



THE OFFICE OF THE
LEGAL SERVICES COMMISSIONER

Private and Confidential

Legal Services Council
Level 11, 170 Phillip Street
Sydney NSW 2000

Email: submissions@legalservicescouncil.org.au

16 December 2014

RE: LEGAL PROFESSION UNIFORM LAW – UNIFORM RULES

Thank you for the opportunity to participate in the consultation process.

At this stage, we are providing feedback and written submissions on the Proposed General Rules.

Attachment 1 contains our comments on the Proposed General Rules.

Attachment 2 contains our comments on the content and layout of the proposed uniform standard costs disclosure for matters where total costs are over \$750 but are not likely to exceed \$3,000.00.

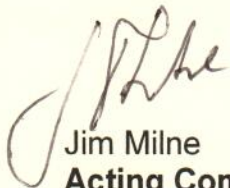
We would like the opportunity to discuss these comments further with the Council and the Commissioner for Uniform Legal Services Regulation and look forward to responding to and making comment on the other submissions that will be considered by the Council.

The Law Council of Australia previously promulgated the *Australian Solicitors' Conduct Rules* that are now circulated as the proposed Legal Profession Conduct Rules for solicitors. Those Rules have already been adopted in New South Wales. We were involved in the consultation process that led to the promulgation of the Rules and have no further comment to make - at this stage. We would, however, wish to consider and comment on any changes that may be proposed to the Rules as a result of feedback and submissions received during the current consultative process.

The Australian Bar Association, in association with the NSW Bar Association, has recently circulated the Continuing Professional Development Rules for barristers and proposed Legal Profession Conduct Rules. We will make submissions where relevant.

If you have any questions or there is any assistance we can give, please let me know.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Jim Milne', written in a cursive style.

Jim Milne
Acting Commissioner

ATTACHMENT 1

**OLSC comments on proposed Legal Profession Uniform General Rules
2014 under the Legal Profession Uniform Law (LPUL)
Consultation Draft**

Rule 15

Supervised legal practice

The period of supervised practice is specified appropriately and the extent of the rule making power may be limited to that particular. However, we are aware of an increase in the number of complaints in which an absence of effective supervision is apparent. Requirements for adequate supervision are needed in order to provide both supervisor and supervisee with guidance.

Rule 35 – generally

Withdrawing trust money for payment of legal costs

Generally, we think the rule dealing with withdrawal of trust money (rule 35) should follow the rules dealing with receipting of trust money so that the rules proceed in logical sequence. OLSC suggests this provision should be inserted between the present rules 41 and 42.

Rule 35(1)

We welcome the requirements to (a) give a client a bill specifying the amount payable and (b) obtain written authorization before withdrawing that amount of trust money for costs. It is presumed that a blanket authority in a costs agreement entered into at the beginning of the retainer will be insufficient to satisfy the rule. This should be expressly stated.

Rule 35(1)(b)

The time frame of 7 days in which to object is not sufficient time for a client to properly to consider a bill. By way of contrast, a law practice cannot commence proceedings to recover costs until at least 30 days after the bill was given (LPUL s194(2)(b)). We submit an extension of the 7 day time limit to 30 days is required.

Rule 35(1)(c)

There is no provision for extension of the 60 day time limit in the event a client requests an itemised bill. A client may request an itemised bill within 30 days and the law practice must comply within 21 days (LPUL s187). However, in the OLSC's experience, law practices often do not provide itemised bills within 21 days. By way of contrast, there is provision for extension of time in the

event a client requests an itemised bill in LPUL ss194(2)(b)(ii) and 272(3). For consistency, similar provision should be included in the Rules.

Rule 42(4) – generally

Method of payment – required particulars

The required particulars for withdrawal of trust money differ from the required particulars for withdrawal of controlled money at rule 60(5). We suggest the two rules should be in identical terms. This will also correct the omission from rule 42(4) of a requirement to identify *the person or persons effecting, directing or authorizing the withdrawal* (see rule 60(5)(g)). We take the view this is a necessary safeguard.

Rule 60

Withdrawal of controlled money

There is a reference to withdrawal of controlled money by cheque but no requirement for particulars of the cheque as in rule 42(4)(c). OLSC again submits that the required particulars in Rules 42(4) and 60(5) should be identical in terms.

Part 4.3 – generally

Bill defined

There is no definition in the LPUL of either lump sum bill or itemised bill. It would be useful if the Rules provided a definition for each, using the power contained in LPUL s208(2)(c).

Itemisation of bills

Additionally, there is a common and recurring difficulty, often the subject of complaint, whereby a bill increases on itemisation provided at the request of the client and the law practice seeks to recover the higher amount. We have previously submitted and repeat here that this issue should be addressed in the rules so New South Wales falls in line with the position taken by the Victorian Legal Services Commissioner (and indeed the Queensland Legal Services Commission). The power in LPUL s208(2)(c) could again be utilised.

