



CONSUMER COMPLAINTS INCLUDING COSTS DISPUTES UNDER THE UNIFORM LAW

Costs disputes are a consumer matter

From 1 July 2015, complaints to the Office of the Legal Services Commissioner (Commissioner) will be categorised as disciplinary or consumer. Consumer matters may include a costs dispute¹. Relief from the Commissioner in relation to a consumer matter (including costs) is not available to commercial or government clients.²

Mediation, settlement and withdrawal of consumer matters

The Commissioner may order the parties to mediate³. Consumer matters may be settled between the parties⁴ or withdrawn by the complainant. However the Commissioner may initiate or continue any disciplinary matter despite the withdrawal.⁵

Determination of costs by the Commissioner – less than \$10,000

The Commissioner may deal with a costs dispute if the total bill for legal costs of any one matter is less than \$100,000, or if the total costs in dispute is less than \$10,000⁶ (including disbursements, excluding interest and excluding GST)⁷. If the Commissioner is unable to resolve the dispute relating costs⁸, and the costs remaining in dispute is less than \$10,000, the Commissioner may make a binding costs determination of less than \$10,000, by having regard to what is fair and reasonable in the circumstances including consideration of the factors that a costs assessor would be required to consider.⁹

Limited costs assessment of costs the subject of a complaint

A costs dispute which is, or has been the subject of a complaint to the Commissioner may not be the subject of a costs assessment except if the Commissioner is unable to resolve the dispute¹⁰ or if the matter is referred by the Commissioner for assessment for the purpose of investigating a disciplinary matter.¹¹

Time limits on making a complaint and waiver¹²

A consumer matter involving a costs dispute is required to be made within 60 days after the legal costs become payable, or within 30 days after any request for an itemised bill was complied with (Required Period).

This time requirement may be waived if the Commissioner is satisfied of all of the following: - that the complaint is made within 4 months after the expiration of the Required Period; - that it is just and fair to deal with the complaint having regard to the reasons for the delay; - the lawyer or law practice has not commenced legal proceedings in respect of the legal costs.

The Commissioner's decision in relation to waiver of the time requirement is final.

¹ Legal Profession Uniform Law (NSW), s.269

² Ibid, s.268(3), s.170 for definition of commercial and government client

³ Ibid, s.288

⁴ Ibid, s.289

⁵ Ibid, s.273

⁶ Ibid, s.291(1)

⁷ Ibid, s 6 - definition of legal costs, s.294

⁸ Ibid, s.287

⁹ Ibid, ss.292, 200

¹⁰ Ibid, ss.197(a), 293

¹¹ Ibid, ss.197(b), 284

¹² Ibid, s.272