

Costs

**PRESENTED BY DUNCAN HARRINGTON & JAMES
HALL | CANBERRA COSTING CONSULTANTS**

LEGAL PRACTICE MANAGEMENT WORKSHOP 18 - 20 JUNE 2024

LEGAL COSTS

WHAT YOU NEED TO KNOW



CANBERRA COSTING
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(02) 6185 0997

duncan@cbrcc.com.au

www.canberracostingconsultants.com

WHO ARE WE?



CANBERRA COSTING
CONSULTANTS



Duncan Harrington
Managing Partner



James Hall
Partner

- Legal costing firm
- Based in Canberra CBD
- Experienced in ACT, NSW and Federal costing jurisdictions
- Deep and precise knowledge of current practice, the Rules and law applying to costs
- Efficient and timely delivery of legal costing services, both party/party and solicitor/own client.

TODAYS PRESENTATION



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- Today's presentation will provide you with a top-level understanding of legal costs in the ACT.
- You may know much of the content already.
- We will cover:
 1. Common definitions
 2. Costs between a solicitor and client
 3. Setting aside costs agreements
 4. Unusual expenses and the Re Blyth Warning
 5. Limitations on costs you can charge your client
 6. Solicitor/client cost disputes
 7. Resolving and/or avoiding costs disputes with your clients

INTRODUCTION



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- Generally, where we talk about:
 - “The Act” or a Section, that is a reference to the *Legal Profession Act 2006*.
 - “The Rules” or a Rule, that is a reference to the *Court Procedures Rules 2006*.
- Part 3.2 of the Act is the part that governs your rights and obligations with respect to all costs issues between a solicitor and client.
- Part 2.17 of the Rules is the part that governs costs between parties in litigation before the ACT Magistrates Court and ACT Supreme Court.

INTRODUCTION



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What this presentation does not do:

- Deal with costs in family law matters (which have their own costs regime) or the Federal Courts, HCA.
- Provide an exhaustive summary of the cost provisions with their various exemptions and exceptions, this is a short overview.
- Give legal advice – this presentation is not legal advice and must not be relied upon as legal advice. It is up to you to stay apprised of relevant law and take your own legal advice when dealing with the issue of costs and costs disclosure. We can assist in this regard.

The image features a central graphic composed of several overlapping, teardrop-shaped segments in various shades of teal and light blue. A solid, horizontal blue bar spans across the middle of the image, passing behind the central graphic. The text 'COMMON DEFINITIONS' is centered within this blue bar.

COMMON DEFINITIONS

“COSTS”



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“COSTS”



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The term "costs" commonly includes both:

- professional costs (sometimes also referred to as profit costs); and
 - disbursements (paid or unpaid).
-
- Can be costs:
 - Between a party and another party
 - Between a solicitor and their client

“DISBURSEMENTS”



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DISBURSEMENTS



“DISBURSEMENTS”



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- Out of pocket expenses legitimately incurred in the conduct of a matter for a client.
- Examples?
 - Expert reports
 - Listing fees
 - Clinical notes
 - Filing fees
 - Service fees
- If you wish to recover disbursements from your client, you must be able to justify them.
- Make sure your cost agreement clearly entitles you to claim disbursements.

“SOLICITOR/CLIENT COSTS”



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“SOLICITOR/CLIENT COSTS”



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Solicitor/Client costs are those costs (including disbursements) which a client is liable to pay to their own solicitor for acting on the client's behalf in any matter.

“SOLICITOR/CLIENT COSTS”



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- Only payable for work done on the instructions (whether express or implied) of the client.
- Can be unnecessary or unusual, provided you have received proper instructions to incur them and provided you have given the client what is usually referred to as a “Re Blyth warning” (discussed later).
- Calculated in accordance with:
 - the terms of your costs agreement (if valid); or
 - if no costs agreement, the relevant Court scale of costs applying to that work; or
 - if no scale of costs applies, in accordance with the fair and reasonable value of the legal services provided).

