

### 363 Criteria for [costs](#) assessment

- (1) In conducting an assessment of [legal costs](#), the [costs assessor](#) must consider:
- (a) whether or not it was reasonable to carry out the work to which the [legal costs](#) relate, and
  - (b) whether or not the work was carried out in a reasonable manner, and
  - (c) the fairness and reasonableness of the amount of [legal costs](#) in relation to the work, except to the extent that section 361 or 362 applies to any disputed [costs](#).
- (2) In considering what is a fair and reasonable amount of [legal costs](#), the [costs assessor](#) may have regard to any or all of the following matters:
- (a) whether the [law practice](#) and any [Australian legal practitioner](#) or [Australian-registered foreign lawyer](#) acting on its behalf complied with any relevant legislation or [legal profession rules](#),
  - (b) any disclosures made by the [law practice](#) under Division 3 (Costs disclosure),
  - (c) any relevant advertisement as to:
    - (i) the [law practice](#)'s [costs](#), or
    - (ii) the skills of the [law practice](#) or of any [Australian legal practitioner](#) or [Australian-registered foreign lawyer](#) acting on its behalf,
  - (e) the skill, labour and responsibility displayed on the part of the [Australian legal practitioner](#) or [Australian-registered foreign lawyer](#) responsible for the matter,
  - (f) the retainer and whether the work done was within the scope of the retainer,
  - (g) the complexity, novelty or difficulty of the matter,

### 172 Legal costs must be fair and reasonable

- (1) A law practice must, in charging legal costs, charge costs that are no more than fair and reasonable in all the circumstances and that in particular are-
- (a) proportionately and reasonably incurred; and
  - (b) proportionate and reasonable in amount.
- (2) In considering whether legal costs satisfy subsection (1), regard must be had to whether the legal costs reasonably reflect-
- (a) the level of skill, experience, specialisation and seniority of the [lawyers](#) concerned; and
  - (b) the level of complexity, novelty or difficulty of the issues involved, and the extent to which the matter involved a matter of public interest; and
  - (c) the labour and responsibility involved; and
  - (d) the circumstances in acting on the matter, including (for example) any or all of the following-
    - (i) the urgency of the matter;
    - (ii) the time spent on the matter;
    - (iii) the time when business was transacted in the matter;
    - (iv) the place where business was transacted in the matter;
    - (v) the number and importance of any documents involved; and
    - (e) the quality of the work done; and
    - (f) the retainer and the instructions (express or implied) given in the matter.
- (3) In considering whether legal costs are fair and reasonable, regard must also be had to whether the legal costs conform to any applicable requirements of this Part, the Uniform Rules and any fixed costs legislative provisions.

## LEGAL PROFESSION ACT 2004

- (h) the quality of the work done,
- (i) the place where, and circumstances in which, the [legal services](#) were provided,
- (j) the time within which the work was required to be done,
- (k) any other relevant matter.

## LEGAL PROFESSION UNIFORM LAW (NSW) 2014

- (4) A costs agreement is prima facie evidence that legal costs disclosed in the agreement are fair and reasonable if-
  - (a) the provisions of Division 3 relating to costs disclosure have been complied with; and
  - (b) the costs agreement does not contravene, and was not entered into in contravention of, any provision of Division 4.

### 322 Making costs agreements

- (1) A costs agreement may be made:
- (a) between a client and a law practice retained by the client, or
  - (b) between a client and a law practice retained on behalf of the client by another law practice, or
  - (c) between a law practice and another law practice that retained that law practice on behalf of a client, or

(d) between a law practice and an associated third party payer.

(2) A costs agreement must be written or evidenced in writing.

(3) A costs agreement may consist of a written offer in accordance with subsection (4) that is accepted in writing or by other conduct.

**Note :** Acceptance by other conduct is not permitted for conditional costs agreements-see section 323 (3) (c) (i).

(4) The offer must clearly state:

(a) that it is an offer to enter into a costs agreement, and

(b) that the client may accept it in writing or by other conduct, and

(c) the type of conduct that will constitute acceptance.

(5) Except as provided by section 395A, a costs agreement cannot provide that the legal costs to which it relates are not subject to costs assessment under Division 11.

