



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

27 January 2015

**RE: LEGAL PROFESSION UNIFORM LAW – UNIFORM RULES
PROPOSED GENERAL RULES**

I am writing about the OLSC's submission of 16 December 2014.

We wish to make the following additional submissions with respect to the proposed uniform standard costs disclosure forms (Forms 1 and 2). The submissions are made on the understanding that:

1. The uniform standard costs disclosure form is an alternative to making costs disclosure under section 174(1)
2. The supply of an information sheet is likely to be highly recommended but not compulsory.

We reiterate the comments made in Attachment 2 of its previous submission.

Definition of legal costs

Before I comment on the cost disclosure document and information sheet I would like to remark on the existing definition of legal costs.

Section 6 of the *Legal Profession Uniform Law* defines legal costs as *including* disbursements:

legal costs means—

- (a) *amounts that a person has been or may be charged by, or is or may become liable to pay to, a law practice for the provision of legal services; or*
- (b) *without limitation, amounts that a person has been or may be charged, or is or may become liable to pay, as a third party payer*

in respect of the provision of legal services by a law practice to another person—

including disbursements but not including interest;

The definition of legal costs for the purposes of section 174 does not, however, include disbursements – see sub-section (9):

(9) Meaning of total legal costs

*For the purposes of this section, the **total legal costs** in a matter do not include GST and disbursements.*

The OLSC submits the inconsistency between these definitions may be confusing and aggravate any dispute over whether costs disclosure was required in a particular matter. At the very least, the definition in section 6 should make reference to the alternative definition in section 174(9).

OLSC is also concerned “*disbursements*”, a term of art that may not be understood by all consumers, is not defined at all in the *Legal Profession Uniform Law*.

Terminology

The term “*costs*” may refer to both (professional) costs and disbursements, or just professional costs. OLSC submits “*professional fees*” would be a better term to describe charges for professional work carried out by a law practice.

Uniform standard costs disclosure form

On the assumption supply of an information sheet will not be mandatory, OLSC considers it imperative that the uniform costs disclosure form:

- explains the distinction between (professional) costs/fees and disbursements.
- makes it clear that disbursements will be charged in addition to professional costs
- includes a statement to the effect that an estimate is not a fixed quote.

OLSC remains of the view that additional information, as set out in our submission of 16 December 2014, should be available by way of an information sheet.

The proposed forms conclude with 2 yes/no questions, and include a signature box. The practical effect of the 2 questions seems questionable. The significance of a “yes” answer and the consequences if a client answers “no” are unclear. Is it intended that law practices may rely upon the answers

to the questions to establish whether a client has understood and given consent to the proposed course of action for the conduct of the matter and the proposed costs? A "yes" answer alone may be insufficient should a client contend they did not in fact give fully informed consent.

The OLSC further queries the consequences of a client not signing the form, bearing in mind it is a costs disclosure document, not a formal costs agreement and neither form will be mandatory.

We repeat our concerns about the layout and typeface of the document.

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

Yours sincerely

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

Jim Milne
Acting Commissioner