Third party payers

The Chief Justice's Review of the Costs Assessment Scheme has recommended that s302A of the *Legal Profession Act 2004 (NSW)* should be amended to clarify that a beneficiary (other than a contingent or discretionary beneficiary) of the trustee client is within the definition of a third party payer and may apply for costs assessment. The OLSC is similarly of the view that lessees and mortgagors should be included in the definition of third party payers for the purpose of costs assessment. It would be useful if this

recommendation could be given effect in the Rules, perhaps using the power contained in LPUL s208(2)(e).

Rule 68

Lower threshold

The Rule does not specify the lower threshold amount, which OLSC understands is to be \$750.

ATTACHMENT 2

OLSC comments on proposed Legal Profession Uniform General Rules
2014 under the Legal Profession Uniform Law (LPUL)
Consultation Draft

Proposed uniform standard costs disclosure for legal costs below
higher threshold - Rule 68 / Schedule 2

General comments

The decision to, effectively, try to fit as much of what might be on a mandatory disclosure document on a single page means that the form itself is cluttered despite the small typeface. There appears to be too little space to comfortably complete all sections, especially if the case has any novelty.

Information sheet

The Schedule 2 Uniform standard costs disclosure forms recommend supply of an information sheet on costs to the client. Even though we have no knowledge of what is proposed for that information sheet we believe provision of basic information should be mandatory. While we can set out now what we think should be included we will wait for the proposed document.

We will be encouraging practitioners to disclose in full at all times.

Client details

Where clients are jointly liable for the costs, and third party payers are responsible for paying all or any part of the costs for legal services provided to the client (see LPUL s171), provision should be made on the disclosure document to include those details.

Law practice details

Aside from the details of the Responsible Principal we take the view that the identity and contact details of any solicitor who will be handling the matter on a day-to-day basis should also be disclosed.

Estimated total legal costs

Consumers often take estimates to be fixed quotes. It would be useful if the section disclosing estimated costs included a statement to the effect that an estimate is not a fixed quote, and that it is based on information currently available, that may change.

The syntax of the statement "*This is the estimated cost of the legal work we will be doing for you but **does not** include GST or other disbursements*" may suggest disbursements will be minimal. Disbursements can, however, be

significant. The form goes on to provide a breakdown of disbursements into barrister/other law practice fees and other disbursements.

We suggest including a statement that a client will also be charged for disbursements and that other disbursements should, so far as possible, be individually listed.

Clients' rights

We note the bullet points do not exactly reproduce LPUL s174(2)(a)(i)-(iv), and that the right to request an itemised bill is duplicated, with slightly different wording each time.

The bullet points should be re-ordered so they follow in a chronological sequence, with further detail of some points (as underlined):

Your rights include to:

- *Ask for an explanation of this document or any bill*
- *Negotiate a costs agreement*
- *Negotiate the bill method (eg timing)*
- *Request a written progress report about costs incurred to date*
- *Receive a bill*
- *Request an itemized (detailed) bill (eg showing work done and time spent). You must make this request within 30 days after the date your legal costs become payable*
- *Contact your local complaints authority (in New South Wales, the Office of the Legal Services Commissioner)*

Logically, information about clients' rights could be included in the accompanying information sheet, provided supply of an information sheet is mandatory.

We have reworked the standard costs disclosure and incorporated the changes suggested above and a copy is attached. We accept that in doing so we have exceeded what might well be the one page limit.

These are suggestions only and we are more than prepared to discuss these and any other issues in more detail.

Information sheet

You will obviously be aware that the short form disclosure document could be further reduced in size and simplified if certain points were included on an agreed information sheet.

Consideration should be given to including the following information (and anything excised from the disclosure document) in any sheet attached to the standard disclosure document.

- Information about the billing arrangements ie when a bill will be issued, at regular intervals or at the end of the matter.
- A statement explaining what disbursements are, and the distinction between (professional) costs and disbursements.
- A statement that interest is payable on unpaid costs and the rate of interest (see LPUL s195).
- It is likely many matters not exceeding the costs threshold will be fixed fee agreements (for example traffic matters and conveyancing). Accordingly, a statement indicating what will happen and the costs payable in the event the retainer is terminated before completion is essential.
- In the event the matter is litigious, the likelihood of recovery of party/party costs if successful, or of being ordered to pay costs if unsuccessful, and the distinction between party/party and solicitor/client costs should be included.

The provisions of the *Australian Consumer Law* may also apply to some law practices, imposing additional requirements. For example, section 48 prohibits a person supplying goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption from making a representation with respect to a component of the total price unless the person also specifies, in a prominent way and as a single figure, the single price for the goods or services.

ATTACHMENT 3
'OLSC FORM 2'

Form 2

Uniform standard costs disclosure form for law practices (other than barristers)

Form 174 (5)—Law practice (other than barrister)

For law practices:

It is recommended that you supply your client the information sheet on costs with this form

[Information sheet to be developed]

You can also elect to use this form if the estimated total legal costs will be \$750 or less

We are providing you this form because our estimated legal costs will be between \$750 and \$3000 (excluding GST). You will also be charged for the disbursements. The estimated total of our legal costs and disbursements is set out below. Our estimate is based on the information we have available and could change. We will contact you if it does. This is not a fixed quote.

