THE LAW SOCIETY
OF NEW SOUTH WALES

COSTS GUIDE
7TH EDITION

CHAPTER 3

DISCLOSURE, COSTS AGREEMENTS AND BILLING

The Uniform Law is a suite of legislation including:

Legal Profession Uniform Law (NSW) ["LPUL"]

Legal Profession Uniform Law Application Act 2014 ["LPULAA"]

Legal Profession Uniform Law Application Regulation 2015 ["LPULAR"]

Legal Profession Uniform General Rules 2015 ["LPUGR"]

Prior legislation referred to:

Legal Profession Act 2004 ["LPA 2004"]

Legal Profession Regulation 2005 ["LPR"]

The Uniform Law applies for instructions first received from your client on or after 1 July 2015 (LPUL Schedule 4 clause 18).

The Uniform Law applies for proceedings commenced on or after 1 July 2015 (LPULAR clause 59).

3.1 INTRODUCTION

This chapter outlines the regulation of law practices' costs under the Legal Profession Uniform Law (NSW) (LPUL). Regulation of law practices' costs may be grouped into three areas: disclosure, costs agreements and billing.

3.2 DISCLOSURE

First, and most importantly, disclosure is mandatory. LPUL imposes significant obligations to disclose information to the client, and failure to comply has serious consequences, including disciplinary action and voiding of the costs agreement, if any (s. 178 of the LPUL).

The obligation to disclose is ongoing: the practitioner must notify the client in writing of any substantial change to anything included in a disclosure (ss. 174(1) and (6) of the LPUL). There are exceptions, particularly relating to "a government or commercial client". If your client falls within the definition of "a government or commercial client" (s. 170 of the LPUL), then Part 4.3 of LPUL, including disclosure and billing obligations, does not apply.

It is important to consider the obligations for disclosure and costs recovery/assessment in conjunction with the legislation in effect at the time the retainer is agreed.

As this is a guide to the legislation only, please read the relevant legislation and regulations carefully.

Additional information on disclosure is as follows:

3.2.1 DISCLOSURE OBLIGATIONS AND PRECEDENTS?

The disclosure obligations are set out at section 174 of LPUL (s. 174 of the LPUL).

The Costs Committee has prepared both "standard" and "conditional" costs disclosure and costs agreement documents, all of which include the requirements for disclosure. The documents also enable the law practice and the client to create a binding agreement. See link to costs agreements at https://www.lawsociety.com.au/practising-law-in-NSW/ethics-and-compliance/costs/useful-forms

3.2.2 WHO IS THE RECIPIENT OF THE DISCLOSURE?

Disclosure must be made to the client and an associated third party payer, if applicable.

The client is defined as including "a person to whom or for whom legal services are provided" (s. 6 of the LPUL).

A person is a "third party payer" if they are not the client and are "under a legal obligation to pay all or any part of the legal costs for legal services provided to the client" (s. 171(1)(a)(i) of the LPUL) or has already paid all or part of those legal costs under such an obligation (s. 171(1)(a)(ii) of the LPUL).

A third party payer is "associated" if the legal obligation is owed to the law practice (s. 171(1)(b)) of the LPUL). A "non-associated" third-party payer is one who is obliged to indemnify another for legal costs; that is, by a contractual obligation, such as a lease or mortgage (s. 171(1)(c) of the LPUL).

Section 176 of the LPUL provides that where a law practice is required to make disclosure to a client, there is an obligation to make the same disclosure to an associated third party payer.

This disclosure, however, only relates to the details or matters that are relevant to the associated third party payer, and to the costs they are obliged to pay.

A law practice is not obliged to disclose to a non-associated third party payer, but is obliged to provide the third party payer, on their written request, with sufficient information to allow them to consider making and, "if thought fit", to make an application for assessment (s. 198(6) of the LPUL).

3.2.3 WHAT INFORMATION DO YOU HAVE TO DISCLOSE?

The following information must be disclosed by the law practice to the client (and any associated third party payer):

- the basis on which legal costs will be calculated and an estimate of the total legal costs (s. 174(1)(a) of the LPUL)
- when or as soon as practicable after there is any significant change to anything previously disclosed, information disclosing the change, including information about any significant change to the legal costs that will be payable by the client (s. 174(1)(b) of the LPUL).
- their right to:
  - negotiate a costs agreement with the law practice (s. 174(2)(a)(i) of the LPUL)
  - negotiate the billing method (s. 174(2)(a)(ii) of the LPUL)
  - receive a bill from the law practice and to request an itemised bill after receiving a bill that is not itemised or is only partially itemised (s.174(2)(a)(iii) of the LPUL)
  - seek the assistance of the designated local regulatory authority (in NSW the Office of the Legal Services Commissioner) in the event of a dispute about legal costs (s.174(2)(a)(iv) of the LPUL).

