

### Overview of responses to the Billing Practices Check for medium to large law firms, 2013

We sent the Billing Practices Check for Medium to Large Law Firms 2013 to 180 managing partners and legal practitioner directors of law firms with 7 or more practising certificate holders. A total of 60 people had answered some or all the survey questions as at 20 May 2013 and of them, 44 people indicated they were from participating firms and 16 that they participated as interested individuals. We extended the deadline and by 15 June, a total of 70 people had answered the survey. Of the 70, 48 people indicated they were from participating firms and 22 that they participated as interested individuals.

We asked participating firms to devise a code for use by everyone in their firm who, for this survey, has experience of billing practices. The code guarantees anonymity for the firm, and, providing enough people from a firm answer, for those individuals also.

A total of 35 of the 48 people who indicated they were from participating firms provided a code and 18 from one firm entered the code KAWANA. We will publish results for everybody who completed the survey and then separate out and publish the results for KAWANA in a separate document for that firm's viewing - there are enough responses from that firm to guarantee anonymity for the individuals who answered. That will give people from that firm the opportunity to highlight areas for encouragement, improvement or even change. At the very least, it can promote discussion within the firm.

A number of other firms gave codes with 2 – 3 people answering. Their codes are 030161, sussex and GP4574. Another 12 people gave codes for their firms but only 1 person from each of the firms completed the survey. Too few people from these firms answered the questions to guarantee their anonymity within their firms and hence we include their answers in the results overall rather than separately under their firm's code.

The document headed *BPM/LF 0713* provides detailed charts and percentages for all 70 people who answered some or all the survey questions. This document describes the responses of a total of 28 people who answered nearly every question enabling us to make more accurate cross-tabulations. While all 28 people answered some questions a varied number of people "skipped" other questions, not necessarily the same people each time. This has a bearing on the numbers we discuss in this overview.

## Demographics

The following table sets out the responses of those 28 people to the demographic questions:

Status	
Participating law firms	18
Interested individuals	10
Business structure	
Incorporated legal practice	22
Partnership	4
Other	1
Employment status	
Partners/Directors	9
Administration/secretarial	6
Principal	4
Paralegal (2) 4 <sup>th</sup> Year lawyer (2)	4
Senior Associate (1) Practice manager (1)	2
Areas of practice (top 4 of 16 areas provided for multiple choice)	
Family/de facto law	18
Personal injury and workcover	16
Litigation	15
Conveyancing	13
Size of practice	
10-19 practising certificate holders	17
7-9 practising certificate holders	10
Location	
Regional city	11
Regional town	6
Brisbane suburbs	5
Brisbane CBD	5
Gender (3 skipped this question)	
Male	15
Female	10
Practising certificate holders (8 skipped as they do not hold practising certificates)	
25-29	5
30-34	5
20-24	3
15-19 (2), 5-9 (2), 10-14 (1), 40+ (1)	6

## First interview and estimating costs

More than half of the 27 respondents who answered the question said they “always” discuss each of the 12 topics listed at question 7 at the first interview for a typical matter but for 1 exception. Just over a half said they “sometimes” talk with the client about “the margin of uncertainty that the client can tolerate with regard to the final bill”.

Of the 8 options given as a basis for estimating costs, more than half say their firm “always” refers to a court scale. The top 5 options that the majority of people “sometimes” use are:

- “taking client feedback into account”
- “reference to standard fees”
- “taking the market into account”
- “predicted time-cost calculation”
- “negotiation with the client about the value of the work and the cost”

## Costs and billing policies

Nearly all the 27 respondents who answered the question said their firm has policies or procedures in place to ensure that they make valid costs disclosure and adhere to the costs agreement, and to ensure that their final bills are consistent with the original estimates and with the firm’s internal costs/billing policies. The one exception is where a third said their firm has a policy or procedure in place to “discuss a provisional bill with the client”.

