

FACT SHEET

Legal costs – Your right to know

When you engage a lawyer or law firm, you **must** be advised **in writing** about certain costs issues (see section 3.4.9 of the *Legal Profession Act 2004*).

You **must** be advised about:

- The basis on which legal costs will be calculated, including whether a practitioner remuneration order or scale of costs applies to any of the legal costs;
- Your right to –
 - Negotiate a costs agreement with the law practice;
 - Receive a bill from the law practice;
 - Request an itemised bill within 30 days after receipt of a lump sum bill;
 - Be notified of any substantial change to the matters disclosed.
- The estimated amount of the total legal costs or, if that is not reasonably practicable –
 - A range of estimates of the total legal costs; and
 - An explanation of the major variables that will affect the calculation of those costs
- If the matter is a litigious matter, the estimated amount of –
 - The range of costs that may be recovered if you are successful in the litigation; and
 - The range of costs you may be ordered to pay if you are unsuccessful;

This disclosure must also include –

- A statement that an order by a court for the payment of costs in favour of the client will not necessarily cover the whole of your costs; and
- If applicable, a statement that disbursements may be payable by the client even if the client enters into a conditional costs agreement.
- Details of the intervals (if any) at which you will be billed;
- The rate of interest (if any) that will be charged on overdue legal costs, whether that rate is a specific rate of interest or is a benchmark rate of interest;
- Your right to progress reports;
- Details of the person you may contact to discuss legal costs;
- The following avenues that are open in the event of a dispute in relation to legal costs –
 - **Costs review**

You may apply to the Taxing Master of the Supreme Court of Victoria for a review of the whole or any part of legal costs.

An application for a costs review may be made even if the legal costs have been wholly or partly paid.

There are **different time limits** that apply for making an application for costs review because of changes in legislation.

If you first instructed your lawyer **before 12 December 2005**, an application for a costs review must be made within **two months** of receiving the bill.

If you first instructed your lawyer on or **after 12 December 2005**, the time limit varies according to when you received the bill of costs:

- If you received the bill before 9 May 2007, an application for costs review must be made within **60 days** of receiving the bill.
- If you received the bill on or after 9 May 2007, an application for costs review must be made within **12 months** after -
 - The bill was given or the request for payment was made to you; or
 - The costs were paid if neither a bill was given nor a request was made.

The Taxing Master has a discretion in relation to the legal costs of the review process, the issue of **who pays** the legal costs of the review process can depend how much (if at all) the bill is reduced.

For further information about applications to the Taxing Master, contact the Associate to the Taxing Master on **(03) 9603 9324**.

○ **The setting aside of a costs agreement**

If you have entered into a costs agreement, you may apply to the Victoria Civil and Administrative Tribunal (**the Tribunal**) for an order that the costs agreement be set aside.

The Tribunal may set aside a costs agreement if satisfied that the agreement is not fair or reasonable.

If the costs agreement is set aside, the Tribunal may order the legal practitioner to pay your costs of the hearing. If the costs agreement is not set aside, the Tribunal may order you to pay the legal practitioner's costs of the hearing.

There is no time limit for making this type of application.

For further information, contact the **Legal Practice List** of the Tribunal on **(03) 9628 9081** or visit its website www.vcat.vic.gov.au

○ **Making a complaint to the Legal Services Commissioner**

The Legal Services Commissioner may accept complaints involving a dispute (**costs dispute**) in relation to legal costs not exceeding **\$25,000** in respect of any one matter.

A complaint involving a costs dispute must be made within **60 days** after the legal costs were payable or, if an itemised bill was requested in respect of those costs, within **30 days** after the request was complied with. The Commissioner may accept

a complaint involving a costs dispute made outside of this period, but made within 4 months after the end of that period, if satisfied that:

- o there was a reasonable cause for the delay in making the complaint; and
- o legal proceedings have not been commenced for the recovery or review of the legal costs that are the subject of the complaint.

Subject to limited exceptions, a complainant who makes a complaint involving a costs dispute **must lodge** the unpaid amount of the disputed costs with the Commissioner within **28 days** after making the complaint.

The role of the Legal Services Commissioner with respect to a costs dispute is to assist the parties to resolve their dispute. Usually this will involve negotiations by letter or telephone, but may also include referring the dispute to a formal mediation or arranging for a non-binding assessment of legal costs.

If the Legal Services Commissioner is unable to resolve the costs dispute, the Commissioner must give written notice to each party stating that the dispute could not be resolved and setting out the party's right to apply to the Tribunal. The application to the Tribunal must be made within 60 days of receiving the notice.

- The law of Victoria applies to legal costs in relation to the matter but you may –
 - o Accept or reject any offer for an interstate costs law to apply to your matter;
 - o Notify your lawyer or law firm that you require an interstate costs law to apply to your matter.

A lawyer or law firm may use Form B3 in the *Legal Profession Regulations 2005* to satisfy some of these obligations.

This Fact Sheet is made in satisfaction of regulation 3.4.4 of the *Legal Profession Regulations 2005*. It has been developed in consultation with the Law Institute of Victoria Ltd and the Victorian Bar Inc.