If the matter is litigious, the following information must be provided:

- Where the law practice negotiates a settlement on behalf of a client, the law practice must disclose to the client, before the settlement is executed:
  - a reasonable estimate of the amount of legal costs payable by the client, if the matter is settled (including any legal costs of another party that the client is to pay (s. 177(1)(a) of the LPUL)
  - a reasonable estimate of any contributions towards those costs likely to be received from another party (s. 177(1)(b) of the LPUL)
- If a law practice enters into a conditional costs agreement that involves an uplift fee, it must disclose to the client the basis on which the uplift fee is to be calculated. It must include an estimate of the uplift fee or, if that is not reasonably practical, a range of estimates for the uplift fee and an explanation of the major variables that may affect the calculation of the uplift fee (s. 182(3) of the LPUL

As LPUL (s. 6 of the LPUL) defines legal costs as including fees that a person has been or may be charged, including disbursements, they must also be disclosed. It is particularly important to disclose whether the fees are inclusive or exclusive of GST. If they are exclusive of GST, the law practice must disclose that there will be an additional amount for GST.

Additional disclosure is required if a law practice proposes to charge more than the regulated costs for matters associated with motor accidents, work injury damages and personal injury, which may be affected by cost caps (see 3.2.6 below).

3.2.4 WHAT DO YOU DISCLOSE IF ANOTHER LAW PRACTICE IS TO BE RETAINED?

If a law practice intends to retain another law practice (for example, a barrister or a practitioner agent) on behalf of the client, then it must (s. 175 of the LPUL) disclose to the client the details specified in section 174(1), in addition to any information that must be disclosed under section 174, including:

- the basis on which legal costs will be calculated and an estimate of the total legal costs (s. 174(1)(a) of the LPUL)
- when or as soon as practicable after there is any significant change to anything previously disclosed under this subsection, provide the client with information disclosing the change, including information about any significant

change to the legal costs that will be payable by the client (s. 174(1)(b) of the LPUL).

The "second law practice" is obliged to provide information under section 175(2) of the LPUL to the "first law practice" so that the retaining law practice can disclose the required information to the client.

3.2.5 WHAT IS THE FORM AND TIMING OF DISCLOSURE?

A law practice must disclose to the client costs and the retention of another law practice "when or as soon as practicable after instructions are initially given in a matter" (s. 174 (1) of the LPUL) and it must be made "in writing" (s. 174(6) of the LPUL).

A significant change to anything previously disclosed (for example, a change in the estimate of costs) must be made "when or as soon as practicable" (s. 174(1)(b) of the LPUL).

The same disclosure rules apply in relation to an associated third party payer (s. 176 of the LPUL) but only to the extent that the details or matters disclosed are relevant to the associated third party payer and relate to costs that are payable by the associated third party payer in respect of legal services provided to the client (s. 176(1) of the LPUL). The disclosure to the third party payer must be made in writing (s. 176(2) of the LPUL) and must be made at the time the disclosure to the client is required (s. 176(2)(a) of the LPUL). If the law practice only afterwards becomes aware of the obligation of the associated third party payer to pay the legal costs of the client, disclosure must be made as soon as practicable after becoming aware (s. 176(2)(b) of the LPUL) the obligation.

3.2.6 WHAT DISCLOSURE IS REQUIRED FOR PERSONAL INJURY DAMAGES MATTERS UNDER SECTION 61 OF THE LPULAA?

There are special requirements for disclosure in relation to legal services provided for personal injury damages claims, where the amount recovered does not exceed $100,000 (s. 61 of the LPULAA and Schedule 1 of the LPULAA) – see Chapter 7 below.

In addition to the general disclosure required, a law practice must also disclose information about the effect a costs agreement may have on maximum fixed costs for personal injury damages claims, where the judgment or settlement is less than $100,000.