“PARTY/PARTY COSTS”



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“PARTY/PARTY COSTS”



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Party/party costs are those costs which a client is entitled to have reimbursed or paid by someone else, usually the losing party to litigation.

The amounts recoverable by way of party/party costs in the ACT are set out in the Scale of Costs contained in Schedule 4 of the Court Procedures Rules 2006 (and calculated pursuant to Rule 1722 for ACT Magistrates Court matters).

Generally speaking, the quantum for recovering party/party costs are less than Solicitor/Client costs.

This presentation will mainly deal with solicitor and own client costs and not party/party costs.

“PARTY/PARTY COSTS”



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A different scale of costs applies in each of the High Court, the Federal Court, the Federal Magistrates Court.

In New South Wales, where scales of costs have generally been abolished, party/party costs are calculated with reference to the principle of "reasonableness".

“PARTY/PARTY COSTS”



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ACT Magistrates/Supreme Court

Those costs which it was **fair and reasonable** to incur for the attainment of justice (Rule 1751(2))

High Court/Federal Court

Those costs which it was **necessary or proper** to incur for the attainment of justice.

“PARTY/PARTY COSTS”



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Costs Orders

- You usually require an order of the Court to recover party/party costs.
- Under the Rules, **reserved costs are now effectively costs in the cause** (Rule 1728).
- Includes the costs incurred prior to commencing a proceeding as long as for the purpose or benefit of the proceeding. For e.g. letters of demand and negotiations.

“INDEMNITY COSTS”



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100

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“INDEMNITY COSTS”



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- Indemnity costs are a more generous form of costs order than that of party/party (often closer to 100%).
- Indemnity costs are all costs and disbursements incurred in a matter except to the extent that they are unreasonable.

What may be unreasonably incurred costs?

- Indemnity cost orders are often made because the party ordered to pay them failed to accept an offer for settlement which the Court subsequently decides should reasonably have been accepted.
- One of the leading cases on indemnity costs in the ACT is *Quirk v Bawden* [1992] ACTSC 118 – look it up if you want to know more.

“GENERAL CARE AND CONDUCT”



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“GENERAL CARE AND CONDUCT”



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- A party/party costs term in the ACT - Also known as "care, skill and attention"
- This is a discretionary loading, on top of Scale charges, for the diligence, skill and expertise brought by the solicitor to the matter and/or for the complexity, importance or value of the matter being litigated.
- Consideration needs to be given to:
 - the importance of the matter;
 - the difficulty of the matter;
 - the volume of documents involved in the matter;
 - the amount of time spent;
 - the particular skill or expertise brought to the matter;
 - the period of time within which the matter is completed i.e. the urgency of the matter etc.
- Set out in Part 4.1 of Schedule 4 of the Rules.



SOLICITOR/CLIENT COSTS
AND THE ACT

OVERVIEW OF THE ACT



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- Part 3.2 of the Act sets out costs disclosure and costs assessment provisions which affect the way practitioners deal with costs including how they can charge and recover from their clients.
- The cost provisions of the Act serve the following general purposes:
 1. Require solicitors to make legal costs disclosures to clients in certain circumstances;
 2. Regulate the making of costs agreements with clients;
 3. Regulate the billing of legal costs;
 4. Provide a way to set aside costs agreements that are not fair or reasonable; and
 5. Provide a way to assess solicitor/client legal costs and resolve costs disputes.

THE ACT

COSTS DISCLOSURE



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Costs Disclosure requirements

- What is the aim of costs disclosure?

THE ACT *COSTS DISCLOSURE*



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Costs Disclosure requirements

- What is the aim of costs disclosure?

Dal Pont – The key objective of disclosure is to ensure adequate consumer protection. It is **designed as a vehicle to empower the client vis-à-vis the lawyer**, by giving the client the opportunity to make an informed choice costs wise whether or not to retain the lawyer or continue with the representation.”

