barrister is not a quote. Unlike quotes, estimates are not by themselves legally binding.

Costs disclosure

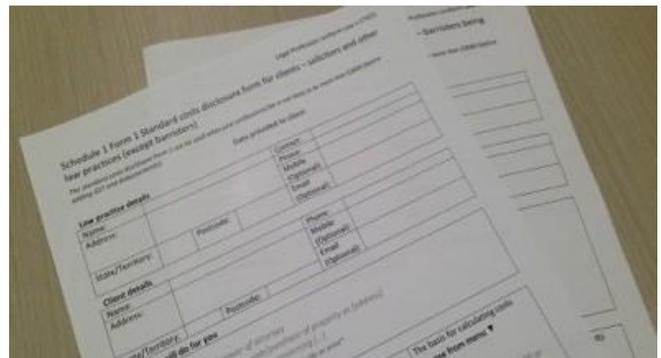
Main disclosure requirements

The Uniform Law provides for increasing levels of disclosure to you about legal costs depending on the amount of costs that are likely to be incurred. If the total estimated costs are likely to be more than \$3,000 you **must** be given a written full disclosure of all the estimated costs. You can ask for full disclosure even if the costs will not exceed \$3,000.

Alternative disclosure requirements and the Costs Disclosure Form

If the legal practitioner's own professional fee is unlikely to exceed \$3,000 excluding GST and disbursements, the Costs Disclosure Form (**Form**) can be used. The Form can be used by a solicitor, or a barrister who is briefed directly by you. Another information sheet that explains the Form is published on the Legal Services Council website or you can ask your legal practitioner for a copy.

If the legal practitioner's own professional fee is unlikely to exceed \$750 excluding GST and disbursements, the legal practitioner need not make any disclosure to you, although the Form can also be used in these circumstances.



Costs agreements

You are entitled to negotiate a costs agreement with your legal practitioner. This is a detailed formal agreement which can be enforced as a contract. As further protection, a costs agreement can become void if there is a substantial contravention by your legal practitioner of the Uniform Law cost disclosure obligations.

Your rights

A *conditional* costs agreement stipulates that the payment of some or all of your legal costs depends on the successful outcome of the case. Such an agreement can provide that disbursements must be paid by you regardless of the result of the case. This is sometimes known as a 'no win – no fee' costs agreement. The agreement must:

- be in **plain language**;
- set out what constitutes a **successful outcome**; and
- include a statement that you have been informed of your **right to independent legal advice**.

A five day cooling off period applies. You can terminate the agreement by written notice within that period.

What is a disbursement?

A disbursement is an expense that a law practice has paid on your behalf. Some examples are the costs of a medical report, court filing fees or stamp duty.

How will I be billed?

You are entitled to receive a bill that complies with the Uniform Law. The bill can be in the form of a lump sum amount or itemised. It must include a statement about your options and the time limits on taking action in the event of a dispute about the legal costs. If you receive a lump sum bill, you may request an itemised bill within 30 days of the bill becoming payable. The itemised bill must be delivered within 21 days of your request. No charge can be made for preparing an itemised bill.

You may be given an interim bill covering part of the services provided.

You have a right to negotiate the billing method, for example, at certain periods or at the completion of particular tasks. You also have the right to receive progress reports of legal costs incurred to date.

The bill can be delivered to you in person, by post or left at your last known address. With your consent, a bill can be sent to you by fax, email or mobile phone. The legal practitioner cannot start legal proceedings to recover legal costs from you unless the bill has been delivered.

Interest can be charged on unpaid legal costs according to the terms of a costs agreement or if the bill is unpaid for 30 days or more after delivery.



What do I do if I disagree with the bill?

If you are unhappy about the costs you have been charged, it is important that you talk to your legal practitioner first. If you are still unhappy, seek the assistance of the Legal Services Commissioner in your State. The NSW and Victorian Commissioners for Legal Services can resolve costs disputes where the total bill is:

- **less than \$100,000**, or
- more than \$100,000, but the **amount in dispute is less than \$10,000**.