The additional disclosure (cl. 28 of the LPULAR) must include:

- a statement that Schedule 1 of the LPULAA (maximum costs in personal injury damages matters) would, but for the costs agreement, limit the maximum costs for legal services provided to the client
- particulars as to how those maximum costs are calculated
- a statement that the costs agreement would have the effect of excluding the operation of that schedule
- an explanation of how the costs will be calculated under the costs agreement
- a statement that the costs agreement relates only to the costs payable between the law practice and the client. If costs are recoverable against the other party, the maximum costs recoverable are determined by Schedule 1 of the LPULAA

This disclosure must be made in writing before, or as soon as practicable after, the law practice is retained in the matter, but before the costs agreement is entered into.

The intention of this additional disclosure is to show the difference between the recovery from another party under Schedule 1 and the costs that the client will have to pay under the costs agreement.

Failure to disclose the information required by clause 28 of the LPULAR has serious consequences: the law practice will not be entitled to the benefit of clause 4 of Schedule 1 of the LPULAA, which means the law practice cannot contract out of the maximum costs cap or charge more than the maximum costs cap.

See the precedent letters drawn up by the Costs Committee in relation to contracting out of the maximum costs caps. See link to contracting out letters at https://www.lawsociety.com.au/practising-law-in-nsw/ethics-and-compliance/costs/useful-forms

3.2.7 WHEN IS DISCLOSURE NOT REQUIRED?

Disclosure is not required in the following circumstances if the total legal costs, excluding disbursements, are not likely to exceed $750 ($825 including GST) (s. 174(4) and Schedule 4 clause 18 of the LPUL).

Disclosure is not required where the client is a "commercial or government client" defined by s. 170(2) of the LPUL as:

- a law practice (s. 170(2)(a) of the LPUL)
- a public or foreign company, or its subsidiary, or a registered Australian body (s. 170(2)(b)(i) of the LPUL)
- a liquidator, administrator or receiver (s. 170(2)(b)(ii) of the LPUL)
- a financial services licensee (s. 170(2)(b)(iii) of the LPUL)
- a proprietary company, if formed for the purpose of carrying out a joint venture and if any shareholder of the company is a person to whom disclosure of costs is not required (s. 170(2)(b)(iv) of the LPUL)
- a subsidiary of a large proprietary company, but only if the composition of the subsidiary's board is taken to be controlled by the large proprietary company as provided by subsection (3) (s.170(2)(b)(v) of the LPUL)
- an unincorporated group of participants in a joint venture, if one or more members of the group are persons to whom disclosure of costs is not required and one or more members of the group are not any such persons and if all members of the group who are not such persons have indicated that they waive their right to disclosure (s. 170(2)(c) of the LPUL)
- a partnership that carries on the business of providing professional services if the partnership consists of more than 20 members or if the partnership would be a large proprietary company (within the meaning of the *Corporations Act 2001* (Cth)) if it were a company (s. 170(2)(d) of the LPUL)
- a body or person incorporated in a place outside Australia (s. 170(2)(e) of the LPUL)
- a person who has agreed to the payment of costs on a basis that is the result of a tender process (s. 170(2)(f) of the LPUL)
- a government authority in Australia or in a foreign country (s. 170(2)(g) of the LPUL)
- a person specified in, or of a class specified in, the Uniform Rules (s. 170(2)(h) of the LPUL).

3.2.8 DISCLOSURE REASONABLE STEPS

The law practice must be satisfied that the client consents to and understands the proposed course of action for the conduct of the matter and the proposed costs (s. 174(3) of the LPUL). A summary of these issues can be found at https://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/1041718.pdf

3.2.9 WHAT ARE THE CONSEQUENCES OF FAILURE TO DISCLOSE?

If a law practice contravenes the disclosure obligations:

- the costs agreement concerned (if any) is void (s. 178(1)(a) of the LPUL)
- the client or an associated third party payer is not required to pay the legal costs until they have been assessed or any costs dispute has been determined by the designated local regulatory authority (s. 178(1)(b) of the LPUL)
- it must not commence or maintain proceedings for the recovery of any or all of the legal costs until they have been assessed or any costs dispute has been determined by the designated local regulatory authority or under jurisdictional legislation (s. 178(1)(c) of the LPUL)
- it may constitute unsatisfactory professional conduct or professional misconduct on the part of any principal of the law practice or any legal practitioner associate or foreign lawyer associate involved in the contravention (s. 178(1)(d) of the LPUL)
- it must make any application for assessment within 12 months of the bill being submitted or a request for payment being made (s. 198(3) and (4) of the LPUL). However, an application for assessment may be dealt with by a costs assessor if the designated tribunal (the Manager, costs assessment), on application from the costs assessor or the client or third party payer, determines, after having regard to the delay and the reasons for the delay, it is just and fair for the application for assessment to be dealt with after the 12month period.