**Note :** If it attempts to do so, the costs agreement will be void-see section 327 (1).

(6) A reference in section 328 and in any prescribed provisions of this Part to a client is, in relation to a costs agreement that is entered into between a law practice and an associated third party payer as referred to in subsection (1) (d) and to which a client of the law practice is not a party, a reference to the associated third party payer.

### 179 Client's right to costs agreement

A client of a law practice has the right to require and to have a negotiated costs agreement with the law practice.

### 180 Making costs agreements

(1) A costs agreement may be made-

(a) between a client and a law practice retained by the client; or

(b) between a client and a law practice retained on behalf of the client by another law practice; or

(c) between a law practice and another law practice that retained that law practice on behalf of a client; or

(d) between a law practice and an associated third party payer.

(2) A costs agreement must be written or evidenced in writing.

(3) A costs agreement may consist of a written offer that is accepted in writing or (except in the case of a conditional costs agreement) by other conduct.

(4) A costs agreement cannot provide that the legal costs to which it relates are not subject to a costs assessment.

### 323 Conditional costs agreements

- (1) A costs agreement may provide that the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which those costs relate.
- (2) A conditional costs agreement may relate to any matter, except a matter that involves criminal proceedings or proceedings under the *Family Law Act 1975* of the Commonwealth.
- (3) A conditional costs agreement:
  - (a) must set out the circumstances that constitute the successful outcome of the matter to which it relates, and
  - (b) may provide for disbursements to be paid irrespective of the outcome of the matter, and
  - (c) must be:
    - (i) in writing, and
    - (ii) in clear plain language, and
    - (iii) signed by the client, and
  - (d) must contain a statement that the client has been informed of the client's right to seek independent legal advice before entering into the agreement, and
  - (e) must contain a cooling-off period of not less than 5 clear business days during which the client, by written notice, may terminate the agreement.
- (4) Subsection (3) (c) (iii), (d) and (e) do not apply to a conditional costs agreement made under section 322 (1) (c) (Costs agreements between law practices).

### 181 Conditional costs agreements

- (1) A costs agreement (a "**conditional costs agreement**") may provide that the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which those costs relate.
- (2) A conditional costs agreement must-
  - (a) be in writing and in plain language; and
  - (b) set out the circumstances that constitute the successful outcome of the matter to which it relates.
- (3) A conditional costs agreement must-
  - (a) be signed by the client; and
  - (b) include a statement that the client has been informed of the client's rights to seek independent legal advice before entering into the agreement.
- (4) A conditional costs agreement must contain a cooling-off period of not less than 5 clear business days during which the client, by written notice, may terminate the agreement, but this requirement does not apply where the agreement is made between law practices only.
- (5) If a client terminates a conditional costs agreement within the cooling-off period, the law practice-
  - (a) may recover only those legal costs in respect of legal services performed for the client before that termination that were performed on the instructions of the client and with the client's knowledge that the legal services would be performed during that period; and
  - (b) in particular, may not recover any uplift fee.
- (6) A conditional costs agreement may provide for disbursements to be paid irrespective of the outcome of the matter.

## LEGAL PROFESSION ACT 2004

(4A) Subsection (3) (c) (iii), (d) and (e) do not apply to a conditional [costs](#) agreement if disclosure under:

- (a) section 309 (Disclosure of [costs](#) to [clients](#)), or
- (b) section 310 (1) (Disclosure if another [law practice](#) is to be retained),

in relation to the agreement was not or would not be required in the circumstances referred to in section 312 (1) (c) or (d) (Exceptions to requirement for disclosure).

(4B) Subsection (3) (c) (iii), (d) and (e) do not apply to a conditional [costs](#) agreement made with a sophisticated [client](#).

(5) If a [client](#) terminates an agreement within the period referred to in subsection (3) (e), the [law practice](#):

- (a) may recover only those [legal costs](#) in respect of [legal services](#) performed for the [client](#) before that termination that were performed on the instructions of the [client](#) and with the [client](#)'s knowledge that the [legal services](#) would be performed during that period, and
- (b) without affecting the generality of paragraph (a), may not recover the uplift fee (if any).

## LEGAL PROFESSION UNIFORM LAW (NSW) 2014

(7) A [conditional costs agreement](#) may relate to any matter, except a matter that involves-

- (a) criminal proceedings; or
- (b) proceedings under the [Family Law Act 1975](#) of the Commonwealth; or
- (c) proceedings under legislation specified in the Uniform Rules for the purposes of this section.