THE ACT

COSTS DISCLOSURE



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Costs Disclosure requirements

- See Sections 269 to 278 of the Act.
- Solicitors must, in writing, disclose the basis on which fees will be charged and advise the client of their extensive rights and entitlements concerning costs.
- Client's right to; receive/request a bill, be notified of changes to the matter, receive an estimate of the legal costs (or a range), progress reports, etc....

THE ACT

COSTS DISCLOSURE



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Costs Disclosure requirements

- Ongoing obligation to disclose – Section 276
 - A law practice must tell the client in writing of any substantial change to anything included in a disclosure under this division as soon as is reasonably practicable after the practice becomes aware of the change.
- There are exemptions to disclosure requirements (sophisticated client and matters under \$1,500) that we do not go into in detail. These can be found in section 272 of the Act.
- Model Laws enacted after ALRC recommendations – so similar requirements for disclosure across all other States/Territories (except SA)
- The ACT Law Society website has resources that can help you comply with the disclosure provisions of the Act.

THE ACT

COSTS DISCLOSURE



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What are some things to keep in mind when providing/drafting a cost agreement/disclosure?

THE ACT

COSTS DISCLOSURE



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- Scope of instructions and matters to which instructions will be sought if they arise i.e. incurring disbursements;
- Compliance with disclosure requirements under s 269 of LPA;
- When to provide – reasonably practicable;
- Who is liable to meet the costs;
- Disbursements;
- 6 min/1 unit;
- Individual tasks or time spent;
- Charging Rates;
- Estimate of costs or range of costs.

THE ACT

COSTS DISCLOSURE



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- Legal Profession Act 2006 – Section 277 – Effect of Failure to Disclose
 - ***Need not pay the legal costs unless they have been assessed***
 - *Cannot bring proceedings against the client for the recovery of legal costs unless the costs have been assessed*
 - ***May apply for the costs agreement to be set aside***
 - *The amount of the costs on an assessment can be reduced to be proportionate to the seriousness of the failure to disclose*
- Costs may be assessed on a party/party basis
- If disclosure is found to be inadequate, then potentially capable of being unsatisfactory professional conduct/professional misconduct (s277(5)):
 - Dependant on circumstances of case and does not automatically constitute unsatisfactory professional conduct/professional misconduct (see *Reynolds v Whittens* (2002) NSWSC 155)
 - This also applies to barristers

THE ACT

COSTS AGREEMENTS



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Costs Agreements

- See Division 3.2.5 and sections 282 to 288 of the Act
- Must be in writing
- Must clearly state—
 - that it is an offer to enter into a costs agreement; and
 - that the offer can be accepted in writing or by other conduct; and
 - the kind of conduct that will be acceptance i.e. continuing to instruct the law practice in the matter after receiving the offer
- Different requirements for conditional costs agreements – s283 – including must identify circumstances that constitute the successful outcome of the matter
- Without a cost agreement (/disclosure) it is difficult to defend a complaint, a claim and recover all the costs claimed on assessment including costs of the assessment.
- Cannot contract out of these requirements unless sophisticated client (s304A of the Act).

THE ACT *BILLING*



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Billing of Clients

- See Division 3.2.6 and sections 289 to 293 of the Act
- Law firms cannot commence legal proceeding to recover legal costs from a person until at least 30 days after the day the practice has given a signed bill to the person in accordance with section 290 (Bills) and section 291 (Notification of client's rights).
- Notification must include that if there is a dispute in relation to legal costs then a costs assessment under division 3.2.7 is open to the client.
- If a lump sum bill is given, the client can ask for an itemised bill which must be provided to the client at no charge.

THE ACT *COSTS ASSESSMENT*



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Costs Assessment

- See Division 3.2.7 and sections 294 to 304A of the Act
- If there is there is no reasonable prospect of settlement of the matter by mediation), clients can apply to the Supreme Court for a review of all or any part of legal costs, regardless of whether or not the costs have been paid.
- Section 302:
 - If costs are reduced by 15% or more, the law firm must pay the costs of the assessment.
 - If failure to disclosure, the law firm must pay the costs of the assessment.

Will discuss in more detail in later part of the presentation.