Section 178(2) of the LPUL provides that in a matter involving both a client and an associated third party payer where disclosure has been made to one but not the other:

- the liability of the one to whom disclosure was made to pay the legal costs is not affected (s. 178(2)(a) of the LPUL)
- recovery proceedings can be maintained against the one to whom the disclosure was made (s. 178(2)(b) of the LPUL).

3.2.10 DISAPPLICATION OF (SS. 178(1) AND (2) OF THE LPUL)

Some comfort is given to law practices by the addition of regulation 72A of the LPUGR, whereby a law practice that has omitted to disclose when instructions are first received, takes all reasonable steps to comply within 14 days of becoming aware of the contravention.

3.3 COSTS AGREEMENTS

Information on costs agreements is as follows:

3.3.1 COSTS AGREEMENTS

A client of a law practice has the right to require a costs agreement and to have a negotiated costs agreement with the law practice (s. 179 of the LPUL).

A costs agreement must be written or evidenced in writing (s. 180(2) of the LPUL). The offer can be accepted in writing or by "other conduct" (s. 180(3) of the LPUL).

It is best practice to have the client sign the costs agreement as evidence of their receipt and acceptance of it. Even if invoices have been paid by the client, this may not be sufficient to protect the law practice from an allegation that the costs agreement is unenforceable.

Law practices that intend to charge for storage of files and documents should consider rule 16 of the Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 in relation to whether to have the client sign the costs agreement.

3.3.2 COSTS AGREEMENT PRIMA FACIE EVIDENCE OF REASONABLENESS OF COSTS

A costs agreement is prima facie evidence that legal costs disclosed in the agreement are fair and reasonable if costs disclosure has been given under Division 3 of LPUL and the costs agreement doesn't contravene Division 4 of LPUL (which concerns requirements for costs agreements) (s. 172(4) of the LPUL).

3.3.3 WHO CAN MAKE A COSTS AGREEMENT?

A costs agreement may be made between:

- a client and a law practice (s. 180(1)(a) of the LPUL)
- a client and a law practice retained on behalf of the client by another law practice (s. 180(1)(b) of the LPUL)
- a law practice and another law practice (s. 180(1)(c) of the LPUL)
- a law practice and an associated third party payer (s. 180(1)(d) of the LPUL).

3.3.4 WHAT TYPES OF COSTS AGREEMENTS ARE THERE?

LPUL provides for two types of costs agreements:

- a standard costs agreement
- a conditional costs agreement.

In some instances, the term "costs agreement" refers to both standard costs agreements and conditional costs agreements (for example, ss. 172, 178, 179, 184, 185, 195 and 199 of the LPUL) and in others, it is used in contradistinction to the term "conditional costs agreement" (for example, s. 180(3) of the LPUL). As a result, some provisions of LPUL apply to both types of agreements, while others apply to only one.

Under LPUL, a law practice is permitted to enter into a conditional costs agreement, which provides that "the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which those costs relate" (s. 181(1) of the LPUL).

The Costs Committee has prepared a pro-forma Standard Agreement which can be accessed in the Precedents under Professional Responsibility on the Law Society Website.

3.3.5 WHAT ARE UPLIFT FEES?

A conditional costs agreement may provide for the payment of an uplift fee on the successful outcome of the matter (s. 182(1) of the LPUL) (excluding unpaid disbursements).

Where a conditional costs agreement relates to a litigious matter, the agreement must not provide for the payment of an uplift fee unless the law practice has a reasonable belief that a successful outcome of the matter is reasonably likely and an uplift fee must not exceed 25 per cent (s. 182(2) of the LPUL).

The basis for calculating the uplift fee must be identified in the agreement (s. 182(3)(a) of the LPUL).

The agreement must contain an estimate of the uplift fee or, if that is not reasonably practical, a range of estimates, and an explanation of the major variables that may affect the calculation of the uplift fee (s. 182(3)(b) of the LPUL).

