

Legal Costs – Your Right to Know

Legal Profession Act 2007 – Queensland

Note: This information applies to costs for legal matters dealt with in Queensland except for certain family law matters being dealt with in the Family Court. The existing rules relating to the regulation of costs in the Family Court will continue for all pending matters and ongoing matters already filed in the Court before 1 July 2008.

For a dispute between a lawyer and a client about the costs charged by the lawyer in a family law matter:

- (a) for a new application commenced after 30 June 2008 or
- (b) under a new agreement between the lawyer and the client entered into after 30 June 2008 or
- (c) under a retainer entered into with a new lawyer after 30 June 2008

then the regulation of the legal costs relationship with your lawyer will be governed by the following information. For further information see www.familycourt.gov.au

When you become involved in any legal matter, there are almost always costs to consider. It is your lawyer's professional responsibility to make sure that you are kept fully informed of all expected costs for your case. This fact sheet, prepared by the Legal Services Commission and Queensland Law Society, gives you a good idea of how your lawyer will work with you to achieve this.

1. Your right to negotiate

You can negotiate with your lawyer about the amount you will be charged for the work the lawyer is doing for you. This is called a 'costs agreement'. Make sure you understand what you are agreeing to, and ask questions if you are unsure about any aspect of the agreement. You will have to pay the costs that you agree to, unless a court orders otherwise (see 5, below).

There are two types of cost agreements:-

- Conditional Cost Agreement – This lists the fees and other expenses you will pay ONLY if your case is successful. This is known as a 'no win, no fee' agreement.
- Cost Agreement – For all other types of legal work, this sets out the fees and expenses you must pay, no matter what the final result may be.

For any costs agreement, your lawyer must tell you in writing:-

- how the costs are calculated (for example, whether they are based on a particular 'scale of fees' or similar costs table);

- a realistic estimate of the total cost (or a number of estimates) with an explanation of the major variables that might affect the final amount;
- your right to:-
 - negotiate the costs agreement
 - receive a bill (see 2, below)
 - request an itemised bill (see 2, below)
 - be notified of anything that might cause a substantial change in a cost or fee (see 3, below)
 - receive progress reports (see 4, below)
 - have a cost assessment if you dispute the bill and the time limits that will apply (see 5, below)
 - apply to the Supreme Court to over-rule the costs agreement.
- when and how often you will be billed;
- the interest rate you will be charged for overdue amounts;
- the identity of the person in the legal practice for you to contact to discuss costs;
- the percentage rate of any 'uplift fee' (*conditional cost agreements only*) and the reasons why this fee would be warranted. An uplift fee can apply if a legal case drags on for an extended period (usually a number of years) and must not exceed 25 percent of the costs (excluding 'hard' costs – those that your lawyer has to pay out);
- a cooling-off period of five clear days (*conditional cost agreements only*);
- if you are involved in a litigious matter (*a case that will go to a court or tribunal*), the legal practice must also disclose the range of costs that you may expect to recover if you are successful and the range of costs you may expect to pay if you are unsuccessful;

Your lawyer does not have to give you all this information if the legal work is going to cost less than \$1500 (excluding GST).

2. Your right to receive bills

You have a right to receive a bill before you pay for legal work. Usually, the bill gives a summary of the work and asks you to pay the full amount. If you want more information about how the costs were calculated, you can ask for a detailed account (an itemised bill) that sets out what work your lawyer did and how much your lawyer has charged for each item of work. Your lawyer cannot charge for preparing the itemised bill, but it is possible that the total amount of the bill may increase once each piece of work is itemised. Your lawyer must provide the itemised bill within 28 days of your request.

Remember that your lawyer can take court action against you if you don't pay your bill, but must wait until 30 days after giving you the bill (or 30 days after giving you an itemised bill, if you have requested one) or after a costs assessment. Your lawyer must also send you a notice with the bill telling you about your rights to challenge legal costs.

Sometimes a legal matter may extend across state boundaries. In such cases your lawyer might ask for interstate costs laws to apply. You can accept or reject this request. Also, you can tell your lawyer if you want interstate costs laws to apply to your case (see 6, below).

3. Your right to be notified of changes

It can be very difficult to predict the exact cost of litigation. The costs of a court case will vary depending on the actions of the parties involved, orders made by the court and so on. Your lawyer must give you a realistic estimate, but it is understandable that they often cannot tell you the exact cost at the beginning.

If there is a *substantial* change to anything that your lawyer has told you about your costs, they must tell you about that change as soon as they can.

4. Your right to request written progress reports

You can ask your lawyer for a written report about (a) the progress of your case, and (b) the legal costs you have run up in total, or since your last bill. Your lawyer can charge for the progress reports, but is not allowed to charge for the update on legal costs.

5. What to do if you are unhappy with your legal costs

If you decide there is some kind of problem with your bill, remember that time limits apply in sorting it out. See the companion fact sheet, 'Your right to challenge legal costs', for details.

6. Which law will apply?

Usually, the law that will apply to your dealings with your lawyer will be the law of the state or territory in which you first engaged the lawyer. However, the law of another state or territory may apply if your matter has a substantial connection to that state or territory, and you and your lawyer agree that law of that other state or territory will apply.

7. Contacts for more information

Courts of Queensland:

A full list of the courts in Queensland giving locations and contact details can be found at the Queensland Government's courts website at www.courts.qld.gov.au

Legal profession regulators:

- **Legal Services Commission**

Telephone: 07 3564 7726

Freecall: 1300 655 754

www.lsc.qld.gov.au

More fact sheets available

Legal and procedural advice:

The following organisations provide free legal advice:-

- **Community Legal Centres (CLCs)**

A list of CLCs in your area is available at www.qails.org.au