We asked respondents to indicate which billing methods they or their firm most commonly used and listed 10 possibilities. The majority said they “sometimes” used seven methods, viz.:

- |  |                            |
|--|----------------------------|
| • Interim billing                            | 79% sometimes (17% always) |
| • No win no fee                              | 73% sometimes ( 4% always) |
| • Fixed fee – “menu” fees for standard tasks | 73% sometimes (26% always) |
| • Fixed fee – tailored to client needs       | 72% sometimes ( 8% always) |
| • Other conditional fee arrangements         | 54% sometimes (0% always)  |
| • A court scale                              | 52% sometimes (32% always) |
| • Time-based (hourly)                        | 50% sometimes (23% always) |

The highest responses for never using a particular method are (over 40% selecting):-

- |   |                           |
|---|---------------------------|
| • Hybrid (part fixed-fee, part time-cost)   | 56% never (39% sometimes) |
| • Fixed fee – value pricing to client value | 48% never (48% sometimes) |
| • Other conditional fee arrangements        | 45% never (55% sometimes) |

## Care and consideration

The survey asked respondents if their firm bills for care and consideration and the circumstances under which they think it is appropriate to bill for care and consideration:

- 7 of 25 respondents who answered the question said their firm “often” bills for care and consideration; 11 “sometimes” and 7 “never”.
- 11 of the 20 respondents who answered the question whether it is appropriate to charge care and consideration when the bill is drawn up on a time-costed basis said “yes” and 9 said “no”;
- 21 respondents answered the question whether it is appropriate charge care and consideration when the bill is drawn up on a court scale: 17 said “yes” and 4 said “no”;
- 17 respondents answered the question “under what circumstances do you believe you are entitled to claim care and consideration?” The main reasons they gave were complexity and/or novelty, urgency, difference, high risk, as allowed by the court scale and when in the client agreement

We did not ask the question “do you/does your firm talk with clients about care and consideration as a contingency that may be added to the final bill?” and so we don’t know the extent to which that topic is discussed. We have however cross-tabulated the answers to two questions which bear on this issue, as follows:

**COLUMNS:** Does your firm bill for care and consideration? (25 responses)

**ROWS:** In a typical matter at the first interview, do you talk with the client about any contingencies that may add to or subtract from the final bill? (25 responses)

	Never	Sometimes	Often
Never	0	0	1
Sometimes	3	2	2
Always	3	9	4

Notably:

- 1 respondent said they never talk with clients about contingencies that may add to or subtract from the final bill and that their firm often bills for care and consideration
- 2 people says their firm often bills for care and consideration and sometimes talks with clients about contingencies
- 4 people say their firm often bills for care and consideration and always talks with clients about contingencies.
- The highest number, 9, say their firm sometimes bills for care and consideration and always talks with clients about contingencies

We have also cross-tabulated the answers to these questions:

**COLUMNS:** Does your firm bill for care and consideration? (25 responses)

**ROWS:** In a typical matter at the first interview, do you talk with clients about the margin of uncertainty that the client can tolerate with regard to the final bill? (25 responses)

	Never	Sometimes	Often
Never	1	1	2
Sometimes	3	7	2
Always	2	3	3

The table shows that:

- 1 respondent who said they never talk with the client about the margin of uncertainty that the client can tolerate with regard to the final bill also said that their firm “sometimes” bills for care and consideration
- 2 respondents who said they never talk with the client about the margin of uncertainty that the client can tolerate with regard to final bill also said that their firm “often” bills for care and consideration
- 3 people say their firm sometimes bills for care and consideration, and that they always talk with the client about the margin of uncertainty
- 3 say their firm often bills for care and consideration, and they always talk with the client about the tolerable margin of uncertainty
- The highest number (7) sometimes talks with the client about their margin of uncertainty, and sometimes bills for care and consideration

## Costs updates

We asked about what is typically done in the firm regarding cost updates, and provided 6 possible actions that firms might take, asking respondents to choose whether their firms “never”, “sometimes” or “always” chose those actions.