3.3.6 PROHIBITION ON CONTINGENCY AGREEMENTS

- A law practice must not enter into a costs agreement under which the amount payable to the law practice, or any part of that amount, is calculated by reference to the amount of any award or settlement or the value of any property that may be recovered in any proceedings to which the agreement relates (s. 183(1) of the LPUL). This prohibition does not apply to the extent that the costs agreement adopts an applicable fixed costs legislative provision; for example, fixed costs for probate or motor accidents matters (s. 183(2) of the LPUL).
- A contravention of the prohibition against contingency fees by a law practice may constitute unsatisfactory professional conduct or professional misconduct on the part of any principal of the law practice or any legal practitioner associate or foreign lawyer associate involved in the contravention (s. 183(3) of the LPUL).
- A law practice that has entered into a costs agreement in contravention of section 183 is not entitled to recover any amount in respect of the provision of legal services in the matter to which the costs agreement relates and must repay any amount received in respect of those services to the person from whom it was received (s. 185(4) of LPUL).

3.3.7 FORMAL REQUIREMENTS FOR CONDITIONAL COSTS AGREEMENTS

The Costs Committee has prepared a pro-forma Conditional Costs Agreement with provision for an uplift if required. It can be accessed in the Precedents under Professional Responsibility on the Law Society Website.

A conditional costs agreement (both with and without uplift) must:

- be in writing and in plain language (s. 181(2)(a) of the LPUL)
- set out the circumstances that constitute the successful outcome of the matter to which it relates (s. 181(2)(b) of the LPUL)
- be signed by the client (s. 181(3)(a) of the LPUL)

- include a statement that the client has been informed of their right to seek independent legal advice before entering into the agreement (s. 181(3)(b) of the LPUL)
- contain a cooling-off period of not less than five clear business days, during which the client, by written notice, may terminate the agreement, but this requirement does not apply where the agreement is made between law practices only (s. 181(4) of the LPUL)

If a client terminates a conditional costs agreement within the cooling-off period, the law practice may recover only those legal costs in respect of legal services performed for the client before that termination, and that were performed on the instructions of the client and with the client's knowledge that the legal services would be performed during that period (s. 181(5)(a) of the LPUL). The law practice may not recover any uplift fee (s. 181(5)(b) of the LPUL).

A conditional costs agreement may provide for disbursements to be paid irrespective of the outcome of the matter (s. 181(6) of the LPUL).

A conditional costs agreement may relate to any matter, except a criminal matter (s. 181(7)(a) of the LPUL) or a family law matter (s. 181(7)(b) of the LPUL).

A contravention by a law practice of provisions relating to conditional costs agreements may constitute unsatisfactory professional conduct or professional misconduct on the part of any principal of the law practice or any legal practitioner associate or foreign lawyer associate involved in the contravention (s. 181(8) of the LPUL). Also, a law practice that has entered into a costs agreement with an uplift fee in contravention of section 182 is not entitled to recover the whole or any part of the uplift fee and must repay any portion of the uplift fee to the person from whom it was received (s. 185(3) of the LPUL).

Conditional costs agreements that include uplift fees have the following additional requirements:

- Where a conditional costs agreement relates to a litigious matter, the agreement must not provide for the payment of an uplift fee unless the law practice has a reasonable belief that a successful outcome is reasonably likely, and an uplift fee must not exceed 25 per cent (s. 182(2)(a) of the LPUL).
- The uplift fee must not exceed 25 per cent of the legal costs (excluding disbursements) (s. 182(2)(b) of the LPUL).
- The basis for the calculation of the uplift fee must be identified in the agreement (s. 182(3)(a) of the LPUL).
- The agreement must contain an estimate of the uplift fee or, if that is not reasonably practical, a range of estimates, and an explanation of the major variables that may affect the calculation of the uplift fee (s. 182(3)(b) of the LPUL).