Date form 174 (5) provided to client

Law practice details			
Firm:	(Firm name)	Contacts:	(Principal and lawyer responsible for work)
Address:	(Unit No/building name) (Street name)	Phone:	
Suburb:	(Suburb)	Mobile:	
State:	(State) Postcode:	Email:	
Client details (Please print clearly)			
Name:	(Given and surname)	Phone:	
Address:	(Unit No/building name) (Street name)	Mobile:	
Suburb:	(Suburb)	Email:	
State:	(State) Postcode:		
Description of legal work to be done (comment section)			
Estimated total of legal costs and disbursements		How I calculated this estimate	
We must tell you our estimated "total legal costs". This is the estimated cost of the legal work we will do for you but <u>does not</u> include GST or other disbursements.		I calculated this estimate by: (comment section)	
<p>Our estimated total legal costs \$</p> <p>Below is an estimate of the disbursements we will also bill you for:</p> <p>Estimated total legal fees of barrister/other law practice used \$</p> <p>Other disbursements \$</p> <p>Total</p> <p>Estimated full amount that you will need to pay \$</p>		<p>[Comment: Should this contained some detailed guidance on how to fill it in? Neither the rules nor the Uniform Law do...]</p>	
<p>Changes in costs or circumstances: When or as soon as practicable after there is any significant change to anything previously disclosed, we will tell you about the change, including any significant change to our estimated fees or changes to GST and disbursements. When, or as soon as practicable after we become aware of any significant increase, we will inform you in writing of that expectation and tell you the basis on which legal costs will be calculated. We will also provide an estimate of the total legal costs.</p>			
<p>Your rights include to:</p> <ul style="list-style-type: none"> Ask for an explanation of this document or any bill Negotiate a costs agreement Negotiate the bill method (eg timing) <i>Comment: what does this mean? Timing of bills, when's payment due, fixed, no win/no fee, itemised/lump sum?</i> Request a written progress report about costs incurred to date Receive a bill Request an itemised (detailed) bill (eg showing work done and time spent). You must make this request within 30 days after the date your legal costs become payable Contact your local complaints authority (in New South Wales, the Office of the Legal Services Commissioner) 			
Do you understand the information in this form?		Yes No Please circle one only	
Do you consent to the proposed course of action and proposed costs?		Yes No	
Do you have any questions?		Yes No	
Signed by the client: _____		Date: ____/____/____	

Form 2

Uniform standard costs disclosure form for law practices (other than barristers)

Form 174 (5)—Law practice (other than barrister)

For law practices:
It is recommended that you supply your client the information sheet on costs with this form

[Information sheet to be developed]

You can also elect to use this form if the estimated total legal costs will be \$750 or less

We are providing you this form because our estimated legal costs will be between \$750 and \$3000 (excluding GST). You will also be charged for the disbursements. The estimated total of our legal costs and disbursements is set out below. Our estimate is based on the information we have available and could change. We will contact you if it does. This is not a fixed quote.

_____/_____/_____
Date form 174 (5) provided to client

Law practice details			
Firm:	(Firm name)	Contacts:	(Principal and lawyer responsible for work)
Address:	(Unit No/building name)	Phone:	
	(Street name)	Mobile:	
Suburb:	(Suburb)	Email:	
State:	(State) Postcode:		
Client details (Please print clearly)			
Name:	(Given and surname)	Phone:	
Address:	(Unit No/building name)	Mobile:	
	(Street name)	Email:	
Suburb:	(Suburb)		
State:	(State) Postcode:		
Description of legal work to be done (comment section)			
Estimated total of legal costs and disbursements		How I calculated this estimate	
We must tell you our estimated "total legal costs". This is the estimated cost of the legal work we will do for you but does not include GST or other disbursements.		I calculated this estimate by: (comment section)	
Our estimated total legal costs \$			
Below is an estimate of the disbursements we will also bill you for:			
Estimated total legal fees of barrister/other law practice used \$			
Other disbursements \$			
Total			
Estimated full amount that you will need to pay \$			
Changes in costs or circumstances: When or as soon as practicable after there is any significant change to anything previously disclosed, we will tell you about the change, including any significant change to our estimated fees or changes to GST and disbursements. When, or as soon as practicable after we become aware of any significant increase, we will inform you in writing of that expectation and tell you the basis on which legal costs will be calculated. We will also provide an estimate of the total legal costs.			
Your rights include to: <ul style="list-style-type: none"> Ask for an explanation of this document or any bill Negotiate a costs agreement Negotiate the bill method (eg timing) Request a written progress report about costs incurred to date Receive a bill Request an itemised (detailed) bill (eg showing work done and time spent). You must make this request within 30 days after the date your legal costs become payable Contact your local complaints authority (in New South Wales, the Office of the Legal Services Commissioner) 			
Do you understand the information in this form?		Yes	No
Do you consent to the proposed course of action and proposed costs?		Please circle one only	
		Yes	No

Do you have any questions?	Yes	No
Signed by the client: _____ Date: ____/____/____		