

## Legal costs and costs disclosure obligations

This information sheet summarises the legal costs and costs disclosure obligations imposed by the Uniform Law.<sup>1</sup>

### Fair and reasonable legal costs

Legal costs must be *fair* and *reasonable*, proportionately and reasonably incurred, and proportionate and reasonable in amount. Regard must be had to matters such as the complexity and urgency of the matter, quality of the work, instructions given and the skill and experience of the legal practitioners involved.<sup>2</sup>

### Avoid unnecessary cost increases

A law practice must not act in a way that unnecessarily increases costs, and must act reasonably to avoid unnecessary delay that results in increased costs.<sup>3</sup>

### Written disclosure of costs

When initial instructions are given, or as soon as practicable afterwards, a client must be given a written disclosure of the estimated total legal costs, including the basis for calculating costs.<sup>4</sup>

If there is a significant change, including to legal costs, the client must be given a further disclosure in writing.<sup>5</sup>

### Estimated total legal costs

An estimate of total legal costs is a reasonable approximation of the total legal costs that a client is likely to have to pay. In this context, it includes professional fees, disbursements and GST.<sup>6</sup>

### Disclosure obligation threshold

The main disclosure obligation applies if legal costs are likely to be more than \$750, before disbursements or GST is added. The practitioner may choose to give full disclosure or use the Uniform Law costs disclosure form.<sup>7</sup>

### Client rights

The written disclosure document must include information about the client's rights to negotiate a costs agreement,

negotiate the billing method, receive a lump sum bill, request an itemised bill, and seek the assistance of the local regulatory authority in the event of a dispute.<sup>8</sup>

### Informed consent

In the case of full costs disclosure, a law practice must *take all reasonable steps* to be satisfied that the client has understood and given consent to the proposed course of action and costs. Making a disclosure in writing may not alone satisfy this requirement.<sup>9</sup>

Any later disclosure to inform the client about a significant change must include sufficient information about the impact on legal costs so the client can make an informed decision about the future conduct of the matter.<sup>10</sup>

### Disclosure if another law practice is retained

A practitioner must disclose the costs (regardless of the amount) of a second law practice retained on the client's behalf. The second law practice must provide costs information so that the practitioner can fully disclose those costs to the client.<sup>11</sup>

### Associated third party payers

A practitioner must also provide written costs disclosure to any associated third party payer who has a legal obligation to the law practice to pay some or all of the costs of legal services. This must include relevant details and information about matters relating to payable costs.<sup>12</sup>

### Settlement in litigation costs

In litigation matters, the client must be made aware of a reasonable estimate of legal costs payable if the matter is settled (including the legal costs of another party likely to be payable by the client), and any contribution likely to be received from another party. This must be done before settlement.<sup>13</sup>

### Costs Disclosure Forms

The Uniform Law costs disclosure form can be used if legal costs are under \$750 or not likely to be more than \$3,000 before disbursements or GST are added. The form is an easy alternative to full disclosure in lower priced matters.

# Legal costs and costs disclosure obligations

User friendly versions of forms and information sheets for legal practitioners and consumers are available from the Legal Services Council website.

## Failure to comply with disclosure obligations

Where a contravention of the costs disclosure obligations occurs:

- a client or associated third party is not required to pay any costs until they have been assessed or determined; and
- a cost agreement (if any) is void.

Contravention of the costs disclosure obligations can constitute unsatisfactory professional conduct or professional misconduct by a principal, legal practitioner, or foreign lawyer involved.<sup>14</sup>

## Uniform General Rule 72A

Uniform General Rule 72 A was made by the Legal Services Council to modify the voiding provision of the Uniform Law.

A costs agreement will not be void if the law practice had:

- taken reasonable steps to comply with their disclosure requirements; and
- within 14 days of becoming aware of a contravention, rectified it by providing the necessary costs disclosure information.

The relevant authority, a costs assessor, court or tribunal will also need to be satisfied that:

- the contravention was not substantial; and
- it would not be reasonable to expect that the client would have made a different decision had they known about the change in the costs from the outset.

## Transitional arrangements

If a client first instructed the law practice prior to commencement of the Uniform Law, the *Legal Profession Act (2004)* of Victoria or NSW will apply.<sup>15</sup>

The provisions of the old legislation will also continue to apply to a second law practice engaged on behalf of the client if the first law practice was first instructed before 1 July 2015.

## Guidelines, Rules and Forms

The Legal Services Council Guidelines and Directions, Uniform Law and Uniform Rules, costs disclosure forms and information sheets are available on the Legal Services Council website.

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<sup>1</sup> *Legal Profession Uniform Law Application Act 2014* (Vic) Sch 1; *Legal Profession Uniform Law 2014* (NSW) (Uniform Law)  
<sup>2</sup> Uniform Law, s 172  
<sup>3</sup> Uniform Law, s 173  
<sup>4</sup> Uniform Law, sub-s 174(1)(a)  
<sup>5</sup> Uniform Law, sub-ss 174(1)(b) and 174(6)  
<sup>6</sup> Uniform Law, s 6; Legal Services Council Guideline and Direction Cost Estimates 11 March 2016  
<sup>7</sup> Uniform Law, sub-s 174(4), Sch 4 cl 18(3)  
<sup>8</sup> Uniform Law, sub-s 174(2)  
<sup>9</sup> Uniform Law, sub-ss 174 (3) and (6)  
<sup>10</sup> Uniform Law, sub-s 174(2)(b)  
<sup>11</sup> Uniform Law, s 175  
<sup>12</sup> Uniform Law, s 176  
<sup>13</sup> Uniform Law, s 177  
<sup>14</sup> Uniform Law, s 178  
<sup>15</sup> Uniform Law, Sch 4 cl 4