3.3.8 VOIDING OF COSTS AGREEMENTS

- A costs agreement that contravenes, or is entered into in contravention of, any provision in Part 4.3 of Division 4 'Costs Agreements' sections 179–185 of the LPUL is void (s. 185(1) of the LPUL).
- If a costs agreement is void due to a failure to comply with the disclosure obligations, the costs must be assessed before the law practice can seek to recover them (s. 178(1)) (note to s.185(1) of the LPUL).
- A law practice is not entitled to recover any amount in excess of that the law practice would have been entitled to recover if the costs agreement had not been void and must repay any excess amount received (s. 185(2) of the LPUL).
- A law practice that has entered into a costs agreement in contravention of the requirements for conditional costs agreements with an uplift fee at section 182 is not entitled to recover the whole or any part of the uplift fee and must repay the amount received in respect of the uplift fee to the person from whom it was received (s. 185(3) of the LPUL).
- A law practice that has entered into a costs agreement in contravention of the prohibition on contingency fees in section 183 is not entitled to recover any amount in respect of the provision of legal services in the matter to which the costs agreement relates and must repay any amount received in respect of those services to the person from whom it was received (s. 185(4) of the LPUL).

3.3.9 COSTS AGREEMENTS GENERALLY

In either standard or conditional costs agreements:

- it is not possible to include a provision that the legal costs to which the costs agreement relates are not subject to a costs assessment (s. 180(4) of the LPUL)
- in the event of a costs agreement being void, legal costs will be recoverable either:
  - according to whether they are fair and reasonable, in particular they are proportionately and reasonably incurred, and are proportionate and reasonable in amount, including consideration of the factors set out at in sections 172(1) and 172(2) of the LPUL, or
    - in accordance with any fixed costs provision (s. 172(3) of the LPUL).

3.3.10 CAN YOU CHARGE INTEREST ON COSTS?

A term entitling the law practice to charge interest may be included in the costs agreement (s. 195(1) of the LPUL).

However, note that LPUL allows a law practice to charge the client interest on unpaid legal costs if the costs are unpaid 30 days or more after a bill was submitted to the client (s. 195(2) of the LPUL). The bill, however, must have included a statement that interest was payable, including the rate of interest (s. 195(3) of the LPUL).

The rate of interest charged, whether under LPUL or under a costs agreement, must not exceed the rate prescribed under regulation 75 of the LPUGR, which sets out that the maximum prescribed rate of interest is the Cash Target Rate (specified by the Reserve Bank of Australia and available at www.rba.gov.au) + 2%.

If you want to charge interest to your client you must bill them within 6 months after the completion of the matter (s.195(5) of the LPUL).

3.3.11 CAN YOU REQUEST SECURITY FOR LEGAL COSTS FROM THE CLIENT?

A law practice may take reasonable security from a client for legal costs (including security for payment of interest on unpaid legal costs) and may refuse or cease to act for a client who does not provide reasonable security (s. 206 of the LPUL).

3.4 BILLING

Information on billing is as follows:

3.4.1 Tax invoice/bill of costs
3.4.2 Commencement of recovery proceedings
3.4.3 Definitions of bills
3.4.4 Request for an itemised bill
3.4.5 Form of a bill of costs
3.4.6 Presenting the bill to the client
3.4.7 Content of a bill
3.4.8 Timing of a bill
3.4.9 Withdrawal/replacement of a bill

3.4.1 TAX INVOICE/BILL OF COSTS

In accordance with Australia's taxation legislation, law practices provide their clients with a tax invoice. The terms "bill" and "bill of costs" (referring to the formal documentation required if there is a dispute between a practitioner and a client) have been incorporated into LPUL.

3.4.2 COMMENCEMENT OF RECOVERY PROCEEDINGS

A law practice must not commence proceedings to recover legal costs from a person unless a bill has been submitted, and:

- where the legal costs are subject to a costs dispute, not before the designated local regulatory authority (the NSW Office of the Legal Services Commissioner) has closed or resolved the dispute (s. 194(2)(a) of the LPUL)
- until, or at least 30 days after, the later of:
  - the date on which the person is given the bill (s. 194(2)(b)(i) of the LPUL) or
  - the date on which the person receives an itemised bill following a request made in accordance with section 187 (s.194(2)(b)(ii) of the LPUL).

Law practices should be aware that applications for assessment of solicitor own client costs must be filed within 12 months after the bill was given to the client (s.193(3)(a) of LPUL).

3.4.3 DEFINITIONS OF BILLS

Regulation 5 of the LPUGR includes the following two definitions of bill:

- "lump sum bill" means a bill that describes the legal services to which it relates and specifies the total amount of the legal costs
- "itemised bill" means a bill that specifies in detail how the legal costs are made up, so as to allow costs to be assessed.

