

Regulatory Guide 6

Itemised Bills

Version 2, 30 March 2012

The Legal Services Commission deals not infrequently with complaints about the conduct of lawyers after their clients requested an itemised bill. The Commissioner has decided to issue this regulatory guide to help lawyers and users of legal services better understand a lawyer's professional obligations in these circumstances and the factors the Commission takes into account in dealing with related complaints.¹

The guide summarizes the Commission's approach as a 'ready reference' for lawyers and users of legal services. We have published separate Explanatory Notes which set out in more detail the legal analysis which underpins the guide.²

THE ENTITLEMENT TO AN ITEMISED BILL

1. The *Legal Profession Act 2007* (the LPA) entitles users of legal services who have been given a lump sum bill to request an itemised bill. It provides at section 332 that:
 - a) 'if a bill is given by a law practice in the form of a lump sum bill, any person who is entitled to apply for an assessment of the legal costs to which the bill relates may request the law practice to give the person an itemised bill
 - b) the law practice must comply with the request within 28 days after the date on which the request is made³ ... [and] ...
 - c) a law practice is not entitled to charge a person for the preparation of an itemised bill.'

¹ Please refer to [Regulatory Guides: An Overview \(the Overview\)](#) for further information about the regulatory guides and what we hope to achieve by publishing the guides, how we propose to go about developing them and, importantly, their status. The Overview is published on the [Regulatory Guides](#) page on the Commission's website at www.lsc.qld.gov.au. We emphasize as we explain in the Overview that 'the guides will be persuasive but they are not, nor could they ever be binding. The Commission is responsible for promoting, monitoring and enforcing appropriate standards of conduct in the provision of legal services, not for setting them. The standards are set by legislation, by the professional bodies and by the disciplinary bodies and the courts. The guides...simply articulate for the benefit of lawyers and users of legal services alike the factors we will take into account in exercising our responsibilities, most relevantly our responsibilities to settle consumer disputes including costs disputes between lawyers and their clients and to decide after investigating a lawyer's conduct if it is inconsistent with the lawyer's professional responsibilities and whether to commence disciplinary proceedings.'

² The Explanatory Notes are published on the [Regulatory Guides](#) page of our website. We have prepared the guide and the accompanying explanatory notes having regard to the submissions we received in response to the consultation draft of the guide we published with the first issue of our E-Newsletter on 26 October 2011. The consultation draft and the submissions we received in response can also be accessed on the Consultations page of our website. We are very grateful to the practitioners and others who made submissions. The guide and the accompanying explanatory notes are much better documents for their contribution. We are especially grateful to Roger Quick and Doug Kerr of QICS Legal Costs Consultants and Ruth Chowdury and Robyn Davis of DG Thomson Legal Costs Lawyers. We accept full responsibility however for any remaining errors and omissions.

³ Note however that the Australian Consumer Law (the ACL) requires incorporated legal practices to give an itemised bill within 7 days of being requested to do so. See the Explanatory Notes for further information.

2. Importantly:
 - a) section 332 makes no provision for any exceptions. Hence in our view it applies to lump sum bills whether the bills are calculated on a time-costed basis, a fixed fee basis or according to a scale, and
 - b) the term 'law practice' refers to legal practitioners including both solicitors and barristers.
3. The LPA does not set a time limit for a person to request an itemised bill. In our view however the request is best made before the original lump sum bill becomes payable wherever possible but in any event within 12 months of receiving the original bill, allowing the law practice time to comply with the request.

THE CONTENT OF AN ITEMISED BILL

4. The LPA defines an itemised bill at section 300 to be 'a bill stating in detail how the legal costs are made up, in a way that would allow the legal costs to be assessed.' It gives no further detail than that, however, and there is no 'set form' of itemised bill.
5. The courts have decided that the level of detail may vary from case to case, depending on factors such as the nature of the matter, the way in which the costs are to be calculated and the client's 'sophistication' in legal matters. The courts have also made it clear however, whatever level of detail may be required in any particular matter, that an itemised bill must give a client sufficient information about the costs the lawyer has charged the client to enable the client to make an informed decision whether the costs are reasonable and whether to exercise his or her entitlement to have the costs independently assessed.
6. That implies in our view that an itemised bill should include:
 - a) the basis of the charges for the work done, viz:
 - where the fees are calculated on a time basis, details of the time spent on each item of work and the charge-out rate of the person(s) who have done the work
 - where the fees are calculated on a scale, sufficient detail to identify which item(s) of the scale are being applied to each item of work, and
 - where the fees are calculated on a fixed fee basis, sufficient detail to show how and to what extent the retainer has been carried out in exchange for the costs that are being charged; and
 - b) a detailed description of each item of work done, including by whom it was done

- c) the date each item of work was done, arranged in chronological order
- d) where the fees are calculated on either a time basis or a scale, the amount charged for each item of work.

We have attached two (mock) bills which meet these requirements at Appendices 1 and 2. We are grateful to DG Thomson Legal Costs Lawyers and QICS Legal Costs Consultants respectively for providing us these examples.

