



# COSTS DISCLOSURE UNDER THE LEGAL PROFESSION UNIFORM LAW

Different disclosure obligations will apply depending on the estimated total legal costs in the matter.

## Main Disclosure Requirement

Costs disclosure must be in writing and in making disclosure a law practice must;

- a. When or as soon as reasonably practical after instructions are given in a matter, provide the client with information –
  - i. Disclosing the basis on which legal costs will be calculated, and
  - ii. An estimate of the total legal costs; and
- b. When or as soon as reasonably practical after there is any significant change to anything previously disclosed provide the client with information –
  - i. Disclosing the change; and
  - ii. Information about any significant change to the legal costs what will be payable by the client.<sup>1</sup>

## Additional Information

In addition the law practice must include information about the client's rights to negotiate a costs agreement with the law practice, receive a bill and/or request an itemised bill and negotiate the billing method.

Where there is a significant change to information previously disclosed the law practice must include information about the change and its impact on the costs the client will have to pay so they can make an informed decision about the future conduct of the matter.<sup>2</sup>

## \$750: Lower Threshold of Disclosure

Disclosure of costs is not required where the total legal costs will not exceed the lower threshold where estimated total legal costs not including GST and disbursements will not exceed \$750.<sup>3</sup>

## \$3000: Higher Threshold for Disclosure

Where the total legal costs will not exceed the higher threshold (where the estimated legal costs not including GST and disbursements will not exceed \$3000) a Law Practice may comply with its obligations to disclose by either;

- a. Making full disclosure to the client or third party payer in accordance with the main disclosure requirements, or

- b. Alternatively providing to the client or third party payer a completed uniform standard disclosure form for the matter as contained in Schedule 1 of the Legal Profession Uniform General Rules 2015.<sup>4</sup>

## Changes in Amount of Total Legal Costs

Where having not disclosed a law practice becomes aware total legal costs are likely to exceed the lower threshold it must as soon as reasonably practical inform the client of that expectation in writing and either make full disclosure in accordance with the main disclosure requirements or use the completed uniform standard disclosure form where the updated estimated total legal costs are below the higher threshold.<sup>5</sup>

Where having previously disclosed by way of the uniform standard disclosure form a law practice becomes aware the total legal costs are likely to exceed the higher threshold it must as soon as reasonably practical inform the client of that expectation in writing and make full disclosure in accordance with the main disclosure requirements.<sup>6</sup>

## Client's Consent & Understanding

If a law practice makes full disclosure in accordance with the main disclosure requirements it must take all reasonable steps to ensure the client has understood and given consent to the course of action and the proposed costs.<sup>7</sup>

## Consequences of a Failure to Disclose

If a law practice contravenes the disclosure obligations then;

- a. any cost agreement entered into with the client or associated third party payer is void; and<sup>8</sup>
- b. the client or associated third party payer is not required to pay the legal costs and the law practice cannot commence or maintain any proceedings for recovery of the legal costs until they have been assessed or any costs dispute is determined by the OLSC; and<sup>9</sup>
- c. the contravention may result in disciplinary action.<sup>10</sup>

<sup>1</sup> Section 174(1) of the Legal Profession Uniform Law (NSW) ("LPUL")

<sup>2</sup> Ibid section 174(2)

<sup>3</sup> Clause 18(3) of Schedule 4 to LPUL

<sup>4</sup> Clause 18(4) of Schedule 4 to LPUL

<sup>5</sup> Section 174(7) of LPUL

<sup>6</sup> Ibid section 174(8)

<sup>7</sup> Ibid section 174(3)

<sup>8</sup> Section 178(1)(a) of LPUL

<sup>9</sup> Ibid Section 178(1)(b)&(c)

<sup>10</sup> Ibid section 178(1)(d)