

Your Right To Challenge Legal Costs

Note: This information applies to costs for legal matters dealt with in Queensland except for certain family law matters being dealt with in the Family Court. The existing rules relating to the regulation of costs in the Family Court will continue for all pending matters and ongoing matters already filed in the Court before 1 July 2008.

For a dispute between a lawyer and a client about the costs charged by the lawyer in a family law matter:

- (a) for a new application commenced after 30 June 2008 or
- (b) under a new agreement between the lawyer and the client entered into after 30 June 2008 or
- (c) under a retainer entered into with a new lawyer after 30 June 2008

then the regulation of the legal costs relationship with your lawyer will be governed by the following information. For further information see www.familycourt.gov.au.

There are any number of reasons why you may not be happy with a bill from your lawyer. This fact sheet prepared by the Legal Services Commission and the Queensland Law Society will help you decide what to do.

Read the fact sheet carefully and, if you need more help, see the contacts listed at the end. Note that time limits apply to resolving this kind of problem.

1 Talk to your lawyer

Generally, the best approach is to start by talking to your lawyer about the bill as, in many cases, this will be all you need to do. Once your lawyer understands why you are concerned, they will be able to explain the costs to you and may agree to review the bill.

If you are still not happy after the discussion, consider using the suggestions below.

2 Lump sum and itemised bills

A bill usually summarises the work your lawyer has done and gives the total amount charged for that work. However, you can request an itemised bill that lists each item of work that has been done and the amount charged for each item.

An itemised bill might help you work out which part(s) of the legal costs you are unhappy about. Your lawyer cannot charge for preparing the itemised bill, although it is possible that the total amount of the bill may increase once each piece of work is itemised. Your lawyer is required to give you an itemised bill and they must provide that within 28 days of being asked.

3 Costs mediation

'Costs mediation' allows you to discuss your concerns with the help of an independent facilitator. Mediation is generally quicker and cheaper than costs assessment (see below). Although mediators cannot give legal advice during the mediation or decide on the fairness or reasonableness of the costs, mediation has proven to be a good way to settle many disputes.

In Queensland the Department of Justice & Attorney-General has a free mediation service through its Dispute Resolution Centres. Contact details are:

- Brisbane 3239 6269
- Other than Brisbane 1800 017 288

However, act quickly to ensure you have enough time for other alternatives if mediation fails.

4 Costs assessment

The Process

Costs assessment is a process in which a court approves an independent person (a costs assessor) to consider the bill and your objections to it. The costs assessor will decide what is a fair and reasonable amount for you to pay.

You can approach a costs assessor to carry out the assessment. You and your lawyer must both agree on the cost assessor. If agreement cannot be reached either the Court Registrar will appoint an assessor or a Judge or Magistrate will appoint an assessor at a directions hearing. A list of approved cost assessors is maintained by the Courts and can be accessed at www.courts.qld.gov.au

The Courts require that the cost assessor provide written consent and that consent is to be included with your Application. The consent form is to be signed and dated and the assessor will declare that he/she is not aware of any conflict of interest or duty.

You have **12 months** to apply for a costs assessment from when the bill was given to you (or you were asked for payment, or when you paid the costs if you didn't get a bill or a request to pay).

It is generally advisable to have an itemised bill for an assessment otherwise you will need to provide the best available information that you have to enable an assessment to proceed.

You can apply for a costs assessment even if you have paid all or part of your legal costs, or if you have paid them without receiving a bill. There is a fee for applying for costs assessment, but if the bill is reduced by 15 percent or more, or your lawyer is found to be at fault, your lawyer may be required to pay the costs of the assessment. However the Courts will require that you pay a separate fee when filing your application.

To obtain a costs assessment, you must apply to the appropriate court – Supreme, District or Magistrates Court, depending on the amount involved (for amounts over \$750,000 go to the Supreme Court, for amounts under \$750,000 go to the District Court, and for amounts under \$150,000 the Magistrates Court). Within **7 days** after filing your application you must serve a copy on your lawyer and any other person to whom such notice is to be given. Such other person could include an Executor, Administrator or Trustee or any other person or entity who is under a legal obligation to pay (or has paid) all or part of the legal costs.

If you and your lawyer negotiated a 'costs agreement' early on, then the assessor must assess the disputed costs based on that agreement, as long as it specifies an amount or charge rate, or the agreement has not been set aside by an order of the Supreme Court.

The costs assessor must consider several things – whether the work was required, whether it was carried out in a reasonable way and the fairness and reasonableness of the costs. The assessor will also want to know if the law practice gave you a realistic estimate of the costs and kept you informed of any substantial changes to those costs.

Contact your local court for more details of this process. The courts have also published explanatory factsheets - See the courts website – www.courts.qld.gov.au for their fact sheets and also to find the court nearest to you.

The **forms** required to make an application for a costs assessment can be downloaded and completed from the Courts website at www.courts.qld.gov.au

Applicable Legislation

- *Supreme Court Act 1991*
- *Uniform Civil Procedure Rules 1999*
- *Legal Profession Act 2007*

5 Setting aside a costs agreement

You can challenge the 'costs agreement' you made with your lawyer by applying to the Supreme Court. It is recommended that you get legal advice from an independent source before you consider this option.

6 Other avenues for challenging legal costs

There may be other ways you can resolve your concerns about legal costs. If the options above don't suit you, seek other legal advice. Remember that your lawyer can take court action against you if you don't pay your bill. However, they must wait until 30 days after giving you the bill (or 30 days after giving you an itemised bill, if you have requested one) or after a costs assessment.

The Legal Services Commission may be able to help negotiate a quick resolution on your behalf, even though staff in both organisations cannot give legal advice nor make any determination as to the fairness or reasonableness of your bill.

7 Who to contact for more information

Courts of Queensland

A full list of the courts in Queensland giving locations and contact details can be found at the Queensland Government's courts website at www.courts.qld.gov.au

Legal profession regulators

- **The Legal Service Commission**
Freecall: 1300 655 754
www.lsc.qld.gov.au
More fact sheets available

Legal and procedural advice

The following organisations provide free legal advice:-

- **Community Legal Centres (CLCs)**
A list of CLCs in your area is available at www.qails.org.au