

Legal Costs – Your right to know

Legal Profession Act – New South Wales

This notice **only** applies in Family Court matters in the following circumstances:

1. If you enter into a new costs agreement with your lawyer after 30 June 2008;
2. If you first retained a lawyer after 30 June 2008, even if your case is pending on that date;
3. If you filed a fresh application in a court under the *Family Law Act* after 30 June 2008

Part 1 Your right to negotiate

You can negotiate with your lawyer about the amount that your lawyer will charge you. Make sure that you understand what you are agreeing to, and ask questions if you are unsure about the costs agreement. You will have to pay the costs that you have agreed to, unless the agreement is set aside (see Part 5 below).

Part 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. However, it is possible that the total amount of the bill may increase once each piece of work is itemised.

Your lawyer may take court action against you if you fail to pay your bill. However, your lawyer cannot start legal action against you until 30 days after giving you the bill (or 30 days after giving you an itemised bill, if you have requested one) or during a costs assessment. A notice telling you about your rights to challenge legal costs must be sent with the bill.

Part 3 Your right to be notified of changes

It can be difficult to predict the exact cost of litigation in advance. The cost of a court case will vary depending on the actions of other parties, orders made by the court and other factors. Your lawyer must give you an estimate, but often cannot tell you the exact cost up front.

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

Part 4 Your right to request written progress reports

You can ask your lawyer for a written report about (a) the progress of your matter, 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.

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

There are **time limits** that apply to taking particular action in relation to legal costs. You should read this fact sheet carefully, and seek advice if you are unsure about anything in it.

Discuss your concerns with your lawyer. Most clients resolve their concerns about their legal costs simply by discussing their concerns with their lawyer. If you are not happy with a bill, your first step should be to do this, either before or after receiving an itemised bill. Once your lawyer has understood your concerns s/he may agree to review the bill.

Mediation: If negotiating with your lawyer does not work you should consider costs mediation. Costs mediation may be formal or informal, and provides you with an opportunity to discuss your concerns with the assistance of an independent facilitator. Mediation is generally a **quicker and cheaper** alternative to costs assessment. Mediators cannot give legal advice during the mediation, and cannot decide on the fairness or reasonableness of the costs. In New South Wales, your lawyer can be required to participate in costs mediation. Contact the Office of the Legal Services Commissioner or the Law Society's Dispute Resolution Department for more information.

Costs assessment. This is where an independent court-appointed person considers the bill and your objections to it. The costs assessor will decide what is a fair and reasonable amount for you to pay. You have **12 months** from the bill being given to you (or a request for payment being made, or when you paid the costs) to apply for costs assessment. The Supreme Court of NSW will only grant extensions of time in special circumstances.

Setting aside the costs agreement. If you believe that your costs agreement is not fair or reasonable, you can apply to a costs assessor to have the whole, or part, of it set aside. If the costs agreement is set aside, the costs assessor will then decide how much you should pay for the legal work.

There may be other ways you can resolve your concerns about legal costs. You should seek legal advice if you feel that the avenues set out above are not appropriate for you.

Part 6 Which law will apply?

Ordinarily, 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 other State or Territory, and you and your lawyer agree that law of that other State or Territory will apply.

Part 7 Who to contact for more information

Legal profession regulators - costs mediation and costs assessment

Office of the Legal Services Commissioner

Ph: (02) 9377 1800
Freecall: 1800 242 958
www.lawlink.nsw.gov.au/olsc
More fact sheets available.

Law Society of New South Wales

Ph: (02) 9926 0333
www.lawsociety.com.au

Supreme Court Costs Assessment Scheme

Ph: (02) 9230 8111
www.lawlink.nsw.gov.au/sc

Legal and procedural advice - the following organisations provide free legal advice:

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| LawAccess Telephone and internet legal advice service. Ph: 1300 888 529 or www.lawaccess.nsw.gov.au | Legal Aid Commission of NSW If you need face-to-face advice after you have spoken to LawAccess, look under 'L' in the business and government listings in the White Pages or go to: www.legalaid.nsw.gov |
| Community Legal Centres (CLCs) A list of CLCs in your area is available by calling: Ph: (02) 9318 2355 or www.nswclc.org.au | Local Court Chamber Registrars Can give advice about court procedure if your lawyer has initiated action to recover outstanding costs. |