THE ACT *RECOVERY OF COSTS*



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Recovery of costs

- Costs are recoverable:
 - Pursuant to the terms of any valid cost agreement (i.e. not set aside) or if there is no such agreement;
 - Pursuant to an applicable scale (for ACT - the Scale of costs in Schedule 4 of the Rules) or if there is no applicable scale;
 - According to the fair and reasonable value of the legal services provided.

Will discuss in more detail in later part of the presentation.



SETTING ASIDE COSTS AGREEMENTS

SETTING ASIDE COST AGREEMENTS



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- Section 277 and 288 deal with setting aside costs agreements or provisions of costs agreements.
- Should do best to avoid this occurring as can have severe costs implications for the Solicitor, especially if ordered to pay the clients' costs of the application to set aside the costs agreement aside.
- General principles have emerged in case law (some have also made their way into the Act), some key principles are below:
 - a Solicitor has a fiduciary duty to the client and cannot prefer his or her own interests over the interests of the client;
 - the Solicitor must explain honestly the nature and effect of the fee agreement to the client, so that the client can and does understand it
 - E.g. if the solicitor will charge costs at a higher hourly rate than the scale charges, the solicitor should explain to the client that they will end up paying more as some costs will not be recoverable if the client enters into the costs agreement;
 - the Solicitor must not take advantage of the client's situation in persuading the client to sign the fees agreement;

SETTING ASIDE COST AGREEMENTS



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- **Real and informed consent** - The client's consent must be real and informed, with no undue pressure applied. Courts may consider the age of the client, if the client speaks English and whether or not the client is experienced in litigation matters.
- **Reasonableness** - the charges pursuant to the costs agreement must be reasonable for the work which is to be performed
- **Independent legal advice** - the Solicitor should advise the client to obtain independent legal advice on the costs agreement.
- **Cheaper firms out there** - The Solicitor should advise the client that there may be other firms of Solicitors who might be prepared to perform the work at scale rates.

SETTING ASIDE COST AGREEMENTS



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Fiduciary duty

- A Solicitor has a fiduciary duty to the client and cannot prefer his or her own interests over the interests of the client
- It is the Solicitors fiduciary duty to:-
 1. make full disclosure to the client regarding any statutory scales of costs that apply;
 2. advise the client that (where scales of costs apply) those scales will limit the costs recoverable from the losing party to the litigation even if an order is made that the losing party pay the clients costs
 3. advise the client that scales of costs exists to limit the costs which the Solicitor can charge unless the costs agreement is valid
 4. give estimates where possible of the costs payable under the scales and recoverable under the scales and to compare those costs with the costs payable pursuant to the costs agreement.

COST AGREEMENTS – IN OUR VIEW



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- In our view, a costs agreement should:
 - Be both fair and reasonable.
 - "Fair" relates to the way the agreement was obtained.
 - Was the nature of the Costs Agreement honestly explained to the client?
 - Did/Does the client understand the terms and terminology used in the costs agreement;
 - Was there real and informed consent?
 - "Reasonable" relates to the terms of the agreement
 - The amount of fees to be charged
 - Based on a consideration of the nature of the work to be done and by whom that work is to be done
 - Whether or not the hourly rate is appropriate for the qualifications and experience of the persons who will perform the work.
 - Indicate if the solicitor/firm is entitled to render interim bills and what may occur if an interim bill remains unpaid.
 - Set out what is to happen if the retainer is terminated (E.g. lien, require all costs to be paid in the event of a change of solicitor/firm, etc.)
 - Include how the solicitor/firm will charge - If intended to charge the client pursuant to minimum units (e.g. 6-minute unit) then the costs agreement must specifically state that intention. Unless specifically provided for, you may be unable to charge hourly rates based on minimum units of time.

