

FACT SHEET COSTS DISPUTES

I'm unhappy with my bill, what should I do?

If your bill is a lump sum bill (a bill that describes the legal services to which it relates and specifies the total amount of legal costs) you may request an itemised bill. An itemised bill should detail all of the work that was done by your legal practitioner and how much you are being charged for each part of that work. If you request an itemised bill the law practice must provide you with the itemised bill within 21 days and is not entitled to charge you for the preparation of that bill. Be aware that an itemised bill may be in a sum higher than the lump sum bill.

If, after examining the itemised bill, you are still unhappy try to narrow in on the issues you are unhappy about and then raise those issues with your legal practitioner. Your legal practitioner may choose to negotiate with you over costs which may resolve the issues you are unhappy about.

Costs assessment

If, after speaking with your legal practitioner, you are still unhappy with the bill you may seek a costs assessment by applying to a taxing officer of the Supreme Court for an assessment of the whole or any part of the bill of legal costs. The taxing officer independently examines the bill (or part of the bill) and the objections to that bill.

The costs assessment procedure is set out in *Sections 294 to 309* of the Legal Profession Act 2008 ('the Act').

You can seek a costs assessment:

- Of the whole or any part of the bill (even if the costs have been paid); and
- Even if you have paid the legal costs without a bill.

You must cause a copy of the application for costs assessment to be given to the law practice (*Section 299*).

What happens to my bill whilst the assessment process is going on?

If you make an application for a costs assessment your legal practitioner must not commence any proceedings to recover the legal costs the subject of the bill until the costs assessment has been completed.

When should I apply for a costs assessment?

If you decide to seek a costs assessment you must make an application within 12 months of receiving the bill. You must serve a copy of your application for a costs assessment on the law practice your legal practitioner works for. They then become a 'party' to the costs assessment and are entitled to participate in the costs assessment process.

If you are outside the 12 month period you can apply for an extension of time, though whether the extension is allowed is a decision for the taxing officer. A taxing officer may grant an extension of time if it is just and fair to do so having regard to the delay and the reasons for the delay. Accordingly, if you wish to apply for an extension of time you should do so as soon as possible. The Supreme Court has published a practice direction about applying for an extension of time in which to seek a costs assessment. The most recent practice direction is available on the Supreme Court website (www.supremecourt.wa.gov.au).

Does it cost anything to have my bill assessed?

There are two costs involved in having a bill assessed. The first cost is a taxing fee may be payable when the bill is lodged for assessment. The second cost is an assessment fee which is calculated at the rate of 2.5% of the bill and is added to the amount at which the bill is drawn.

Usually, if on assessment the legal costs are reduced by 15% or more or the taxing officer is satisfied that the law practice failed to properly disclose their costs arrangements to you, the law practice will have to pay the costs of having the bill assessed. However, if the law practice is not ordered to pay, you may be ordered to pay the costs of the assessment. The taxing officer may refer any special circumstances relating to the costs assessment to the Supreme Court for consideration (*Section 304*).

What will the taxing officer consider when assessing the bill?

When assessing the bill the taxing officer will consider:

- Whether or not it was reasonable to carry out the work to which the legal costs relate;
- Whether or not the work was carried out in a reasonable manner; and

- The fairness and reasonableness of the amount of legal costs in relation to the work (except to the extent that a costs agreement or costs determination applies, in which case the costs normally must be assessed by reference to the agreement or determination).

In assessing what is a fair and reasonable amount of legal costs the taxing officer may have regard to matters such as the complexity of the matter and the quality of the work done. These are set out in full in *Section 301* of the Act.

Once the bill has been assessed the taxing officer will certify in writing the amount of disputed costs allowed and the costs of the assessment. That certificate is then binding on the parties involved, bears interest and may be enforced against the person liable to pay as if it were a judgment of the Supreme Court (*Section 305*).

What if I have been overcharged?

If, after the assessment, the taxing officer considers that the legal costs charged by the law practice are grossly excessive the taxing officer must refer the matter to the Legal Profession Complaints Committee. If the taxing officer considers the assessment raises any other matter that may constitute unsatisfactory professional conduct or professional misconduct, the taxing officer may refer the matter to the Committee. You also are able to make a complaint to the Committee if one is not made by the taxing officer.

What if I am not happy with the costs assessment?

You can apply for the costs assessment to be reviewed by a Judge of the Supreme Court. Such an application must normally be made within 14 days of the taxing officer issuing the taxation certificate.

What if I signed a costs agreement?

If you have entered into a costs agreement with your legal practitioner you can apply to the Supreme Court to have the agreement set aside. The Court may order that the agreement be set aside if it is satisfied that the agreement is not fair or reasonable. The costs agreement review procedure is set out in *Section 288* of the Act.

Family Court proceedings

If your proceedings are in the Family Court this brochure may not apply to you. If your matter commenced before 30 June 2008 you should refer to the information sheet provided by the Family Court

of Western Australia which is available at our office. However, if your matter commenced after 30 June 2008, the assessment legislation described in this brochure applies.

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