THE AMOUNT OF AN ITEMISED BILL

7. The LPA provides that lawyers are not entitled to charge users of legal services for the preparation of an itemised bill. Hence in our view:
 - a) lawyers must not 'adjust' the amount of the original bill to reflect the time taken to prepare the itemised bill
 - b) while an itemised bill may 'work out' to a higher amount than the original lump sum bill, lawyers are not entitled to charge more in the itemised bill than they charged in the original lump sum bill
 - c) lawyers may have a right to substitute a higher bill if the bill goes to costs assessment, but only if the original lump sum bill is delivered subject to an appropriately worded 'reservation of rights' condition in the lawyer's disclosure notice and costs agreement, but
 - d) any such 'reservation of rights' condition must be fair and reasonable, and must not discourage or deter users of legal services from exercising their entitlement under the LPA to request an itemised bill.
8. Importantly however users of legal services who apply to have their costs assessed must pay the amount determined by the costs assessment process, whether that amount is more or less than the amount the lawyer charged in the original lump sum bill.

APPENDIX 1

No of Item	Date	Item Details	Outlays	Fee	Column for cost Assessor
Family Law example					
1	1/9/11	Item 109: Telephone call with Ms X our client's partner who advised of urgent family law matter, appointing conference (Clerk) - 12 minutes		\$26.62	
2	2/9/11	Item 108: Attendance in conference with client and Ms X who advised of shared residency for the child Y and noting application being made for full residency and taking instructions (Solicitor) – 60 minutes		\$205.27	
3	2/9/11	Item 104: Reading chronology of custody dispute (10 folios)		\$82.00	
Federal Court example					
1	1/9/11	Item 1.3: Telephone call with client to appoint conference (Clerk) -6 minutes		\$10.00	
2	2/9/11	Item 1.1: Attendance In conference with client concerning documents sought by means of non party discovery and obtaining instructions as to documents likely to be held(Mr XY) - 60 minutes		\$550.00	
3	3/9/11	Item 2.4: Letter to client by email enclosing a proposed letter to the Solicitor for the Respondent and requesting confirmation all in order, further discussing copies of documents and timeframe for compliance		\$50.00	
4	10/9/11	Item 1.3: Attendance by Clerk with commercial copying firm having discovered documents copied - 12 minutes		\$20.00	
5	10/9/11	XYZ commercial copying - copy of 1000 pages of documents	\$200.00		
Hourly rate example					
1	1/9/11	Drawing Notice of Intention to Apply for a Grant of Probate (2 folios) (Ms XY) – 12 minutes		\$60.00	
2	1/9/11	Telephone call with Courier Mail discussing price for publication and likely date advertisement would run (Ms XY) – 6 minutes	\$0.25	\$30.00	
3	1/9/11	Telephone call with Queensland Law Reporter obtaining the price for publication (Ms XY) - 6 minutes	\$0.25	\$30.00	

APPENDIX 2

IN THE MATTER of the Legal Profession Act of 2007

AND:

IN THE MATTER of a Bill of Fees and Costs of Sample Lawyers of 123 Fake St, Brisbane in the State of Queensland for professional legal services rendered and costs incurred on the instructions received from Aaron Aarons to act for him in relation to a motor vehicle claim

PURSUANT TO CLIENT AGREEMENT EXECUTED 01.07.11
(GST INCLUSIVE)

PRINCIPAL – ADAM BROWN (AB) - \$300.00 per hour
SOLICITOR – CHLOE DOUGLAS (CD) - \$300.00 per hour
PARALEGAL – EMILY FIELD (EF) - \$150.00 per hour

2011 June 26	1.	Telephone attendance on Aaron Aarons (hereinafter referred to as the "client") providing information in relation to his motor vehicle accident and arranging an appointment to discuss the same (CD engaged 15 minutes)		75.00	
July 1	2.	Initial attendance on the client taking detailed instructions in relation to his motor vehicle accident and resulting personal injury, advising in relation thereto and settling the notice of accident claim form and additional information form (AB engaged 60 minutes)		400.00	
July 2	3.	Attendance to search CITEC database in relation to vehicle registration (EF engaged 15 minutes)	\$0.00	37.50	
		Carried Forward	\$0.00	\$512.50	
		2	\$0.00	\$512.50	

July 4	5.	Brought Forward Drafting the client's general authority (1 folio)		20.00	
	6.	Producing the same (1 folio)		5.00	
	7.	Letter to the Nominal Defendant enclosing the client's executed notice of accident claim form, additional information form and medical certificate and requesting a response in relation to liability	0.50	40.00	
	8.	Photocopying documents to enclose therewith (16 pages)		3.20	
	9.	Letter to Fake Insurance Limited (hereinafter referred to as the "insurer") enclosing the client's executed notice of accident claim form, additional information form and medical certificate and requesting they admit liability and agree to meet the cost of the client's rehabilitation expenses	0.50	40.00	
	10.	Photocopying documents to enclose therewith (16 pages)		3.20	
	11.	ETC...			
	12.	Care and consideration for the complexity novelty or importance of the matter, including the amount involved, the number and complexity of documents prepared and perused, research and consideration of questions of law and fact, specialised knowledge, skill taken and all responsibility		110.00	
		Add Disbursements	\$13.50	\$733.90	\$ 13.50
		DELIVERED AT		\$747.40	
		LESS Reduction on Assessment			
		ADD Short Charges			
	ALLOWED AT				
	Assessed this day of and allowed in the sum of \$				
	Signed: 				
	FOR AND ON BEHALF OF:-				
	SAMPLE LAWYERS 123 FAKE STREET BRISBANE QLD 4000				

Version	Notes	Version date
1		08 March 2012
2	Minor amendment to the ordering of the sub-sections in section 6.	30 March 2012