

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 legal costs matters under the Legal Profession Uniform Law (LPUL), other than in relation to dispute resolution and professional discipline issues.
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, the Legal Services Council expresses its view 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 and 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 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 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 its 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, the Legal Services Council

HEREBY GIVES 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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to keep the Council informed at intervals to be advised of the extent to which in their respective opinions the views expressed in the Guideline – Costs Estimates – LSC 01/2016 are applied in practice and of any judicial or other decisions that may come to their attention concerning the interpretation of the requirement of section 174(1)(a) and (b) to provide an estimate.

Dale Boucher

Chief Executive Officer
Legal Services Council

11 March 2016

- 1 The Legal Services Council and the Commissioner for Uniform Legal Services Regulation perform different functions. Both are empowered to issue guidelines and directions under section 407 of the Legal Profession Uniform Law. This Guideline and Direction is issued by the Legal Services Council to provide guidance to the local regulatory authorities in the performance of their functions concerning the operation of the cost estimate disclosure requirement in section 174(1) under the Legal Profession Uniform Law.