

Overview of responses to the Billing Practices Check for smaller law firms, 2013

We sent the Billing Practices Check for Smaller Law Firms 2013 to 1600 managing partners and legal practitioner directors of law firms with 6 or fewer practising certificate holders and to principals of sole practices. A total of 273 people had answered some or all the survey questions as at 20 May 2013. We extended the deadline and by 15 June, a total of 322 people had answered the survey. Of the 322, 179 people indicated they were from participating firms and 143 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 131 of the 179 people who indicated they were from participating firms provided a code and 11 from one firm entered the code BROLGA. We will publish results for everybody who completed the survey and then separate out and publish the results for BROLGA 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 – 4 people answering. Their codes are 123456, Godbol, HSL, NQLEGA, RKAARI, Details, FeePad, BlessK and Ralph4. Another 96 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 *BPsLF everybody 0713* provides detailed charts and percentages for all 322 people who answered some or all the survey questions. This overview document describes the responses of a total of 212 people who answered nearly every question enabling us to make more accurate cross-tabulations. While all 212 respondents 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 212 people to the demographic questions:

Status	
Participating law firms	110
Interested individuals	102
Business structure (top 4 of 8 options)	
Sole practice with 1 practising certificate holder	67
Sole practice comprising a principal, and employed solicitors	57
ILP with a principal and employed solicitors	31
ILP with one practising certificate holder.	25
Employment status (209 answers)	
Principals	143
Partners/Directors	35
Employed solicitors	16
Paralegal, conveyancing clerk, administration/secretarial, office manager, practice manager and general manager	15
Areas of practice (top 4 of 16 areas of practice for multiple choice)	
Conveyancing	99
Wills and estate planning	91
Company law	77
Family/de facto law	74
Size of practice	
1-2 practising certificate holders	131
3-4 practising certificate holders	60
5-6 practising certificate holders	19
Location	
Regional city	74
Brisbane suburbs	57
Brisbane CBD	39
Regional town	38
Gender	
Male	141
Female	68
Practising certificate holders (172 answers)	
<5 years to 35-39 years (number for each age grouping)	10-28
>40 years	33
Not applicable	8

First interview and estimating costs

Nearly all of the 208 respondents who answered this question said they “always” discuss each of the 12 topics listed at question 7 at the first interview for a typical matter but for 4 exceptions. Fewer than a third said they “always” talk with the client about, but between a third and a half of them said they only “sometimes” discuss:

- “the margin of uncertainty that the client can tolerate with regard to the final bill”
- “arrangements for on going costs disclosure”
- “how often the client would like to receive bills”
- “arrangements for dealing with complaints”

Of the 8 options given as a basis for estimating costs, there are none that the majority of 208 respondents answering the question said they “always” use. The majority selected 7 options that they “sometimes” use - fewer than half chose the 8th option “referring to a court scale”. The top four options that the majority of people “sometimes” use are:

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

Costs and billing policies

Nearly all the 206 respondents who answered this 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 that half say that 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 five methods and a small number “always”, viz.:

- | | |
|--|----------------------------|
| ▪ Fixed fee – tailored to client | 70% sometimes (8% always) |
| ▪ Time based (hourly) | 66% sometimes (26% always) |
| ▪ Interim billing | 67% sometimes (22% always) |
| ▪ Hybrid arrangements | 59% sometimes (2% always) |
| ▪ Fixed fee – “menu” fees for standard tasks | 61% sometimes (30% always) |

The highest responses for never using a particular method are:-

- | | |
|--------------------------------------|---------------------------|
| ▪ No win no fee | 80% never (18% sometimes) |
| ▪ Fixed fee (legal aid) | 73% never (17% sometimes) |
| ▪ Other conditional fee arrangements | 60% never (34% sometimes) |
| ▪ A court scale | 51% never (45% sometimes) |

- Fixed fee – value pricing, client value 50% never (45% 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. 206 answered the question as follows:

- 13 said their firm “often” bills for care and consideration; 74 “sometimes” and 120 “never”
- 121 of the 212 respondents answered the question whether it is appropriate to charge care and consideration when the bill is drawn up on a time-costed basis: 60% of them said “yes” and 40% said “no”
- 207 of the 212 respondents answered the question whether it is appropriate to charge care and consideration when the bill is drawn up on a court scale: 65% said “yes” and 35% said “no”
- 121 of 212 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, when on a court scale and in a client agreement.
- a number of respondents gave several reasons, for example: “when a matter is dealt with on an urgent basis, requiring extraordinary attendances e.g. late into night, weekends etc, importance to client, complex/novel matters, special skills”

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? (206 responses)

ROWS: In a typical matter at the first interview, do you talk with clients about any contingencies that may add to or subtract from the final bill? (208 responses)

	Never	Sometimes	Often
Never	3	3	0
Sometimes	42	37	3
Always	75	32	10

Notably:

- only 3 respondents said they never talk with clients about contingencies that may add to or subtract from the final bill and that their firm sometimes bills for care and consideration
- the highest number, 75, said they always talk with the client about contingencies and never bill for care and consideration
- the middle ground of 37 people said their firm sometimes bills for care and consideration and sometimes talks with clients about contingencies that may add to or subtract from the final bill.