(8) A contravention of provisions of this Law or the Uniform Rules relating to [conditional costs agreements](#) by a law practice is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any principal of the law practice or any legal practitioner associate or foreign [lawyer](#) associate involved in the contravention.

### 324 Conditional [costs](#) agreements involving uplift fees

- (1) A [law practice](#) must not enter into a conditional [costs](#) agreement in relation to a claim for damages that provides for the payment of an uplift fee on the successful outcome of the claim to which the fee relates.
- (2) Except as provided by subsection (1), a conditional [costs](#) agreement may provide for the payment of an uplift fee.
- (3) The basis of calculation of the uplift fee must be separately identified in the agreement.
- (4) The agreement must contain an estimate of the uplift fee or, if that is not reasonably practicable:
  - (a) a range of estimates of the uplift fee, and
  - (b) an explanation of the major variables that will affect the calculation of the uplift fee.
- (5) If a conditional [costs](#) agreement relates to a litigious matter, the uplift fee must not exceed 25% of the [legal costs](#) (excluding disbursements) otherwise payable.
- (6) A [law practice](#) must not enter into a [costs](#) agreement in contravention of this section.

### 182 Conditional costs agreements involving uplift fees

- (1) A conditional costs agreement may provide for the payment of an uplift fee.
- (2) If a conditional costs agreement relates to a litigious matter-
  - (a) the agreement must not provide for the payment of an uplift fee unless the law practice has a reasonable belief that a successful outcome of the matter is reasonably likely; and
  - (b) the uplift fee must not exceed 25% of the legal costs (excluding disbursements) otherwise payable.
- (3) A conditional costs agreement that includes an uplift fee-
  - (a) must identify the basis on which the uplift fee is to be calculated; and
  - (b) must include an estimate of the uplift fee or, if that is not reasonably practical-
    - (i) a range of estimates for the uplift fee; and
    - (ii) an explanation of the major variables that may affect the calculation of the uplift fee.
- (4) A law practice must not enter into a costs agreement in contravention of this section or of the Uniform Rules relating to uplift fees.

### 327 Certain [costs](#) agreements are void

- (1) A [costs](#) agreement that [contravenes](#), or is entered into in contravention of, any provision of this Division is void.
- (2) Subject to this section and Division 11, [legal costs](#) under a void [costs](#) agreement are recoverable as set out in section 319 (1) (a) or (c) (On what basis are [legal costs](#) recoverable?).
- (3) However, a [law practice](#) is not entitled to recover any amount in excess of the amount that the [law practice](#) would have been entitled to recover if the [costs](#) agreement had not been void and must repay any excess amount received.
- (3A) A [law practice](#) that has entered into a [costs](#) agreement in contravention of section 324 (2)-(5) (Conditional [costs](#) agreements involving uplift fees) is not entitled to recover the whole or any part of the uplift fee and must repay any amount received in respect of the uplift fee to the person from whom it was received.
- (4) A [law practice](#) that has entered into a [costs](#) agreement in contravention of section 324 (1) (Conditional [costs](#) agreements involving uplift fees) or 325 (Contingency fees are prohibited) is not entitled to recover any amount in respect of the provision of [legal services](#) in the matter to which the [costs](#) agreement related and must repay any amount received in respect of those services to the person from whom it was received.
- (5) If a [law practice](#) does not repay an amount required by subsection (3) or (4) to be repaid, the person entitled to be repaid may recover the amount from the [law practice](#) as a debt in a court of competent [jurisdiction](#).

### 185 Certain costs agreements are void

- (1) A costs agreement that contravenes, or is entered into in contravention of, any provision of this Division is void.  
**Note:** If a costs agreement is void due to a failure to comply with the disclosure obligations of this Part, the costs must be assessed before the law practice can seek to recover them (see section 178(1)).
- (2) A law practice is not entitled to recover any amount in excess of the amount that the law practice would have been entitled to recover if the costs agreement had not been void and must repay any excess amount received.
- (3) A law practice that has entered into a costs agreement in contravention of section 182 is not entitled to recover the whole or any part of the uplift fee and must repay the amount received in respect of the uplift fee to the person from whom it was received.
- (4) A law practice that has entered into a costs agreement in contravention of section 183 is not entitled to recover any amount in respect of the provision of legal services in the matter to which the costs agreement related and must repay any amount received in respect of those services to the person from whom it was received.
- (5) If a law practice does not repay an amount required by subsection (2), (3) or (4) to be repaid, the person entitled to be repaid may recover the amount from the law practice as a debt in a court of competent jurisdiction.