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UNUSUAL EXPENSES

RE BLYTH WARNINGS



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- **What is a Re Blyth Warning?**

RE BLYTH WARNINGS



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- Commonly referred to as a **Re Blyth Warning** (originating from the decision of *Re Blyth and Fanshawe* [1882] 10 QBD 207), a Re Blyth warning is a warning that a Solicitor is under a duty to give to his or her client before incurring an unusual expense (or before performing unusual work).
- A Re Blyth Warning should be given where:
 - the expense is unusual to incur in litigation matters of that kind, and
 - the client may not recover that expense, or some part of it, from the other party to the litigation even if the client is successful and the other party is ordered to pay the client's costs.

RE BLYTH WARNINGS



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What is an unusual expense?

In *Re Felton* (1942) 60 WN (NSW) 16 Maxwell J said at p.20:

"An unusual expense is one which would not in the ordinary course of a particular type of litigation be incurred. What is unusual in one type of litigation is not necessarily unusual in litigation of a different type."

Question:

What is an example of an unusual expense based on the above definition?

RE BLYTH WARNINGS



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What do you think - should a **Re Blyth Warning** be given:

- Briefing Senior Counsel?
- Briefing interstate Junior / Senior Counsel?
- Cancellation fees and/or contingency fees?
- Interstate or overseas travel by the solicitor (to gather evidence, etc.)?
- Briefing interstate or overseas experts (and associated costs for hearing)?
- Photocopying fees for 1 folder of subpoena documents?

RE BLYTH WARNINGS



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The **Re Blyth Warning** principle has been developed over time to include:

- An expense can be unusual either because it is not ordinarily incurred in matters of that kind, or because of the amount of the expense.
- The Solicitor's must inform the client of the unusual expense and not to simply take the authority to incur the additional expense.
- The client must be placed in a position where they can properly exercise their own judgment in approving the incurring of the unusual expense.
- The quantum of Counsels' fees can be such as to require a Re Blyth warning – use your experience and discretion
- Just advising that there will be a gap in Counsel's fees payable and recoverable will not discharge the duty.
- Enshrined in Court Rules in Victoria

RE BLYTH WARNINGS



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Re Blyth Warning :

- The essence of the Re Blyth warning is that the client must be protected - The duty of the solicitor is to protect the client against incurring such expenses without a warning or notice.
- Both the warning and the instructions to incur the expense should both be in writing.
- Onus to prove Re Blyth Warning was given usually lies with solicitor – take file notes, record in correspondence and/or other records

Exceptions?

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LIMITATIONS ON COSTS

LIMITS ON WHAT YOU CAN CHARGE



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- Any personal injury lawyers present?
 - Do you know what recovery restrictions exist in the ACT for personal injury matters?

LIMITS ON WHAT YOU CAN CHARGE



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Charging your client on a solicitor/own client basis

- ***Civil Law (Wrongs) Act 2002 (CLW Act)***
 - Provides that if an amount recovered on a claim for personal injury damages is \$50,000.00 or less, that you are not entitled to be paid more than the maximum costs provided for in that Act (see Section 181 of the CLW Act).
 - The maximum costs is \$10,000.00 including Counsel's fees other than Counsel's fee on brief.
- This amount can be increased in appropriate circumstances (see Section 184 of the CLW Act) due to the:
 - (a) the complexity of the claim; or
 - (b) the behaviour of 1 or more of the parties to the claim.

LIMITS ON WHAT YOU CAN RECOVER



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Recovering from the losing party on a party/party basis

- Cost Restrictions – Rule 1725 of the Rules
 - If matter commenced in SC but could have been heard in MC
 - awarded <\$50 000 - 50% of the disbursements;
 - awarded > \$50,000 but <\$100,000 - 50% of costs and disbursements
 - awarded > \$100,000 but <\$175,000 - 75% of costs and disbursements
- Cost Multipliers
 - Rule 1722 - a solicitor is entitled to charge, and be allowed, the costs under the prescribed scale of costs for work done for or in a proceeding in the court, multiplied by the prescribed percentage.
 - a) In the Supreme Court—100%; or
 - b) In the Magistrates Court—relevant amount
 - (i) < \$10 000—33%; or
 - (ii) not <\$10 000 but < \$25 000- 67%; or
 - (iii) not <\$25 000 but <\$40 000—80%; or
 - (iv) not <\$40 000 but < \$50 000—90%; or
 - (v) not <\$50 000—100%.
 - Relevant amount changes depending on whether/when counterclaim was issued and the success of the counterclaim and different multipliers can apply
 - Multipliers don't apply to disbursements

LIMITS ON WHAT YOU CAN RECOVER



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Costs Indemnity Principle?

