

19 June 2023

Heather Moore  
Chief Executive Officer  
Legal Services Council

By email: [submissions@legalservicescouncil.org.au](mailto:submissions@legalservicescouncil.org.au)

Dear Ms Moore

**REVIEW OF THE COSTS DISCLOSURE THRESHOLDS IN THE UNIFORM LAW:  
CONSULTATION PAPER**

Thank you for your invitation dated 5 May 2023 inviting the Law Society of Western Australia ('the Law Society') to make a submission to the above inquiry.

The Law Society appreciates the opportunity to make a submission for this inquiry.

The consultation proposed 5 questions to be answered on the current Costs Disclosure thresholders under the *Uniform Law*. The Law Society provides the following answers to these questions.

**Question 1: What should the lower threshold be and why?**

The Law Society proposes the lower threshold be increased to \$3,000.

Having a costs disclosure threshold which is too low could discourage individuals from seeking legal assistance as they are disincentivised and overwhelmed by the volume of information and paperwork surrounding costs disclosures.

The Law Society is advised that few matters fall below the current \$750 threshold and as such, is rarely utilised due to its lack of practical function.

The threshold should be increased to cover matters best suited to no costs disclosure, such as one off matters, leases. Standard matters where clients will not be exposed to potential cost orders.

It is Law Society's view that the burden of providing disclosure on the practice and the threat to access to justice for minor matters show the lower threshold should be increased to \$3,000.

**Question 2: What should the upper threshold be and why?**

It is submitted that the upper threshold for disclosure be kept at \$3,000.

If the above proposal of raising the lower threshold for no disclosure is accepted, this will effectively abolish the standard form disclosure.

The Law Society considers that having only one figure for disclosure will make disclosure simpler for practitioners to understand, implement and maintain.

Few firms deal with matters often where the short form disclosure would be utilised. For firms who do, the use of the short form disclosure is often superfluous as clients commonly require the price for the legal work to be provided when being initially briefed on the matter.

There are also the logistical difficulties in maintaining correct disclosure while matters progress. It can be difficult to track when matters move past the various thresholds and causes more work for practitioners and administrative staff.

**Question 3: How could the standard costs disclosure forms and information sheets be improved? For legal practitioners? For consumers?**

If the Law Society's previous submissions are accepted, the standard costs disclosure forms and information sheets will not be necessary.

As a state, Western Australia has not had sufficient experience using the forms to comment as yet. The Law Society is not aware of complaints dealing with this issue in the Supreme Court and so is not able to identify any areas of concern.

**Question 4: Should the list of commercial and government clients be expanded by specifying new person or classes of person in the Uniform General Rules? If so, which categories should be added and why?**

The Law Society supports the inclusion of the following classes or persons:

- 1) Trustees within the meaning of the *Bankruptcy Act 1996* (Cth),
- 2) Overseas-registered foreign law practices,
- 3) Corporations that have a share capital and whose shares, or the majority of whose shares, are held beneficially for the Commonwealth or a State Territory,
- 4) Licensees under the *National Consumer Credit Protection Act 2009* (Cth), and
- 5) Large charitable and not-for-profit organisations.

The Law Society opposes the inclusion of high-net-worth individuals.

An individual's financial position does not necessarily translate to legal knowledge. An example of this could be a FIFO worker in a specialised field who has detailed knowledge in their area of expertise but not necessarily an understanding of contract disputes or family law matters.

Additionally, having 2.5 million dollars in assets does not guarantee a person is sophisticated, they may have inherited, won the lottery or been a shrewd saver.

Alternatively, if high-net-worth individuals are to be included, the Law Society suggests the thresholds be increased significantly to prevent the above examples of individuals from being included in the exemption.

**Question 5: Which of these options should be adopted and why? What other options should be considered and why?**

The proposed options for record keeping of cost disclosures provided to clients were:

- 1) Improve guidance on record keeping,
- 2) New rule for barristers, or
- 3) New rule for barristers and solicitors.

It is the Law Society's recommendation to improve guidance and education around record keeping for solicitors and barristers.

It is in practitioners' interest to keep their disclosures because if no disclosure was given or none can be produced, the costs agreement is void. The Law Society does not consider a rule will make practitioners more likely to maintain their costs agreements with clients than the consequence of voiding the agreement.

Introducing the suggested record keeping for solicitors or barristers would be unlikely to provide any greater protection to the public. Protections for clients should focus on ensuring that costs disclosure is given, not that a record is kept.

If a practitioner does not give disclosure, they will not be able to provide records of the disclosure and will face discipline for both. If a practitioner gave disclosure but is unable to provide evidence of the disclosure, they will face the same consequences and be disciplined twice.

If you have any queries please contact Mary Woodford, General Manager Advocacy and Professional Development on (08) 9324 8646 or [mwoodford@lawsocietywa.asn.au](mailto:mwoodford@lawsocietywa.asn.au)

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Ante Golem', written in a cursive style.

Ante Golem  
**President**