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

COLUMNS: Does your firm bill for care and consideration? (206 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? (208 responses)

	Never	Sometimes	Often
Never	31	21	6
Sometimes	56	31	4
Always	32	23	3

The table shows that:

- 21 respondents who said they never talk with their clients about the margin of uncertainty that they can tolerate with regard to final bill also said that their firms “sometimes” bill for care and consideration
- 6 respondents who said they never talk with their clients about the margin of uncertainty that they can tolerate with regard to final bill also said that their firms “often” bill for care and consideration
- 23 respondents who said they never talk with their clients about the margin of uncertainty that they can tolerate with regard to final bill also said that their firms sometimes or always bills for care and consideration, 17 of them sometimes and 6 of them often;
- the highest number, 56, said that they sometimes talk with clients about their margin of uncertainty and never bill for care and consideration;
- 23 respondents said their firm always talks with clients about their tolerable margin for uncertainty with regard to the final bill and sometimes bills for care and consideration and;
- 31 respondents said they sometimes talk with clients about their margin of uncertainty and sometimes bill for care and consideration.

Costs updates

We asked about what is typically done in the firm regarding cost updates, and provided 7 possible actions that firms might take, asking respondents to choose whether their firms “never”, “sometimes” or “always” chose those actions. Of the 208 people answering,

- over half said they “deal with short time frame matters only”
- nearly two thirds said that “sometimes” “The client receives regular, scheduled bills that include the charges to date, and estimated charges remaining (22% always, 19% never), otherwise less than half choose “sometimes” for all other options.
- a majority never use or provide clients with IT solutions (2 say that clients can check current costs on-line as well as work in progress

Billing

We have tabulated how often the 197 respondents said that their final bills exceed their initial estimates and by how much, as follows:

Bill exceeds the estimate by:	Sometimes	Frequently
10%	81%	11%
20%	69%	6%
30%	47%	1%
40%	30%	1%
50%	21%	1%
>50%	16%	1%

- the most common reasons the 197 respondents answering the question gave for their final bills exceeding their estimate are that there were complex developments with the matter (93%); that they spent more time spent on the matter than originally estimated (68%); their initial estimate was inaccurate (22%); and that they billed care and consideration (4%).
- when the final bill looks like it will exceed the estimate:
 - 30% said they always and 65% said they sometimes discussed the situation with their clients in person
 - 18% said they always, and 63% said they sometimes sent their clients emails alerting them to the situation and seeking their consent by reply email;
 - 13% said they always, and 62% said they sometimes sent a formal letter
 - 18% said they always, and 57% said they sometimes followed up an initial phone call with a letter asking their clients to respond; and
 - 31% said they always, and 53% said they sometimes communicated to clients how the work benefitted them and the value for money they were receiving.

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. A total of 204 answered the question as follows:

- 60% said they “always” and 30 % said they “sometimes” provide clients with an itemized bill at the completion of a matter;
- 79% said they “always” and 16% said they “sometimes” provide clients with an itemized bill upon request; and
- 40% said they “sometimes” and 48% said they “always” provide itemized bills at regular billing intervals
- 37% said they “sometimes” and 36% said they “always” provide itemized bills as agreed with clients at the start of a matter.

Client satisfaction

The 206 respondents who answered the question said the most common ways firms gauge client satisfaction with costs disclosure and billing are to monitor for any problems arising (57%) and to rely on clients to say if they are dissatisfied with costs disclosures and billing (56%).

Approximately one-fifth of the respondents said they ask the client at the end of the matter through a meeting or phone call, or gauge satisfaction by the percentage of their bills that they recover. Notably 30% say they do not gauge client satisfaction.

Supervision of billing practices

The majority of 204 respondents answering the question, over two thirds, review their billing practices to ensure they comply with their professional obligations “when there are legislative changes”; over half “If prompted by good advice received when attending external training”; and “regularly as a matter of course”. A quarter said they are “confident [their] billing practices always comply with [their] professional obligations” and nearly a half said “if it seems problems are arising for clients”.

Notably:

- 83% of 204 respondents said they have never had concerns about the billing practices of other legal practitioners or staff in the firm;
- 96% of 204 respondents said they have never observed any instances of “padding” bills for work not performed; and
- 20 people said their response was/responses were to “discuss the matter with the legal practitioner whose practices I was querying” and 12 said they “discussed the matter with a supervisor or manager”
- several respondents added free text comments as follows:
 - “I am managing partner- so we looked at our processes informally and adjust- need to formalise our processes more”;
 - “I wrote back the time or deleted it completely and on occasion have been required to terminate staff for repeated instances”; and
 - “I raised it at a meeting of professional staff for it to be addressed.”

Feedback

206 people answered the feedback questions, and of them, 159 were satisfied that the survey was easy to work through and 110 that the questions raised useful issues for them and/or their law firm. We note however that 51 respondents were “not satisfied” that the majority of scenarios were relevant for their firm, and that is the highest number of people selecting “not satisfied” for any of the options.

