

Fact Sheet 7 - Costs Disputes

The information in this fact sheet applies to solicitors and barristers acting in New South Wales
July 2023

What should a client do if they are not happy with their lawyer's costs?

If a client is not happy with the costs that their lawyer has charged, they should first explain their concerns to their lawyer, either by phone, in person or in writing. Many lawyers will negotiate over costs. If the client is unhappy with the explanation their lawyer gives them – or if the lawyer will not negotiate with them – the client may seek the assistance of the Office of the NSW Legal Services Commissioner to resolve the costs dispute or apply for a costs assessment.

Costs Dispute Resolution

The Office of the NSW Legal Services Commissioner (OLSC) can assist clients in attempting to resolve costs disputes with their lawyer if:

- The total bill for legal costs is less than \$185,460 or,
- The total bill for legal costs equals or is more than \$185,460, but the total amount in dispute is less than \$18,550.

A client who wishes to seek the assistance of OLSC will need to make a complaint. The complaint must be made:

- (a) within 60 days after the legal costs become payable, or
- (b) if an itemised bill was requested in respect of the costs – within 30 days after the request was complied with.

The time requirement may be waived in certain circumstances.

OLSC will assist the parties in attempting to resolve the costs dispute. If the dispute cannot be resolved, the Commissioner has power, in appropriate cases, to make a determination about costs, including a binding determination specifying the amount payable, up to \$18,550 from 1 July 2023.

Costs assessment

Costs assessments are carried out by independent, court-appointed costs assessors. The costs assessor considers the bill and the client's objections to it, and decides what is a fair and reasonable amount of costs for the legal services provided. There is no court hearing because the decision is based on the written material that the law practice and the client submit.

There is an initial application fee of \$100 or 1% of the amount of costs remaining unpaid or in dispute

at the time of making the application, whichever is the greater. There may be further costs payable at the end of the assessment that you should discuss with the Supreme Court Costs Assessment Section prior to lodging your application. If the law practice did not disclose costs before undertaking the work or the costs are reduced by 15% or more on assessment, the law practice generally pays the costs of costs assessment.

The client must apply for costs assessment within 12 months after being given a bill or request for payment, or paying the costs if no bill was given or request for payment made. However, an application made out of time may be dealt with if the Manager, Costs Assessment determines that it is just and fair to deal with the application after the 12 month period.

On completion of the assessment, the costs assessor will issue a Certificate of Determination which is binding on all the parties. A person who is not satisfied with a costs assessor's determination may apply for a review of the determination by a panel of two costs assessors. There are fees associated with a review. The panel may affirm the original determination, or set it aside and substitute a new determination. There are also limited rights of appeal to the District Court.

Costs assessment is available to a client or lawyer, and to third party payers, that is, any person who is not the client but is under a legal obligation to pay all or any part of the legal costs.

Information about the costs assessment scheme, and costs assessment application forms, are available from the **Supreme Court of New South Wales, Costs Assessment Section** on the Supreme Court website. Enquiries to the Costs Assessment Section may be through their call centre on 1300 679 272, by post, GPO Box 3, Sydney 2001; or email CostsAssessment@courts.nsw.gov.au

Interest

A lawyer is allowed to charge interest on unpaid costs in accordance with a costs agreement. Otherwise, a lawyer is allowed to charge interest on unpaid legal costs if the costs are unpaid 30 days or more after the client was given a bill containing a statement that interest is payable and the rate of interest.

Regulated costs

If a lawyer acts for you in relation to a personal injury claim or a motor accident compensation matter, the costs they can charge may be regulated by legislation. Further information can be found on the OLSC Fact Sheets **Regulated Costs – Motor Accident Compensation and Regulated Costs – Personal Injury Claims**.

In limited circumstances, costs in family law matters may also be regulated. If you instructed a lawyer in a family law matter before 30 June 2008, different rules may apply and you should contact our Inquiry Line on (02) 9377 1800 for further information.

Court proceedings

A lawyer may choose to sue for unpaid costs.

Under the *Legal Profession Uniform Law (NSW)*, a lawyer may not commence proceedings against a client for recovery of costs until any costs dispute lodged with the NSW Legal Services Commissioner is closed or resolved, and at least 30 days have passed since the lawyer gave the client a bill which complies with the law.

If a lawyer has failed to make proper disclosure of the basis of the costs of the legal services provided, then:

- the client does not have to pay the costs, and
- the lawyer may not commence or maintain proceedings for the recovery of the costs

until those costs have been assessed or any costs dispute lodged with the NSW Legal Services Commissioner has been closed or resolved. Further information can be found on the OLSC Fact Sheet on **Costs Disclosure**.

A client who wishes to defend court proceedings brought by their lawyer should seek legal advice from:

- **Law Access:** phone 1300 888 529.
- Another lawyer, who will probably charge for his or her services.
- A **Community Legal Centre**, which provides information and referrals free of charge. For information about the nearest Community Legal Centre phone (02) 9264 9595.
- The **Chamber Service** in Local Courts who can assist with procedural advice about the court process or documents to be put to the court. Local Courts are listed under L in the White Pages of the telephone book.

The Office of the NSW Legal Services Commissioner cannot provide legal advice.