

Costs estimates

Guideline

1. This Guideline and Direction seeks to promote consistency in the exercise of their functions by local regulatory authorities in relation to dispute resolution and professional discipline matters concerning legal costs under the Legal Profession Uniform Law (LPUL).
2. It also seeks to advance the objective stated by section 169(a) of the LPUL to ensure that clients are able to make informed choices about their legal options and the costs associated with pursuing those options.
3. For these purposes, I express my view as Commissioner for Uniform Legal Services Regulation (CULSR) that an estimate of the total legal costs in a matter, as required by section 174(1)(a) of the LPUL, is a reasonable approximation of the total costs that a client is likely to have to pay in the matter for which instructions have been given, expressed as a single figure, from time to time (the estimate). The definition of total legal costs in this context includes professional fees, any disbursements and GST, which should be separately identified, but not interest: LPUL section 6. It should be noted that where a costs agreement includes an uplift fee, that fee should be included as part of the estimate of total legal costs, with the circumstances in which it would be payable explained to the client.
4. It should be noted that section 174(1)(a) also requires a law practice to disclose the basis on which legal costs will be calculated.
5. It is at all times important that the matter for which the estimate is required is clearly defined and understood by both the law practice and their client and, in particular, it should be explained to a client that the estimate is not a fixed fee quotation.
6. The requirement to give an estimate does not preclude a fixed fee quotation being given if it is desired by the law practice so to do.

7. Where a law practice is required pursuant to section 174 (1)(b) to provide information about any significant change to anything previously disclosed, a revision of the estimate may also be required. Any revised estimate should also be provided to the client in accordance with that section.
8. The provision of an estimate or estimates from time to time does not preclude the provision of other information to a client about the steps or stages in a matter and the provision of such information to a client should be encouraged. It will not be inconsistent with section 174(1)(a) to provide costs estimates for each of the stages that the matter might reach, whether individual stage estimates are expressed as a single figure or as a range of figures, PROVIDED the law practice, having considered all the circumstances and the most likely outcome, always gives the single figure estimate of the total legal costs in the matter that section 174(1)(a) requires. It is permissible and may be desirable to preface a single figure estimate with the word 'about' to reflect the fact that the figure is an estimate and is not a fixed fee.

Direction

Having regard to my opinion that the following direction is necessary and appropriate to ensure that the designated local regulatory authorities to which it is addressed act in a manner that promotes inter-jurisdictional consistency in the application of the Legal Profession Uniform Law and of the Uniform Rules:

I HEREBY GIVE A DIRECTION TO:

- The Council of the Law Society of NSW;
- The Council of the NSW Bar Association;
- The NSW Legal Services Commissioner;
- The Victorian Legal Services Board; and
- The Victorian Legal Services Commissioner

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- i to keep me as the Commissioner for Uniform Legal Services Regulation informed at intervals to be advised of the extent to which in the ordinary exercise of their functions and in their respective opinions the views expressed in Guideline CULSR 01/2016 – Costs Estimates are applied in practice; and of any judicial or other decisions that may come to their attention concerning the interpretation of the requirements of section 174(1)(a) and (b) to provide an estimate; and
- ii to report pursuant to section 440 at least annually and as required on:
 - the extent to which the total estimated legal costs in matters are based on the appropriate exercise of the professional judgment of law practices generally or in particular matters or classes of matters;
 - the extent to which law practices adequately disclose and explain the possible variables that may impact on total legal costs to their clients;
 - the extent to which the disclosed estimated total legal costs depart from final bills;
 - what are fair and reasonable legal costs in particular circumstances, having regard to the principles and criteria set out in section 172;
 - the operation of any rule made under section 178(3); and
 - any other matters required or permitted by the Uniform Law and notified to local regulatory authorities in relation to legal costs.

Dale Boucher

Commissioner for Uniform Legal Services Regulation

11 March 2016

- 1 The Commissioner for Uniform Legal Services Regulation and the Legal Services Council perform different functions. Both are empowered to issue guidelines and directions under section 407 of the Legal Profession Uniform Law to local regulatory authorities about how they exercise their functions under the Uniform Law and Uniform Rules. The Commissioner can issue guidelines and directions about the complaints and professional discipline functions exercised under Chapter 5 of the Legal Profession Uniform Law. This Guideline and Direction is intended to enable opinions to be formed from time to time by the Commissioner on the operation of the cost estimate disclosure requirements in the context of complaints and professional discipline matters.

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COMMISSIONER
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