

Submission of the Office of the NSW Legal Services Commissioner in response to the Review of the Costs Disclosure Thresholds in the Uniform Law: Consultation Paper

Submission in relation to standard short form costs disclosure (section 174(5) of the *Legal Profession Uniform Law* (LPUL))

In relation to the review of costs disclosure thresholds conducted by Dr Matthew Butlin, appointed by the Legal Services Council, the Office of the NSW Legal Services Commissioner (OLSC) wishes to make the following submission regarding the standard short form costs disclosure option available to lawyers pursuant to section 174(5) of the *Legal Profession Uniform Law* (LPUL). This submission should be considered as supplementary to the points raised by OLSC in its discussion with Dr Butlin on 30 November 2022, as a key stakeholder.

The standard short form costs disclosure should not be abolished (Option U4). Based on the experience of OLSC in the conduct of compliance audits of law practices pursuant to section 256 LPUL in the period 2018 to the present, the alternative option of providing standard short form costs disclosure is utilised by small practices and sole practitioners, and has been positively received (and adopted in some cases) by those solicitors who were previously unaware of its existence and were notified of it by the OLSC during an audit. For example, since 2018, from over 25 practices which were audited by OLSC, there were nine practices which were unaware of and expressed an intention to adopt (some of which went on to demonstrate adoption of) the regular use of the standard short form costs disclosure pursuant to section 174(5) LPUL.

Whilst it is acknowledged that this is a relatively small number of instances when compared to, for example, the number of respondents to the solicitor survey conducted in relation to the review by Dr Butlin, it is noted that the OLSC data aligns with the results of the survey of solicitors, as referred to in the May 2023 'Consultation paper on costs disclosure thresholds' (emphasis added):

Almost three quarters of respondents to the solicitor survey reported that they were aware of the standard costs disclosure form. Of those respondents, almost three quarters (which is around half of the total sample) had used the standard form. When the respondents who had used the standard form were asked about frequency, around 80 per cent said they use it for all or some matters under \$3,000. These results were not reflected in the feedback from professional associations or solicitor workshops. While some of the solicitors at the workshops said they used the form, it was more common to hear they had never

used it, had used it in the past but no longer did, or had modified the form for their practice.

Based on the data regarding the number of costs dispute complaints received annually and their breakdown by 'total cost' amounts (as referred to in the annual reports of the Legal Services Council), a significant proportion of disputes arise in relation to matters where costs are in the \$0-\$3,000 range. For example, in the period 1 July 2022 to 31 May 2023, there were 140 costs disputes in the \$0-\$3000 range and a further 383 in the range of \$3001-over \$5000. It is the OLSC's view that any curtailment or removal of the alternative option of standard short form costs disclosure could result in the number of such disputes rising annually.

Samantha Gulliver
Acting NSW Legal Services Commissioner

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