### 309 Disclosure of [costs](#) to [clients](#)

- (1) A [law practice](#) must disclose to a [client](#) in accordance with this Division:
- (a) the basis on which [legal costs](#) will be calculated, including whether a fixed [costs](#) provision applies to any of the [legal costs](#), and
  - (b) the [client](#)'s right to:
    - (i) negotiate a [costs](#) agreement with the [law practice](#), and
    - (ii) receive a bill from the [law practice](#), and
    - (iii) request an itemised bill after receipt of a lump sum bill, and
    - (iv) be notified under section 316 of any substantial change to the matters disclosed under this section, and
  - (c) an estimate of the total [legal costs](#) if reasonably practicable or, if that is not reasonably practicable, a range of estimates of the total [legal costs](#) and an explanation of the major variables that will affect the calculation of those [costs](#), and
  - (d) details of the intervals (if any) at which the [client](#) will be billed, and
  - (e) the rate of interest (if any), whether a specific rate or a benchmark rate, that the [law practice](#) charges on overdue [legal costs](#), whether that rate is a specific rate of interest or is a benchmark rate of interest (as referred to in subsection (1A)), and
  - (f) if the matter is a litigious matter, an estimate of:
    - (i) the range of [costs](#) that may be recovered if the [client](#) is successful in the litigation, and
    - (ii) the range of [costs](#) the [client](#) may be ordered to pay if the [client](#) is unsuccessful, and

### 174 Disclosure obligations of law practice regarding clients

- (1) Main disclosure requirement A law practice-
- (a) must, when or as soon as practicable after instructions are initially given in a matter, provide the client with information disclosing the basis on which legal costs will be calculated in the matter and an estimate of the [total legal costs](#); and
  - (b) must, when or as soon as practicable after there is any significant change to anything previously disclosed under this subsection, provide the client with information disclosing the change, including information about any significant change to the legal costs that will be payable by the client-  
together with the information referred to in subsection (2).
- (2) Additional information to be provided Information provided under-
- (a) subsection (1)(a) must include information about the client's rights-
    - (i) to negotiate a costs agreement with the law practice; and
    - (ii) to negotiate the billing method (for example, by reference to timing or task); and
    - (iii) to receive a bill from the law practice and to request an itemised bill after receiving a bill that is not itemised or is only partially itemised; and
    - (iv) to seek the assistance of the designated local regulatory authority in the event of a dispute about legal costs; or
  - (b) subsection (1)(b) must include a sufficient and reasonable amount of information about the impact of the change on the legal costs that will be payable to allow the client to make informed decisions about the future conduct of the matter.

- (g) the [client](#)'s right to progress reports in accordance with section 318, and
  - (h) details of the person whom the [client](#) may contact to discuss the [legal costs](#), and
  - (i) the following avenues that are open to the [client](#) in the event of a dispute in relation to [legal costs](#):
    - (i) [costs](#) assessment under Division 11,
    - (ii) the setting aside of a [costs](#) agreement or a provision of a [costs](#) agreement under section 328 (Setting aside [costs](#) agreements or provisions of [costs](#) agreements),
    - (iii) mediation under Division 8, and
  - (j) any time limits that apply to the taking of any action referred to in paragraph (i), and
  - (k) that the law of [this jurisdiction](#) applies to [legal costs](#) in relation to the matter, and
  - (l) information about the [client](#)'s right:
    - (i) to accept under a [corresponding law](#) a written offer to enter into an agreement with the [law practice](#) that the corresponding provisions of the [corresponding law](#) apply to the matter, or
    - (ii) to notify under a [corresponding law](#) (and within the time allowed by the [corresponding law](#)) the [law practice](#) in writing that the [client](#) requires the corresponding provisions of the [corresponding law](#) to apply to the matter.
- Note :** The [client](#)'s right to sign an agreement or give a notification as mentioned in paragraph (l) will be under provisions of the law of the other [jurisdiction](#) that correspond to section 304 (Part also applies by agreement or at [client](#)'s election).
- (1A) For the purposes of subsection (1) (e), a benchmark rate of interest is a rate of interest for the time being equal to or calculated by reference to a rate of interest that is specified or determined from