It is evident from their free text comments that sole practitioners felt that not all the questions were relevant to their particular circumstances and that many of the questions were better suited to firms with more staff. Many non-legal staff were unable to answer all the questions (but we are pleased that they persisted to complete the survey nonetheless).

Here are some of the free text comments:

- “I do a significant amount of pro bono work but the questions did not seem to recognize this important, and fairly common, practice.”
- “This has made me reconsider some existing policies and procedures and consider introducing new policies. Thanks”
- “Overall, the survey was well done. It certainly cannot have been an easy task to produce something relevant to the varied types of legal practices. From my point of view, I did find it difficult to answer some of the questions - and wished in some cases that there was opportunity to provide further information or explain my answers. For example, in some cases where i had to answer whether or not the firm had a specific policy, I said no because the policy was not specifically written down in those terms, but I did feel that the policy existed and was communicated through practice and generally by us communicating directly with our staff about what was ethical and unethical. The scenarios were not really relevant to our firm, and to be honest, i was actually starting to get a bit upset that you even had to ask those questions! For one thing, i thought care and consideration was long forgotten - let alone surcharges on searches being charged as disbursements! In relation to the issues raised relevant to our firm, I believe that we have a good baseline of policies and practices, but we can improve our training and do more to ensure that we are constantly reviewing our practices and committing them to writing. At present we tend to address such issues as they arise, or on an ad-hoc basis as new knowledge comes to light. In our case, I am an admitted solicitor acting in the role of bookkeeper, so I can tend to identify ethical areas of concern as I am fulfilling my bookkeeping/practice management duties. But what we will take from this survey is the need to more regularly review and communicate our policies to ensure that we do not become complacent. Thank you for the opportunity to participate. “
- “I have a niche practice and charge only fixed fee and don't usually have disbursements. I quote first and bill in accordance with quote. In calculating the quote I anticipate some questions after the main work is complete and include reasonable changes/discussion in the fixed fee. This gives the clients certainty. I have never had a billing complaint and no bad debtors.”
- “Appreciate the survey will be relevant to many firms but not quite relevant in highly competitive fixed price markets such as conveyancing. Our firm focuses on conveyancing and other small fixed price property and will /estate work”
- “The survey was somewhat difficult for small firms as many questions asked if there were policies or procedures in place. As principal I decide on all billing so the only policies or procedures are those in my own judgement as applied to billing. I would love to see further guidance from the Commission on some of the scenarios raised - time billing is much maligned but I think that it is important to look at the overall approach. I only ever charge for time that has been spent working efficiently and on issues that will directly assist my client. I do believe it is unethical though to charge the client for additional time if my efficiency means that I can deliver the results within the estimate and quicker than other lawyers may be able to. In that sense I guess my approach is a mix between time based and fixed fee work but it is outlined to clients as time based only”
- “As we task charge and never time charge, most of the issues are not related. If time charging is to be discouraged, as we believe it should, there should be a focus on the encouragement of task charging or other value based systems”
- “I have decided to make a move away from time-billing and focus on fixed-fee or value-based billing. I've also decided to build many things like postage, photocopying, etc into my professional fees

(instead of charging them separately) and I've scrapped the idea of 'care and consideration'. When compared to other industries, this whole idea of 'care and consideration' (while I understand its history etc) is very strange for the average client. Good survey... hope you get plenty of responses so some meaningful information comes out of the process"

- "It provoked me into greater thought about my billing practices and demonstrated how a lack of proactive management could lead to problems. It also made me realise that time billing may not be the only way to bill a client"
- "Survey could be a little more distilled. Some questions contain multiple (but in our case mutually exclusive) elements, making it more difficult to give an accurate reply. See if you can break it down a bit more. But I appreciate you're trying to keep it simple and not too long or complex. Most of our fees are agreed fixed fees. We're less likely to have a complaint about an item in a bill. If an issue arises, it is a value issue with the client looking at the bill(s) as a whole, rather than a particular item. If an issue comes up, generally we look at discounting a bill by agreement with the client. We don't like having arguments with clients any more than anyone else"
- "As a small Firm it is never easy seeing clients, going to court, skimming files, work flows are either slow or overdrive and as such administration perfection is not always possible but if you do your best, if you are client focussed and also client friendly to always have a good rapport with the client, have no reservation about speaking to your client openly about their matter then this is consistent with operating transparently, e.g. always itemised accounts and encourage clients to review them against their files, but to date we have not had a client who wish to do this, if it is freely open to them we can only assume that they accept they will find the itemised account is consistent with all the work done and the outcome achieved. We appreciate and look forward to the LSC hopefully providing an easier cost system for clients and especially for sole practitioners who for the first time are attempting to gauge appropriate costs in a matter, but the reality is, all files are unknown until the true facts are established, the client outcomes are considered, and the totality of the work to accomplish the outcome is finally known. We thank the LSC for providing the survey and look forward to the results"