- Less than half of the 26 respondents who answered this question indicated that they “always” used any of the listed actions
- the majority said that their firm “sometimes” used 3 of the listed actions
  - “The client receives regular, scheduled bills that include the charges to date, and estimated charges remaining” (19 sometimes, 6 always, 1 never)
  - “In our costs updates we try to communicate the benefit of the work to the client” (17 sometimes, 3 always, 5 never)
  - “A personal bring-up system is used” (15 sometimes, 11 always).

## Billing

We have tabulated how often the 21 respondents who answered the question said that their final bills exceed their initial estimates and by how much, as follows:

Bill exceeds the estimate by	Sometimes	Frequently
10%	14	4
20%	13	2
30%	10	
40%	5	
50%	5	1
>50%	5	

- the most common reasons the 23 respondents who answered the question gave for their final bills exceeding their estimate are that there were complex developments with the matter (21), that they spent more time spent on the matter than originally estimated (16) their initial estimate was inaccurate (7) and that they billed care and consideration (1)
- when the final bill looks like it will exceed the estimate, respondents say about their firm's response:
  - We discuss the changes in person (21 sometimes, 3 always)
  - An email is sent to let them know of the changes, seeking their consent by reply email (16 always, 4 sometimes)
  - We communicate to the client how the work benefits them, and the value for money they receive (15 sometimes, 5 always)
  - A formal letter is sent, requesting a response (15 sometimes, 6 always)
  - We follow up an initial phone call with a letter that requires a response (13 sometimes, 6 always)

The majority of people say their firm reviews a client's bill before sending it and that estimate accuracy is measured, i.e. comparing initial estimates to the actual bill.

We asked in what circumstances respondents provided clients with itemized bills and gave them the option to answer "never", "sometimes" or "always" for each of 4 possibilities,:

- 18 said they "always" and 4 said they "sometimes" provide clients with an itemized bill as requested by the client

- 15 said they “always” and 7 said they “sometimes” provide clients with an itemized bill at the completion of a matter;
- 11 say they “sometimes” provide itemized bills at regular billing intervals (8 “always”, 3 “never”)
- 10 “always” and 7 “sometimes” provide itemized bills dependent on agreed client preferences at the start of a matter

### **Client satisfaction**

24 respondents said the most common ways firms gauge client satisfaction with costs disclosure and billing are to monitor for any problems arising (12) and to rely on clients to say if they are dissatisfied with costs disclosures and billing (12)

The question was multiple choice, and 8 people also said they ask clients complete a client satisfaction survey (by post), and 5 said they ask the client at the end of the matter through a meeting or phone call, and 3 gauge satisfaction by the recovery percentage of bill amounts that are recovered. 2 say they do not gauge client satisfaction.

### **Supervision of billing practices**

Over half of 22 respondents said their firm offers training to all fee earners regular each year, with a quarter saying it is offered at induction. Notably:-

- Of 25 responses, around half say that the firm measures and manages or rewards a fee earner’s performance in relation to “the amount the fee earner has billed” (13) and client satisfaction with their work (12).
- Of 25 responses, 12 people say that their firm publishes a ranking of how fee earners are performing in respect of time or monetary budgets/targets vis a vis other fee earners (and an equal number say they do not)
- Of 25 responses, the majority of people say that with regard to addressing ethical concerns or queries of employees “We address concerns informally” (18), and their firm has “scheduled in-firm meetings” (14). Less than half choose the remaining options. , with nearly a quarter of respondents saying they do not know.
- Of 24 responses, the majority of people say their firm has a policy or procedure in place for all options apart from regular review of staff timesheets, both legal and non-legal staff.
- 25 of 26 people say they have never had concerns about the billing practices of other legal practitioners or staff in the firm. 1 person discussed the matter with a supervisor or managing partner/director
- 26 of 26 respondents answering say they have never observed any instances of “padding” bills for work not performed
- 20 of 24 think sanctions should apply to fee earners who “pad” bills.

## **Feedback**

The majority of 26 respondents answering the question were satisfied that the survey was easy to work through and that the questions and scenarios had relevance for and raised useful issues for them and/or their law firm.