LIMITS ON WHAT YOU CAN RECOVER



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- Costs Indemnity Principle
 - Essentially, your client cannot recover more from the losing party than the total liability for legal costs to their solicitor.
- To compensate - Not to punish, not to profit
- Branwell B in Harold v Smith (1860) 157 ER 1229 at 1231:
 - *Costs as between party and party are given by the law as an indemnity to the person entitled to them; they are not imposed as a punishment on the party who pays them, nor given as a bonus to the party who receives them.*

The image features a central graphic composed of several overlapping, teardrop-shaped segments in various shades of teal and light blue. A solid, medium-blue horizontal bar spans across the middle of the image, partially overlapping the central graphic. The text "DISPUTES WITH YOUR CLIENT" is centered within this bar in a white, bold, sans-serif font with a subtle drop shadow.

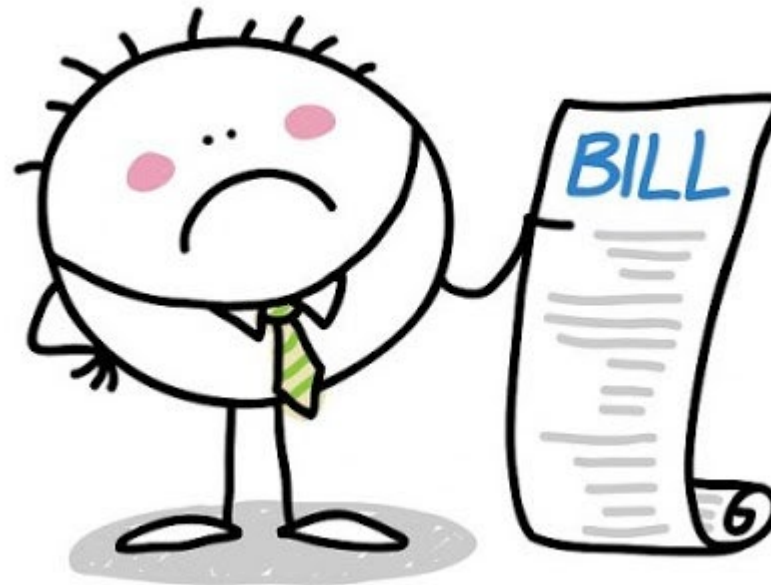
DISPUTES WITH YOUR CLIENT

DISPUTES WITH YOUR CLIENT



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- What are some common causes of disputes with clients about legal fees?

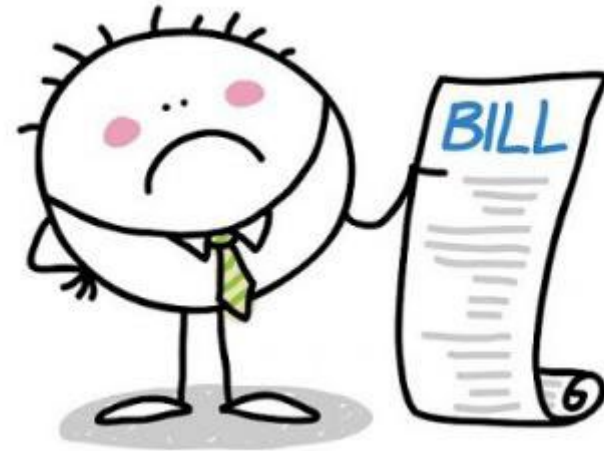


DISPUTES WITH YOUR CLIENT



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- What are some common causes of disputes with clients about legal fees?
 - Overcharging
 - Bill shock
 - Failure to disclose
 - Expensive disbursements