- (3) Client's consent and understanding If a disclosure is made under subsection (1), the law practice must take all reasonable steps to satisfy itself that the client has understood and given consent to the proposed course of action for the conduct of the matter and the proposed costs.
- (4) Exception for legal costs below [lower threshold](#) A disclosure is not required to be made under subsection (1) if the [total legal costs](#) in the matter are not likely to exceed the amount specified in the Uniform Rules for the purposes of this subsection (the "**lower threshold**" ), but the law practice may nevertheless choose to provide the client with the uniform standard disclosure form referred to in subsection (5).
- (5) Alternative disclosure for legal costs below [higher threshold](#) If the [total legal costs](#) in a matter are not likely to exceed the amount specified in the Uniform Rules for the purposes of this subsection (the "**higher threshold**" ), the law practice may, instead of making a disclosure under subsection (1), make a disclosure under this subsection by providing the client with the uniform standard disclosure form prescribed by the Uniform Rules for the purposes of this subsection.
- (6) Disclosure to be written A disclosure under this section must be made in writing, but the requirement for writing does not affect the law practice's obligations under subsection (3).
- (7) Change in amount of total costs-where previously below [lower threshold](#) If the law practice has not made a disclosure, whether under subsection (1) or (5), because the [total legal costs](#) in the matter are not likely to exceed the [lower threshold](#), the law practice must, when or as soon as practicable after the law practice becomes aware

time to time by an ADI or another body or organisation, or by or under other legislation, and that is publicly available.

(1B) The regulations may make provision for or with respect to the use of benchmark rates of interest, and in particular for or with respect to permitting, regulating or preventing the use of particular benchmark rates or particular kinds of benchmark rates.

(2) For the purposes of subsection (1) (f), the disclosure must include:

(a) a statement that an order by a court for the payment of [costs](#) in favour of the [client](#) will not necessarily cover the whole of the [client](#)'s [legal costs](#), and

(b) if applicable, a statement that disbursements may be payable by the [client](#) even if the [client](#) enters a conditional [costs](#) agreement.

(3) A [law practice](#) may disclose any or all of the details referred to in subsection (1) (b) (i)-(iii), (g), (i), (j) and (l) in or to the effect of a form prescribed by the regulations for the purposes of this subsection, and if it does so at the time the other details are disclosed as required by this section the practice is taken to have complied with this section in relation to the details so disclosed.

(or ought reasonably become aware) that the legal costs are likely to exceed the [lower threshold](#)-

(a) inform the client in writing of that expectation; and

(b) make the disclosure required by subsection (1) or (if applicable) subsection (5).

(8) Change in amount of total costs-where previously below [higher threshold](#) If the law practice has not made a disclosure under subsection (1) but has made a disclosure under subsection (5) because the [total legal costs](#) in the matter are not likely to exceed the [higher threshold](#), the law practice must, when or as soon as practicable after the law practice becomes aware (or ought reasonably become aware) that the legal costs are likely to exceed the [higher threshold](#)-

(a) inform the client in writing of that expectation; and

(b) make the disclosure required by subsection (1).

(9) Meaning of [total legal costs](#) For the purposes of this section, the "**total legal costs**" in a matter do not include GST and disbursements.

### **310 Disclosure if another [law practice](#) is to be retained**

(1) If a [law practice](#) intends to retain another [law practice](#) on behalf of the [client](#), the first [law practice](#) must disclose to the [client](#) the details specified in section 309 (1) (a), (c) and (d) in relation to the other [law practice](#), in addition to any information required to be disclosed to the [client](#) under section 309.

(2) A [law practice](#) retained or to be retained on behalf of a [client](#) by another [law practice](#) is not required to make disclosure to the [client](#) under section 309, but must disclose to the other [law practice](#) the information necessary for the other [law practice](#) to comply with subsection (1).

(3) This section does not apply if the first [law practice](#) ceases to act for the [client](#) in the matter when the other [law practice](#) is retained.

**Note :** An example of the operation of this section is where a [barrister](#) is retained by a firm of [solicitors](#) on behalf of a [client](#) of the firm. The [barrister](#) must disclose to the firm details of the [barrister's](#) [legal costs](#) and billing arrangements, and the firm must disclose those details to the [client](#). The [barrister](#) is not required to make a disclosure directly to the [client](#).

