

GUIDE TO “COSTS DISCLOSURE STATEMENT”

(Legal Costs Your Right to Know)

For use when there is no Costs Agreement

Important notice

The “Costs Disclosure Statement” is based on a draft costs disclosure statement prepared pro bono at the request of the ACT Law Society. This Guide and the Costs Disclosure Statement are not legal advice and should not be relied upon as legal advice. Further, legislation and case law change from time to time. Neither the ACT Law Society nor the Law Society Northern Territory accepts any responsibility for relying upon the information contained in this Guide or the Costs Disclosure Statement. Practitioners and law practices must stay apprised of relevant law and take their own legal advice when making costs disclosures.

All provision numbers in this Guide refer to the Act.

Application for family law practitioners

The Family Court has announced it proposes to repeal its Rules dealing with solicitor / client costs, including costs disclosure obligations contained in those Rules. This proposal will take effect from 1 July 2008.

From 1 October 2007 until 1 July 2008, in matters which are to be litigated in the Family Court, practitioners will need to comply with costs disclosure obligations under the Act as well as under Chapter 19 of the Family Law Rules. The two systems are similar. The Society will provide separate guidance for Family Law matters.

Family Law Rules regarding Costs Agreements will continue to apply to matters which commence before 1 July 2008. For new matters that commence after 1 July 2008, only Part 3.3 of the Act in relation to costs disclosure and assessment will apply.

When can I use the Costs Disclosure Statement?

The Costs Disclosure Statement is intended to fulfil a law practice’s mandatory S 303 costs disclosure obligations to clients. Law practices are welcome to develop and use their own costs disclosure statements.

If a law practice wishes to charge an ‘uplift fee’, the Costs Disclosure Statement will need to be amended in accordance with SS 308 and 319.

When can I omit giving costs disclosure?

Under S 306, costs disclosure does need not be given in the following situations.

- If the total legal costs in the matter, excluding disbursements, are not likely to exceed \$1,500 (exclusive of GST) (s 306(1)). If the law practice becomes aware that the total legal costs are likely to exceed \$1,500, full costs disclosure must be given as soon as practicable.
- If the client has received one or more disclosures under SS 303 or 304(1) from the law practice in the previous 12 months AND the client has agreed in writing to waive the right to disclosure AND a principal of the law practice decides on reasonable grounds that, having regard to the nature of the previous disclosures and the relevant circumstances, the further disclosure is not justified (s 306 (1)(b)). The law practice must ensure that a written record of a principal's decision that further disclosure in the matter is not justified is made and kept with files relating to the matter (s 306(3)).
- If the client is a 'sophisticated client'. Under S 306, 'sophisticated clients' are:
 - (i) a law practice or an Australian legal practitioner; or
 - (ii) a public company, a subsidiary of a public company, a large proprietary company, a foreign company, a subsidiary of a foreign company or a registered Australian body (each within the meaning of the Corporations Act); or
 - (iii) a financial services licensee (within the meaning of the Corporations Act); or
 - (iv) a liquidator, administrator or receiver (as respectively mentioned in the Corporations Act); or
 - (v) a partnership that carries on the business of providing professional services if the partnership consists of more than 20 members or if the partnership would be a large proprietary company (within the meaning of the Corporations Act) if it were a company; or
 - (vi) a proprietary company (within the meaning of the Corporations Act) formed for the purpose of carrying out a joint venture, if any shareholder of the company is a person to whom disclosure of costs is not required; or
 - (vii) an unincorporated group of participants in a joint venture, if any member of the group is a person to whom disclosure of costs is not required and if any other member of the group who is not someone to whom disclosure is not required has indicated that he or she waives the right to disclosure; or
 - (viii) a local government council constituted under a law of a jurisdiction of the Commonwealth

(ix) a Minister of a jurisdiction or the Commonwealth acting in the Minister's official capacity, or a government department or public authority of a jurisdiction or the Commonwealth; or

- if the legal costs or the basis on which they will be worked out has been agreed following a tender process (S 306 (1) (d)).
- If the client will not be required to pay the legal costs or they will not otherwise be recovered by the law practice (S 306(1) (e)).
- In any circumstances prescribed by regulation (S 306(1)(f)).
Regulation 80C provides that disclosure need not be made where the client is:
 - (a) An overseas-registered foreign lawyer or foreign law practice; or
 - (b) A corporation that has a share capital and whose shares or the majority of whose shares are held beneficially for the Commonwealth, a State or Territory; or

Clause 1.1 – Right to negotiate a costs agreement with us

Refer to SS 303(1) (b) (i) 317.