A complaint about costs must be made within 60 days of the costs becoming payable, or within 30 days of receipt of an itemised bill. The time limit can be extended up to four months, if it is just and fair to do so, and if the law practice has not commenced proceedings to recover the costs.

The Legal Services Commissioner will try to resolve the dispute informally and bring the parties to an agreed settlement. Alternatively, the Commissioner can undertake a non-binding assessment of legal costs if this will help to resolve the dispute. The Commissioner can order you to attend mediation. If mediation fails, the Commissioner can investigate the complaint further and make a determination. If the dispute cannot be resolved, the Commissioner must tell you about your right to access the more formal costs assessment process.

What is a costs assessment?

You have a right to apply for the costs to be assessed and decided by an independent body. If your complaint falls within the Legal Services Commissioner's money limits set out above, you can ask for their help first, even if they suggest talking to your legal practitioner to see if the problem can be resolved

Billing provisions

informally. If your complaint falls outside those limits, you must use the process of costs assessment. In Victoria, the Costs Court is responsible for undertaking the assessment of legal costs. In NSW, costs assessment is undertaken by costs assessors, appointed by the Chief Justice of NSW. In both States, the cost assessor can make a binding order about the legal costs you have been charged.

A costs assessor will determine:

- whether a **valid costs agreement** exists;
- whether the costs are **fair and reasonable**; and
- the amount you must pay.

In assessing whether the costs charged are fair and reasonable, the costs assessor will take into account several matters including the level of skill, experience and specialisation of the legal practitioner; the labour and responsibility involved; the urgency, time spent and complexity of the legal work; the quality of the work done; and the retainer and instructions given.

You have a right to be given reasons for the determination, as well as the right to appeal. In Victoria, an appeal from a determination by the Costs Court lies with the Trial Division of the Supreme Court of Victoria. In NSW, you can seek a review of the costs assessment by a review panel, with the right to an appeal of that decision to the District Court of NSW.

What if I am not satisfied with my legal practitioner's work?

If you have a problem with a legal practitioner's behaviour or the work they have done, you can have your concerns addressed. Complaints about the conduct of law practices or legal practitioners can be made in writing to the Legal Services Commissioner in your State or they can be made orally and then recorded in writing.

Depending on the type of complaint, there are time limits for making the complaint and different methods for dealing with the complaint by the Commissioner. The Commissioner can recommend immediate suspension of the practitioner's practising certificate if the alleged conduct is serious and it is in the public interest to do so.

The parties may also be ordered to participate in mediation to achieve a settlement. If this fails, the Commissioner can make a determination that is 'fair and reasonable' to settle the complaint. The Commissioner can make a finding that

the legal practitioner has engaged in unsatisfactory professional conduct and can make an order that includes:

- a **caution**;
- a **reprimand**;
- the requirement for an **apology**;
- that the **work be redone** at no cost;
- that the legal practitioner **undertake training**;
- a recommendation that the practising certificate be subject to a condition;
- a **compensation order** for up to \$25,000 for the loss suffered. (This does not include other forms of damages.)

Your legal practitioner has a right of appeal against a determination that involves a compensation order for more than \$10,000 or a finding of unsatisfactory professional conduct.

Want to find a qualified legal practitioner?

It is against the law for anyone to engage in legal practice unless they are properly qualified and hold a valid practising certificate. You can find a qualified legal practitioner by searching the online register of legal practitioners held by each State as follows:

- **Victoria: solicitors and barristers** – the Victorian Legal Services Board + Commissioner. Visit www.lsb.vic.gov.au, click on the 'Information for Consumers' tab on the main menu bar, then 'Register of Legal Practitioners and Law Practices'.
- **NSW: solicitors** – the Law Society of NSW. Visit www.lawsociety.com.au and click on the 'Find a lawyer' arrow on the home page.
- **NSW: barristers** – the NSW Bar Association. Visit www.nswbar.asn.au and click on the 'Find a Barrister' arrow on the home page.

More information

Legal Services Council

www.legalservicescouncil.org.au

Victorian Legal Services Board + Commissioner

www.lsc.vic.gov.au

NSW – Office of the Legal Services Commissioner

www.olsc.nsw.gov.au