### **318A Disclosure to [associated](#) third party payers**

(1) If a [law practice](#) is required to make a disclosure to a [client](#) of the practice under this Division, the practice must, in accordance with subsections (2) and (3), also make the same disclosure to any [associated](#) third party payer for the [client](#), but only to the extent that the details or matters disclosed are relevant to the [associated](#) third party payer and relate to [costs](#) that are payable by the [associated](#) third party payer in respect of [legal services](#) provided to the [client](#).

### **175 Disclosure obligations if another law practice is to be retained**

(1) If a law practice (the "**first law practice**") intends to retain another law practice (the "**second law practice**") on behalf of a client, the [first law practice](#) must disclose to the client the details specified in section 174(1) in relation to the [second law practice](#), in addition to any information required to be disclosed to the client under section 174.

(2) If a law practice (the "**first law practice**") retains or intends to retain another law practice (the "**second law practice**") on behalf of a client, the [second law practice](#) is not required to make a disclosure to the client under section 174, but must disclose to the [first law practice](#) the information necessary for the [first law practice](#) to comply with subsection (1).

(3) This section does not apply if the [first law practice](#) ceases to act for the client in the matter when the [second law practice](#) is retained.

### **176 Disclosure obligations of law practice regarding associated third party payers**

(1) If a law practice is required to make a disclosure to a client of the law practice under section 174 or 175, the law practice must, in accordance with subsection (2), also make the same disclosure to any associated third party payer for the client, but only to the extent that the details or matters disclosed are relevant to the associated third party payer and relate to costs that are payable by the

## LEGAL PROFESSION ACT 2004

- (2) A disclosure under subsection (1) must be made in writing:
- (a) at the time the disclosure to the [client](#) is required under this Division, or
  - (b) if the [law practice](#) only afterwards becomes aware of the legal obligation of the [associated](#) third party payer to pay [legal costs](#) of the [client](#)-as soon as practicable after the practice became aware of the obligation.
- (3) Section 315 (Form of disclosure) applies to a disclosure to an [associated](#) third party payer under subsection (1) in the same way as it applies to a [client](#).
- (4) An [associated](#) third party payer for a [client](#) of a [law practice](#) has the same right as the [client](#) to obtain reports under section 318 (Progress reports) of [legal costs](#) incurred by the [client](#), but only to the extent that the [costs](#) are payable by the [associated](#) third party payer in respect of [legal services](#) provided to the [client](#), and the [law practice](#) must comply with that section accordingly.

## LEGAL PROFESSION UNIFORM LAW (NSW) 2014

- associated third party payer in respect of legal services provided to the client.
- (2) A disclosure under subsection (1) must be made in writing-
- (a) at the time the disclosure to the client is required; or
  - (b) if the law practice only afterwards becomes aware of the legal obligation of the associated third party payer to pay legal costs of the client-as soon as practicable after the practice became aware of the obligation

### 311 How and when must disclosure be made to a [client](#)?

- (1) Disclosure under section 309 must be made in writing before, or as soon as practicable after, the [law practice](#) is retained in the matter.
- (2) Disclosure under section 310 (1) must be made in writing before, or as soon as practicable after, the other [law practice](#) is retained.
- (3) Disclosure made to a person before the [law practice](#) is retained in a matter is taken to be disclosure to the person as a [client](#) for the purposes of sections 309 and 310.

### 312 Exceptions to requirement for disclosure

- (1) Disclosure under section 309 or 310 (1) is not required to be made in any of the following circumstances:
  - (a) if the total [legal costs](#) in the matter, excluding disbursements, are not likely to exceed \$750 (exclusive of GST) or the amount prescribed by the regulations (whichever is higher),
  - (b) if:
    - (i) the [client](#) has received one or more disclosures under section 309 or 310 (1) from the [law practice](#) in the previous 12 months, and
    - (ii) the [client](#) has agreed in writing to waive the right to disclosure, and
    - (iii) 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 warranted,
  - (c) if the [client](#) is:
    - (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

Refer to s174(1): it must be made “when or as soon as practicable after instructions are initially given in a matter”

Refer to s174(4): which provides that there is an exception to the requirement to disclose where the total legal costs are not likely to exceed the “lower threshold”.

