

FACT SHEET

YOUR RIGHT TO CHALLENGE LEGAL COSTS

FORM 3

Legal Profession Regulations 2009

Regulation 82(1) - Form of Notification of clients' rights

Legal Profession Act 2008 (the Act)

Section 291(3) and Sections 291(1)(a) and (b)

All bills issued by law practices must include or be accompanied by a written statement setting out –

- (a) That the following avenues are open to the client in the event of a dispute in relation to legal costs –
 - (i) costs assessment under Division 8;
 - (ii) the setting aside of a costs agreement under section 288;
 - (iii) making a complaint under Part 13;and
- (b) any time limits that apply to the taking of any action referred to in paragraph (a).
(sections 291(1)(a) and (b) of the Act).

Form 3 to the *Legal Profession Regulations 2009* states that clients should discuss their concerns with their lawyer.

1. Requesting an itemised bill

If you do not receive an itemised bill, you have a right to request one (section 292 of the Act).

The law practice must comply with your request within 21 days after the date on which your request is made.

Your lawyer cannot charge for preparing the itemised bill.

However, it is possible that the total amount of the bill may increase when each item of work has been itemised and the cost calculated.

It is recommended that your request for an itemised bill reach the law practice within 30 days after you receive the lump sum bill. Although you are not required by law to request an itemised bill within 30 days, your lawyer is entitled to sue you for unpaid legal fees after 30 days have elapsed since you were given the bill. If you request an itemised bill, the 30 days will run from the date your request is complied with by the law practice.

2. Discussing your concerns with your lawyer

It is prudent to discuss your concerns with your lawyer. It may be that you have misunderstood your bill or it may be that the lawyer has made a mistake. Discussing your concerns with your lawyer could lead to an early resolution of your concerns and thereby avoid the delays and costs associated with the exercise of your other rights.

3. Having your costs assessed

An application for assessment of a bill must be made within 12 months after the bill was given to you (section 295 of the Act).

However, if an application is made out of time, a Supreme Court Taxing Officer may determine, having regard to the delay and the reasons for the delay that it is just and fair for the application for assessment of the bill to be dealt with after the 12 month period.

4. Applying to set aside the costs agreement

On application by a client, the Supreme Court may order that a costs agreement be set aside if satisfied that the agreement is not fair or reasonable (section 288 of the Act).

There is no time limit prescribed in the Act for bringing an application to set aside a costs agreement.

In determining whether or not to set aside a costs agreement, the Supreme Court will have regard to a number of factors including:

- whether the client was induced to enter into the agreement by fraud or misrepresentation;
- whether any practitioner acting for the law practice has been found guilty of unsatisfactory professional conduct or professional misconduct in relation to the legal services to which the costs agreement relates;
- the circumstances and conduct of the parties before and after the agreement was made;
- the disclosure made by the law practice and how the costs agreement and billing under the agreement address changed circumstances that might foreseeably arise.

5. The making of a complaint

The Legal Profession Complaints Committee is the statutory body established under the Act to receive and investigate complaints against Australian legal practitioners.

A complaint may be made about conduct of an Australian legal practitioner irrespective of when the conduct is alleged to have occurred.

However, a complaint cannot be dealt with (otherwise than to dismiss it or refer it to mediation) if the complaint is made more than 6 years after the conduct is alleged to have occurred unless the Legal Profession Complaints Committee determines that —

- (a) it is just and fair to deal with the complaint having regard to the delay and the reasons for the delay; or
- (b) the complaint involves an allegation of professional misconduct and it is in the public interest to deal with the complaint.

A determination under subsection (2) is final and cannot be challenged in any proceedings by the complainant or the Australian legal practitioner concerned (Section 411(1) - (3) of the Act).

A complaint against a lawyer should be made to:

The Law Complaints Officer
Legal Profession Complaints Committee
2nd Floor "Colonial Building"
55 St George's Terrace
PERTH WA 6000

Phone: (08) 9461 2299
Fax: (08) 9461 2265
Email: lpcc@bigpond.com.au

Additional information about making a complaint is available at www.lpbwa.org.au
Scroll down the Menu on the left hand side of the Legal Practice Board's home page to 'Complaints Committee'.