DISPUTES WITH YOUR CLIENT



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- Solicitor and client disputes determined per:
 - Costs agreement – Contract Law
 - Part 3.2 – Cost Disclosure and Assessment of the Act
- Court has significant discretion
- Courts more likely to side with client as lawyers are held to a higher standard

DISPUTES WITH YOUR CLIENT – THE ACT



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- Part 3.2 of the Legal Profession Act 2006 deals with costs disclosure and costs assessment.
- Applications for costs assessment can be made by and different rules apply:
 - Client or third-party payer
 - Must be made not later than 12 months after bill was given
 - By the law practice
 - unless at least 30 days have passed since—
 - the day the bill was given or the request for payment was made; or
 - the day the costs were paid if neither a bill was given nor a request was made; or
 - an application has been made under this division by someone else in relation to the legal costs.
 - Law practice retaining another law practice (i.e. Counsel)
 - not later than 60 days after the day the bill was given or the request for payment was made; or the day the costs were paid if neither a bill was given nor a request was made.

DISPUTES WITH YOUR CLIENT – THE ACT



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- What is the procedure? – Division 3.11.3 of Rules
 - Application, Affidavit in Support and Bill of Costs – r 3621 - must be supported by—
 - A costs agreement/a retainer
 - if the application is made under the Legal Profession Act, section 296 - an affidavit by the applicant and a sufficient description of the work to which the legal costs relate.
 - File 2 copies of the application and supporting documents and then a directions hearing – Registrar will set a time and date for the assessment
 - Receive any objections from client (r 3625) not later than 14 days before date for the assessment - if no objections, Court will likely allow further time for client to put on objections
 - Assessment hearing and Bill of Costs is taxed:
 - by reference to costs agreement (s300A);
 - by reference to scale of costs (s300B);
 - by reference to fairness and reasonableness of the costs (s300(1)(c));
- Once assessed, the assessment is taken to be a judgment of the Supreme Court for the amount of the unpaid legal costs and may be enforced accordingly – s300C

DISPUTES WITH YOUR CLIENT – THE ACT



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- What is allowable and what is not?
 - Look at your costs agreement/disclosure
 - Act within instructions – Act outside and not allowed on Assessment
 - List of assessing criteria in section 300(2) of LPA where no Costs Agreement
 - Useless, unnecessary or excessive costs will be disallowed
- Comes down to reasonableness - Assessor is required to consider:
 - Whether it was reasonable to carry out the work to which the costs relate
 - Also includes where it was reasonable for the person doing the work – i.e. a clerk is allowed more for the same work done by a partner
 - Whether the work was carried out in a reasonable manner
 - The fairness and reasonableness of the amount of costs in relation to the work, except to the extent that a valid costs agreement or scale applies to the costs



RESOLVING AND/OR AVOIDING DISPUTES WITH YOUR CLIENT

DISPUTES WITH YOUR CLIENT



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- Costs disputes with clients are essentially a no-win situation for both parties (although sometimes unavoidable)
- Costs disputes:
 - Can (are most likely will) be expensive in terms of time, recourses and money
 - Think about it like this, it costs the Solicitor time, opportunity cost/lost revenue and firm resources to:
 - Prepare the itemised bill of costs
 - Discuss the bill of costs with the client or the client's new solicitors
 - Prepare for and attend on an Assessment of costs
 - Recover the assessed costs as a debt.
 - It also distracts from your actual work and can be an emotional process

TIPS TO AVOID COSTS DISPUTES



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1. What steps can you take early on to try and avoid a costs dispute later in the matter?
2. What could you do to resolve a dispute that has arisen before it gets out of hand?

TIPS TO AVOID COSTS DISPUTES



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- Cost Agreement and Costs Disclosure Statement as soon as possible
- Make sure disclosure is accurate of the costs likely to be involved
- Update disclosure often
- Disclosure disbursements
- Re Blyth Warnings
- Keep your file in order
- Issue regular invoices
- Ensure there is documentary evidence on file for all work i.e. file notes

TIPS TO AVOID COSTS DISPUTES



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▪ Time recording and billing

- Be descriptive;
- Do not block bill and avoid catch-all entries (i.e. multiple tasks within the one entry- "All work done on the matter today – 8 hours")
- Time record for everything;
- When to time record - do it while or after the task has been completed.