Refer to s170: which provides the whole of Part 4.2 does not apply to “commercial or government clients” which are defined in s170 to include;

- (2) For the purposes of this Law, a **"commercial or government client"** is a client of a law practice where the client is-
  - (a) a law practice; or
  - (b) one of the following entities defined or referred to in the [Corporations Act](#)-

## LEGAL PROFESSION ACT 2004

- company or a [registered](#) Australian body (each within the meaning of the [Corporations Act 2001](#) of the Commonwealth), or
- (iii) a financial services licensee (within the meaning of that Act), or
- (iv) a liquidator, administrator or receiver (as respectively referred to in that 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 that Act) if it were a company, or
- (vi) a proprietary company (within the meaning of that 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 one or more members of the group are persons to whom disclosure of [costs](#) is not required and one or more members of the group are not such persons and if all of the members of the group who are not such persons have indicated that they waive their right to disclosure, or
- (viii) a Minister of the Crown in right of a [jurisdiction](#) or the Commonwealth acting in his or her capacity as such, or a government department or public authority of a [jurisdiction](#) or the Commonwealth,
- (d) if the [legal costs](#) or the basis on which they will be calculated have or has been agreed as a result of a tender process,
- (e) if the [client](#) will not be required to pay the [legal costs](#) or they will not otherwise be recovered by the [law practice](#),
- Note :** For instance, disclosure would not be required where the [law practice](#) acts in the matter on a pro bono basis.
- (f) in any circumstances prescribed by the regulations.

## LEGAL PROFESSION UNIFORM LAW (NSW) 2014

- (i) 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;
- (ii) a liquidator, administrator or receiver;
- (iii) a financial services licensee;
- (iv) a proprietary company, if formed for the purpose of carrying out a joint venture and if any shareholder of the company is a person to whom disclosure of costs is not required;
- (v) a subsidiary of a large proprietary company, but only if the composition of the subsidiary's board is taken to be controlled by the large proprietary company as provided by subsection (3); or
- (c) an unincorporated group of participants in a joint venture, if one or more members of the group are persons to whom disclosure of costs is not required and one or more members of the group are not any such persons and if all of the members of the group who are not such persons have indicated that they waive their right to disclosure; or
- (d) 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
- (e) a body or person incorporated in a place outside Australia; or
- (f) a person who has agreed to the payment of costs on a basis that is the result of a tender process; or
- (g) a government authority in Australia or in a foreign country; or
- (h) a person specified in, or of a class specified in, the Uniform Rules.

## LEGAL PROFESSION ACT 2004

(2) Despite subsection (1) (a), if a [law practice](#) becomes aware that the total [legal costs](#) are likely to exceed \$750 (exclusive of GST) or the amount prescribed by the regulations (whichever is higher), the [law practice](#) must disclose the matters in section 309 or 310 (as the case requires) to the [client](#) as soon as practicable.

(3) A [law practice](#) must ensure that a written record of a [principal](#)'s decision that further disclosure is not warranted as mentioned in subsection (1) (b) is made and kept with the files relating to the matter concerned.

(4) The reaching of a decision referred to in subsection (3) otherwise than on reasonable grounds is capable of being [unsatisfactory professional conduct](#) or [professional misconduct](#) on the part of the [principal](#).

(5) Nothing in this section affects or takes away from any [client](#)'s right:

(a) to progress reports in accordance with section 318, or

(b) to obtain reasonable information from the [law practice](#) in relation to any of the matters specified in section 309, or

(c) to negotiate a [costs](#) agreement with a [law practice](#) and to obtain a bill from the [law practice](#).

## LEGAL PROFESSION UNIFORM LAW (NSW) 2014

(3) For the purposes of subsection (2)(b)(v), the composition of the subsidiary's board is taken to be controlled by the large proprietary company if the large proprietary company, by exercising a power exercisable (whether with or without the consent or concurrence of any other person) by it, can appoint or remove all, or the majority, of the directors of the subsidiary.

(4) For the purposes of subsection (3), the large proprietary company is taken to have power to make an appointment referred to in that subsection if-

(a) a person cannot be appointed as a director of the subsidiary without the exercise by the large proprietary company of such a power in the person's favour; or

(b) a person's appointment as a director of the subsidiary follows necessarily from the person being a director or other officer of the large proprietary company.