Clause 1.2 – Right to receive a bill of costs

Refer to S 303(1) (b) (ii).

Clause 1.3 – Right to request an itemised bill

Refer to SS 303 (1) (b) (iii) and 327.

Clause 1.4 – Right to progress reports

Refer to SS 303(1) (g) and 312.

Clause 1.5 – Your rights if you dispute our legal costs

Refer to SS 303 (1) (i), 323 and Part 3.3 Divisions 7 and 8.

Clause 1.6 – Right to accept our offer to enter into an agreement under a corresponding law

Refer to S 298(1).

Clause 2.1 – The basis on which our costs will be calculated

Refer to SS 297 – 302. Note that if a corresponding law applies to the matter, you must disclose costs as they are applicable in that State or Territory.

Clause 2.1.1 – Professional Charges

Refer to S 303(1) (a).

If you are using the Law Society’s “Costs Agreement” or “Conditional Costs Agreement” containing a clause titled “Our Professional Charges”, delete clause 2.1.1. The clause “Our Professional Charges” provides adequate disclosure about professional charges and need not be repeated in the Costs Disclosure Statement.

If you are not using a written Costs Agreement at all, or if you are using a written Costs Agreement that does not contain a clause about your professional charges, delete which ever section does not apply and complete details as indicated.

Clause 2.1.2 – Disbursements

Refer to S 303(1) (a).

If you are using the Law Society’s “Costs Agreement” or “Conditional Costs Agreement” containing a clause titled “Our Disbursements”, delete clause 2.1.2. The clause “Our Disbursements” provides adequate disclosure about professional charges and need not be repeated in the Costs Disclosure Statement.

If you are not using a written costs agreement at all, or if you are using a written costs agreement that does not contain a clause about your disbursements, complete the details as indicated in Clause 2.1.2.

Clause 2.2 – Estimate of costs

Delete whichever section does not apply and complete details as indicated.

Refer to SS 303 (1) (c) and 310.

Clause 2.3.1 – 2.3.3 – Costs in court proceedings – litigious matters

Complete details as indicated.

Refer to s 303(1) (f).

Clause 2.3.4 – Costs in court proceedings – litigious matters – settlement

Refer to S 307.

Clause 3.1.1 – Our billing arrangements

Delete whichever paragraph does not apply OR replace with a paragraph indicating the intervals at which you will bill your client.

Refer to S 303(1) (d).

Clause 3.2 – Interest on unpaid costs

Refer to s 316(1). The interest rate is prescribed Regulation 80D under the *Legal Profession Regulations 2007*. As of February 2008, this rate was 9% (the Cash Target Rate set by the Reserve Bank of Australia plus 2%). You should monitor changes to the rate and amend your Costs Disclosure Statement should this rate change.

Clause 4.1 – Right to be notified of any substantial changes

Refer to SS 303(1) (b) (iv), 310.

Clause 4.2 – Persons responsible for your matter and legal costs

Delete whichever section does not apply and complete details as indicated.

Refer to S 303(1) (h).

Clause 4.3 – Engagement of another law practice

If your law practice intends to engage a second law practice, such as Counsel, your law practice must disclose certain details to the client in writing before engaging the second law practice. In urgent circumstances, you may disclose details to the client orally and then confirm these in writing as soon as practicable afterwards. The details that must be disclosed are as follows.

- The basis on which the second law practice's legal costs will be worked out, including whether a scale of costs applies to any of the legal costs (S 303(1))(a)); AND
- An estimate of the second law practice's total legal costs, if reasonably practicable or, if it is not reasonably practicable to estimate the total legal costs, a range of estimates of the total legal cost and an explanation of the major variables that will affect the working out of the costs (S 303(1)(c)). AND
- Details of the intervals (if any) at which the client will be billed in relation to the second law practice (S 303(1)(d)).

Refer to SS 303, 304 and 305.