Poor time entries	Good time entries
Email to client	Email to client advising on liability and prospects of success including next steps to progress matter to hearing
Call from defendant solicitor	Telephone from defendant solicitor seeking consent to directions for directions hearing, providing consent to same and re contacting the court by email for orders to be made in chambers
Attendance at court	Attendance at court for directions hearing including discussions with defendant solicitor as to next steps and including travel and waiting time

DISPUTES WITH YOUR CLIENT



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- Things to consider:
 - If failure to disclose, then commercial offer to resolve matter (i.e. discount)
 - Consider likely outcome of costs of the assessment
 - Consider any likely failure to disclose costs in accordance with the LPA
- Will you have to pay costs of the Assessment?
 - Section 302(2) of the Act:
 - If solicitors Bill of Costs reduced by 15% or more or failure to disclose, costs of assessment must be awarded to client unless the Court “otherwise orders”.
 - Section 302(3) of the Act :
 - If solicitors found not liable to pay the costs of the costs assessment, the costs must be paid by the party ordered by the Supreme Court to pay the costs.

RESOLVING DISPUTES



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If you have a costs dispute with your client, consider the following:-

- (a) if the client objects to the terms of a costs agreement which was entered into at an earlier stage of a matter, consider reducing your costs or reverting to scale charges to avoid the costs/delay of a dispute.
- (b) don't be condescending of the client as the client may be considerably smarter than you think. This will make the whole process more difficult.
- (c) offer to have the costs dispute independently assessed and agree at whose cost this will take place.
- (d) Act commercially - If the client persists with the dispute, it is almost certainly going to be cheaper for you to give in to the client, than to have to deal with a cost assessment and/or complaint to the Law Society.

SECTION 304 - BEWARE



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LEGAL PROFESSION ACT 2006 - SECT 304

- **Legal costs subject to consumer dispute not assessable**
- (1) Despite anything to the contrary in this part, legal costs that are or have been the subject of a consumer dispute under chapter 4 (Complaints and discipline) must not be the subject of a costs assessment under this division
- (2) Subsection (1) does not apply
- (a) to the extent that the relevant council for the legal practitioner—
 - (i) is unable to resolve the costs dispute and has notified the parties of their entitlement to apply for a costs assessment; or
 - (ii) refers a matter to the Supreme Court for a costs assessment under section 409 (Referral of matters for costs assessment—complaint [investigation](#)); or
- (b) if the costs dispute is withdrawn in accordance with section 400.



CANBERRA COSTING
CONSULTANTS

(02) 6185 0997

duncan@cbrcc.com.au

www.canberracostingconsultants.com

Please follow us on



for costing case updates

Thanks for your attention



*Any
Questions?*

ABOUT OUR FIRM



CANBERRA COSTING
CONSULTANTS

- We are a legal costing specific firm
- Happy to take calls anytime re any matter or question
- We can provide one off ad hoc costs advice
- We:
 - Appear and advise on all types of costing matters
 - Draft letters containing offers re costs on your behalf
 - Prepare Bills of Costs
 - Prepare Notices of Objections
 - Provide general costing advice
 - Conduct binding mini-assessments
 - Appear on formal assessments as instructed
 - Our fees are billed in accordance with the rates in Scale of Costs in Schedule so are fully claimable in most matters
- We conduct **binding mini-assessments** to avoid the costs and pitfalls of the Court's assessment process
- We move as quickly as possible – 4 to 8 weeks for Bills/Objections depending on size of matter and within a week for costs advice



Law Society of the Australian Capital Territory
Level 4, 1 Farrell Place, Canberra City ACT 2601
Phone 02 6274 0333 | memberconnect@actlawsociety.asn.au

actlawsociety.asn.au