3.4.4 REQUEST FOR AN ITEMISED BILL

If a "lump sum bill" is given by the law practice, then any person who is entitled to apply for an assessment may ask the law practice to give them an itemised bill (s. 187(1) of the LPUL).

A request for an itemised bill must be made within 30 days after the date on which the legal costs become payable (s. 187(2) of the LPUL).

The law practice must comply with the request within 21 days after the date on which the request is made (s. 187(3) of the LPUL).

If the person making the request is liable to pay only a part of the legal costs to which the bill relates, the request for an itemised bill may only be made in relation to those costs that the person is liable to pay (s. 187(4) of the LPUL).

3.4.5 FORM OF A BILL OF COSTS

A bill of costs given by a law practice or a letter accompanying the bill must be signed by a principal of the law practice designated in the bill or letter as the principal for the bill, or it must nominate a principal of the law practice as the responsible principal for the bill (s. 188(1) of the LPUL).

If a principal does not sign or is not nominated as the responsible principal for a bill given by a law practice, each principal of the law practice is taken to be responsible for the bill (s. 188(2) of the LPUL).

The bill must include, or be accompanied by, a written statement setting out:

- the avenues that are open to the client if there is a dispute in relation to legal costs (s. 192(a) of the LPUL)
- any time limits that apply to the avenues open to the client if there is a dispute in relation to legal costs (s. 192(b) of the LPUL)

See the precedent of statement in Appendix 1.

The reasons for the decision of the Court of Appeal in Leon Nikolaidis v Legal Services Commissioner [2007] NSWCA 130

contain important commentary on a practitioner's responsibility in relation to bills of costs prepared by employed staff.

Clients cannot be charged for providing a bill of costs or a subsequent itemised bill of costs (s. 191 of the LPUL).

3.4.6 GIVING THE BILL TO THE CLIENT

A bill given by a law practice to a client may be given in one of several ways, which are:

- by personal delivery to the client or an agent (reg. 73(1)(a) of the LPUGR)
- by post to the client or an agent (reg. 73(1)(b) of the LPUGR)
- by leaving a copy of the bill at the usual or last known business or residential address (reg. 73(1)(c) of the LPUGR)
- by DX (reg. 73(1)(d) of the LPUGR)
- by fax (reg. 73(1)(e) of the LPUGR)
- by email or mobile phone (reg. 73(1)(f) of the LPUGR)
- in the case of a corporation, in any manner in which service of a notice or documents may, by law, be served on the corporation (reg. 73(1)(g) of the LPUGR).

3.4.7 CONTENT OF A BILL

Itemised bills should include:

- date of attendance
- description of the task/s undertaken during the attendance
- the names of the practitioners who undertook the attendance
- the duration of the attendance
- the amount charged for the attendance.

3.4.8 TIMING OF A BILL

A law practice may give a client an interim bill covering only part of the legal service that the law practice was retained to provide (s. 193(1) of the LPUL).

Legal costs that are the subject of an interim bill may be assessed either at the time of the interim bill or at the time of the final bill (s. 193(2) of the LPUL). This means that a client who receives and pays an interim bill may apply for assessment of that bill at the conclusion of the matter. In this case, the 12-month period to apply for assessment (s. 198(3) of the LPUL) runs from the date the final bill was given to the client.

This also means that a law practice which has given an interim bill may apply for assessment of that bill at the conclusion of the matter. Law practices have 12 months from the date of the final bill in which to apply for assessment (s.198(3) of LPLUL.

If a client requests a report on costs, then the law practice must provide it at no cost to the client (s. 190(1) of the LPUL).

3.4.9 WITHDRAWAL/REPLACEMENT OF A BILL

Where a lump sum bill is given and a client requires an itemised bill and the total amount of the legal costs in the itemised bill exceeds the amount charged in the lump sum bill, the additional costs may only be recovered by the law practice if:

(a) when the lump sum bill was given, the law practice disclosed in writing to the client that the total amount of the legal costs specified in any itemised bill may be higher than the amount specified in the lump sum bill, and

(b) the costs are determined to be payable after a costs assessment or a binding determination under section 292 of the Uniform Law (reg. 74(1) of the LPUGR).

It would be prudent to include a warning on any lump sum bill that, if an itemised bill is requested, the earlier bill may be withdrawn and the itemised bill may be for a larger amount

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