

9 May 2024

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Dear Legal Services Council

COSTS DISCLOSURE THRESHOLDS REVIEW - UPDATED STANDARD COSTS DISCLOSURE FORMS AND INFORMATION SHEETS

Thank you for your email dated 14 March 2024 inviting the Society to provide feedback on updated standard costs disclosure forms and associated guidance and an updated information sheet for legal practitioners on legal costs and costs disclosure obligations.

In addition to this letter, the Law Society appreciated the opportunity to meet with the Legal Services Council (LSC) twice to discuss the suite of documents, on 15 March and 29 April 2024.

The documents under consideration are:

1. The updated standard costs disclosure form for solicitors (form 1);
2. The updated standard costs disclosure form for barristers (form 2);
3. A new standard costs disclosure form for solicitors to update a costs estimate (form 3);
4. A new standard costs disclosure form for barristers to update a costs estimate (form 4);
5. The updated information sheet for consumers on the standard costs disclosure form;
6. The updated information sheet for legal practitioners on the standard costs disclosure form;
7. The updated information sheet for legal practitioners on legal costs and costs disclosure obligations.

The standard costs disclosure form and information sheets are clear and considered, and it is apparent that significant time and resources have been dedicated to developing this suite of documents for the benefit of both the legal profession and consumers of legal services.

STANDARD DISCLOSURE FORMS

Estimates of Total Legal Costs

s174(1) of the *Legal Profession Uniform Law (WA) (LPUL)*, among other matters, requires disclosure of 'the total legal costs'. Within the profession there is a divergence of views in relation to the meaning of 'total legal costs', particularly in the context of litigious matters. For instance, if a law practice is engaged to act in respect of a litigious matter up to the mediation stage, one view is that it is necessary to give an estimate of legal costs up to mediation stage

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only, while the other view is that it is necessary to give an estimate of legal costs up to the end of the proceedings. Accordingly, it is recommended that the LSC provide some guidance in this regard.

However, it is also acknowledged that this is unlikely to be a far-reaching issue while the current higher threshold remains at \$3,000. It may become a more serious issue if the higher disclosure threshold increases to \$10,000, as more law practices may then seek to use the standard form costs disclosure for litigious matters.

Client rights

Noting the main disclosure requirement in s174(2) of the LPUL, the disclosure of client rights, which currently appears under the heading “Notes”, may be more prominently disclosed, perhaps by inclusion near the beginning of the form and/or under a heading “client rights”.

Disclosure regarding costs scales

In Western Australia, a law practice is required to provide a client with information as to whether a costs determination applies (s143 of *the Legal Profession Uniform Law Application Act (WA) 2022*).

While it is understood that there is no similar requirement in other Uniform Law jurisdictions, consideration should be given to addressing this matter in the LSC’s standard form costs disclosure for use in Western Australia.

Use of the standard form as a costs agreement

There would be a significant benefit to law practices and consumers if the standard costs disclosure form could also function as a costs agreement. However, it is understood that the circumstances where law practices may seek to use the standard form as a costs agreement are likely to be limited, most likely to discrete non-contentious engagements such as drafting wills, preparation of leases etc.

The Law Society of Western Australia and Law Mutual WA have developed generic templates for client engagement agreements, for litigated and transactional matters that represent good practice management and should also comply with costs disclosure obligations provided they are properly completed, and the practice satisfies itself that the client understands the services it will provide and at what cost. Each template is accompanied by Guidelines that assist in their proper completion. These are available on our [website](#).

In relation to the section headed “Acceptance of costs agreement and costs disclosure” consideration should be given to:

- a) amending “*This form is also my costs agreement with you for this matter*” to “*This form is also my costs agreement and an offer to act for you for this matter*” to reflect that the LPUL contemplates a costs agreement may consist of a written offer (s180(3) LPUL); and
- b) including a date from which the costs agreement is intended to operate. This would cater for situations where work is commenced, for reasons of urgency or otherwise, before a costs agreement is entered.

Trust Money

Consideration should be given to including a provision in relation to the requirement to deposit and authorisation to deal with trust money.

INFORMATION SHEET FOR CONSUMERS - FORM 5

It is recommended that consideration be given to amending the form as follows, "*The Legal Profession Uniform Law (Uniform Law) standard costs disclosure form is one way a lawyer can give you the information the lawyer is required to tell you about costs including an estimate of the costs you can expect to pay to help you make an informed choice about whether to ask the lawyer to work for you*".

Under the heading "Can my costs change" it is recommended that it be made plain that the comments relate to time based billing engagements, not fixed fee agreements, which may only be varied by agreement.

It is also recommended that it be highlighted that the standard disclosure form is unlikely to meet the requirements for a conditional costs agreement, particularly if the form is to function as a costs agreement and the higher threshold limit increases.

If you have any queries please contact Susie Moir, General Manager Advocacy and Professional Development on (08) 9324 8646 or smoir@lawsocietywa.asn.au.

Yours sincerely



Paula Wilkinson
President