



The Law Society

OF SOUTH AUSTRALIA

The Voice of the Legal Profession

Fact Sheet: Legal Costs – Your Right to Know

(*Legal Practitioners Regulations 2014 - Schedule 1*)

This Fact Sheet has been prepared by the Law Society of South Australia and is made available to you in accordance with the relevant provisions of the *Legal Practitioners Act 1981*.

You have the following rights in relation to legal costs which arise when you engage a law practice to act for you, and when you receive bills from the law practice.

1. You have the right to negotiate a costs agreement with a law practice.

You have the right not to accept, or ask for amendments to, a costs agreement that is provided by the law practice. You have the right to decline to sign the costs agreement immediately and to take it away with you to consider before signing. You have the right to a reasonable period of time within which to do this.

You have the right to obtain independent legal advice on the cost agreement, and a reasonable period of time in which to do so.

If you ask for amendments to be made to the proposed agreement which the law practice is not prepared to agree to, then you have the right to decline to sign the costs agreement and seek legal representation elsewhere.

2. You have a right to receive a bill of costs from a law practice.

A law practice is not entitled to payment of its fees or other costs, or to take action against you to recover unpaid fees, until you have been provided with a bill of costs.

You have the right to request an itemised bill of costs (at no charge to you). An itemised bill of costs is a bill that separately lists each task or item of work performed by the law practice and attributes a separate charge to each task or item. Under clause 34 of Schedule 3 to the *Legal Practitioners Act 1981* you have a statutory right to require the law practice to provide you with an itemised bill of costs within 21 days of your request.

The law practice is not permitted to take recovery action against you in relation to an itemised bill until 30 days have passed after providing the itemised bill.

3. You have a right to challenge the amount of legal costs billed.

You can do the following if you are not happy with a bill from a law practice:

- a) Request an itemised bill. See paragraph 2 above.

b) Discuss your concerns with your law practice. It is always open to you to approach the law practice and discuss your concerns regarding a bill. If you think the bill is too high, it is open to you to ask the law practice to reduce it. The costs agreement you signed when you engaged the law practice should specify who you can see to do this. This should usually be your first step, as it may be the quickest and cheapest way to resolve matters.

c) Have the costs adjudicated. You may apply to the Supreme Court under clause 37(1) of Schedule 3 of the *Legal Practitioners Act 1981* for an adjudication of the billed costs.

i) You need to make this application within 6 months of receiving the bill however you may be able to apply for an extension of time for this under clause 37(5) of Schedule 3 to the *Legal Practitioners Act 1981*.

ii) The form for making the application is Form 2F of the Uniform Civil Rules. You will need to attach to it supporting materials such as an affidavit, the bill or bills you are seeking to have adjudicated and a copy of the costs agreement you entered into with your lawyer (if any).

iii) If such an application is made, the Court will probably go through the bill on an item-by-item basis, allowing or disallowing each item. If a properly itemised bill has not been provided to you by the law practice, the Court may order it to do so. You will probably have to tell the Court, either in writing or verbally, which charges you do not agree with and why.

d) Apply to have a costs agreement set aside. If you do not want the costs you have to pay to a law practice calculated on the basis of a costs agreement that you signed, you can apply to have the costs agreement set aside under section 30 of Schedule 3 to the *Legal Practitioner's Act 1981*. The Supreme Court has the power to set aside a costs agreement if it finds that it is not fair and reasonable.

If the costs agreement is set aside by the Supreme Court, the costs you will have to pay to the law practice, if any, will be calculated based on the Higher Courts Scale pursuant to the Uniform Civil Rules of costs. A copy of the Higher Courts scale is available on the Law Society website at https://www.lawsocietysa.asn.au/Public/Publications/Resources/Higher_Courts_civil_cost_scale.aspx. You may wish to obtain independent legal advice when considering this option.

e) Make a complaint to the Legal Profession Conduct Commission (if you believe there has been overcharging). If you believe that you have been overcharged by a law practice, then you may complain to the Commissioner.

The Commissioner **must** investigate your complaint if it is made within 2 years of the final bill about which you are complaining being delivered to you. The Commissioner **may** investigate your complaint if it is made outside of that 2-year period (but is not obliged to do so). However, there are some circumstances in which the Commissioner might determine not to investigate your complaint, no matter when it is made – for example, if it is frivolous, if the bill complained of is already the subject of civil proceedings between you and your lawyer, or if it is not otherwise in the public interest for the Commissioner to deal with it.

The Commissioner requires a \$110 fee to be paid before you can make an overcharging complaint. You may be entitled to have that fee waived. You may also be entitled to have that fee refunded if your complaint is substantially upheld. More detail is available at <https://lpcc.sa.gov.au/consumers/complaints/making-a-complaint>

Once a complaint is received, the first step the Commissioner will normally take will be to see if, through a conciliation process, the bill complained of can be sorted out by agreement between the parties.

If conciliation isn't successful, then the Commissioner will go through the process of determining what is a fair and reasonable amount for the legal fees to have been. If that amount is less than the amount charged, then the Commissioner may recommend that the law practice reduce the bill (or, if you have already paid it, that it refunds some or all of it to you). The Commissioner's recommendation is not binding on you or a law practice – but at the very least, it should be persuasive.

If either you or the law practice don't accept the Commissioner's recommendation, then:

- if the amount in dispute is more than \$50,000, the Commissioner is unlikely to be able to do anything further (although there are still some steps that are potentially open to the Commissioner in that situation);
- if the amount in dispute is \$50,000 or less, the Commissioner may make a determination as to whether or not there has been overcharging and, if so, the amount that has been overcharged – and that determination is binding on both you and the law practice.

Before making a binding determination, the Commissioner must first have the law practice's fees assessed by an expert costs assessor – which will usually come at a cost. The Commissioner is entitled to ask you to pay the cost of obtaining that costs assessment up-front, but again you will usually be entitled to receive that money back if you have been substantially overcharged.

You can find out more about what happens if you complain to the Commissioner about overcharging by going to the Commissioner's website at <https://lpcc.sa.gov.au/> and clicking on the overcharging section.

If you would like further advice in relation to your rights with respect to costs you can do the following:

- Go to the Legal Profession Conduct Commissioner's website at <https://lpcc.sa.gov.au/>.
- Contact the Legal Services Commission Legal Help Line on 1300 366 424.
- Obtain independent legal advice. For details of legal practitioners who specialise in costs, community & specialist legal services that may be able to provide you with free advice, contact the Law Society on 08 8229 0220.