

Your right to challenge legal costs

Legal Profession Act – New South Wales

This notice **only** applies in Family Court matters in the following circumstances:

1. If you enter into a new costs agreement with your lawyer after 30 June 2008;
2. If you first retained a lawyer after 30 June 2008, even if your case is pending on that date;
3. If you filed a fresh application in a court under the *Family Law Act* after 30 June 2008.

There are different reasons why a client may become unhappy with a bill from his/her lawyers. This document seeks to identify areas that might assist in resolving any problems. There are **time limits** that apply to taking particular action in relation to legal costs. You should read this fact sheet carefully, and seek advice if you are unsure about anything in it.

Part 1 Talking to your lawyer

Most clients resolve their concerns about their legal costs simply by discussing their concerns with their lawyer. If you are not happy with a bill, your first step should be to do this, either before or after receiving an itemised bill (see Part 2). Once your lawyer has understood your concerns s/he may agree to review the bill.

If you are not happy with the outcome of the discussions, you can consider using the avenues set out below in Parts 3-6.

Part 2 Lump sum and itemised bills

A bill usually summarises the work your lawyer has done and gives the total amount being charged for that work. However, you may request an itemised bill that lists each item of work that has been done and the amount charged for each item. Reviewing an itemised bill might help you to work out which part(s) of the legal costs you may be unhappy about. Your lawyer cannot charge for preparing the itemised bill. However, it is possible that the total amount of the bill may increase once each piece of work is itemised.

Part 3 Costs mediation

Costs mediation may be formal or informal, and provides you with an opportunity to discuss your concerns with the assistance of an independent facilitator. Mediation is generally a **quicker and cheaper** alternative to costs assessment. Mediators cannot give legal advice during the mediation, and cannot decide on the fairness or reasonableness of the costs.

In NSW, your lawyer can be required to participate in costs mediation. Contact the Office of the Legal Services Commissioner or the Law Society's Dispute Resolution Department for more information.

Part 4 Costs assessment

Costs assessment is where an independent court-appointed person considers the bill and your objections to it. The costs assessor will decide what is a fair and reasonable amount for you to pay. You have **12 months** from the bill being given to you (or a request for payment being made, or when you paid the costs) to apply for costs assessment. The Supreme Court of NSW will only grant extensions of time in special circumstances.

You can apply for 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. However, if the bill is reduced by 15% or more, or your lawyer did not make proper costs disclosure, your lawyer may be required to pay the costs of the assessment.

Contact the Supreme Court Costs Assessment Scheme for details about how to apply for costs assessment.

Part 5 Setting aside a costs agreement

If you believe that your costs agreement with your lawyer is not fair or reasonable, you can apply to a costs assessor to have it set aside, in whole or in part. If the costs agreement is set aside, the costs assessor will determine the costs that are payable.

Part 6 Other avenues for challenging legal costs

There may be other ways you can resolve your concerns about legal costs. You should seek legal advice if you feel that the avenues set out above are not appropriate for you.

Your lawyer may take court action against you if you fail to pay your bill. However, your lawyer cannot start legal action against you until 30 days after giving you the bill (or 30 days after giving you an itemised bill, if you have requested one) or during a costs assessment.

Part 7 Who to contact for more information

Legal profession regulators - costs mediation and costs assessment

Office of the Legal Services Commissioner Ph: (02) 9377 1800 Freecall: 1800 242 958 www.lawlink.nsw.gov.au/olsc More fact sheets available.	Law Society of New South Wales Ph: (02) 9926 0333 www.lawsociety.com.au	Supreme Court Costs Assessment Scheme Ph: (02) 9230 8111 www.lawlink.nsw.gov.au/sc
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Legal and procedural advice - the following organisations provide free legal advice:

LawAccess Telephone and internet legal advice service. Ph: 1300 888 529 or www.lawaccess.nsw.gov.au	Legal Aid Commission of NSW If you need face-to-face advice after you have spoken to LawAccess. Look under 'L' in the business and government listings in the White Pages or go to: www.legalaid.nsw.gov
Community Legal Centres (CLCs) A list of CLCs in your area is available by calling: Ph: (02) 9318 2355 or www.nswclc.org.au	Local Court Chamber Registrars Can give advice about Local Court procedure if your lawyer has initiated action to recover outstanding costs.