### 313 Additional disclosure-settlement of litigious matters

(1) If a [law practice](#) negotiates the settlement of a litigious matter on behalf of a [client](#), the [law practice](#) must disclose to the [client](#), before the settlement is executed:

- (a) a reasonable estimate of the amount of [legal costs](#) payable by the [client](#) if the matter is settled (including any [legal costs](#) of another party that the [client](#) is to pay), and
- (b) a reasonable estimate of any contributions towards those [costs](#) likely to be received from another party.

(2) A [law practice](#) retained on behalf of a [client](#) by another [law practice](#) is not required to make a disclosure to the [client](#) under subsection (1), if the other [law practice](#) makes the disclosure to the [client](#) before the settlement is executed.

### 314 Additional disclosure-uplift fees

(1) If a [costs](#) agreement involves an uplift fee, the [law practice](#) must, before entering into the agreement, disclose to the [client](#) in writing:

- (a) the [law practice](#)'s [legal costs](#), and
- (b) the uplift fee (or the basis of calculation of the uplift fee), and
- (c) the reasons why the uplift fee is warranted.

(2) A [law practice](#) is not required to make a disclosure under subsection (1) to a sophisticated [client](#).

### 177 Disclosure obligations regarding settlement of litigious matters

(1) If a law practice negotiates the settlement of a litigious matter on behalf of a client, the law practice must disclose to the client, before the settlement is executed-

- (a) a reasonable estimate of the amount of legal costs payable by the client if the matter is settled (including any legal costs of another party that the client is to pay); and
- (b) a reasonable estimate of any contributions towards those costs likely to be received from another party.

(2) A law practice retained on behalf of a client by another law practice is not required to make a disclosure to the client under subsection (1), if the other law practice makes the disclosure to the client before the settlement is executed

Refer to s182 in relation to uplift fees in conditional cost agreements

**317 Effect of failure to disclose**

(1) Postponement of payment of [legal costs](#) until assessed If a [law practice](#) does not disclose to a [client](#) or an [associated](#) third party payer anything required by this Division to be disclosed, the [client](#) or [associated](#) third party payer (as the case may be) need not pay the [legal costs](#) unless they have been assessed under Division 11.

**Note :** Under section 369, the [costs](#) of an assessment in these circumstances are generally payable by the [law practice](#).

(2) Bar on recovering proceedings until [legal costs](#) assessed A [law practice](#) that does not disclose to a [client](#) or an [associated](#) third party payer anything required by this Division to be disclosed may not maintain proceedings against the [client](#) or [associated](#) third party payer (as the case may be) for the recovery of [legal costs](#) unless the [costs](#) have been assessed under Division 11.

(3) Setting [costs](#) agreement aside If a [law practice](#) does not disclose to a [client](#) or an [associated](#) third party payer anything required by this Division to be disclosed and the [client](#) or [associated](#) third party payer has entered into a [costs](#) agreement with the [law practice](#), the [client](#) or [associated](#) third party payer may also apply under section 328 for the [costs](#) agreement to be set aside.

(4) Reduction of [legal costs](#) on assessment If a [law practice](#) does not disclose to a [client](#) or an [associated](#) third party payer anything required by this Division to be disclosed, then, on an assessment of the relevant [legal costs](#), the amount of the [costs](#) may be reduced by an amount considered by the [costs assessor](#) to be proportionate to the seriousness of the failure to disclose.

(5) Effect on [legal costs](#) where [law practice](#) retains another [law practice](#) that fails to disclose If a [law practice](#) retains another [law practice](#) on behalf of a [client](#) and the first [law practice](#) fails to

**178 Non-compliance with disclosure obligations**

(1) If a law practice contravenes the disclosure obligations of this Part-

- (a) the costs agreement concerned (if any) is void; and
- (b) the client or an associated third party payer is not required to pay the legal costs until they have been assessed or any costs dispute has been determined by the designated local regulatory authority; and
- (c) the law practice must not commence or maintain proceedings for the recovery of any or all of the legal costs until they have been assessed or any costs dispute has been determined by the designated local regulatory authority or under jurisdictional legislation; and
- (d) the contravention is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any principal of the law practice or any legal practitioner associate or foreign [lawyer](#) associate involved in the contravention.

(2) In a matter involving both a client and an associated third party payer where disclosure has been made to one of them but not the other, this section-

- (a) does not affect the liability of the one to whom disclosure was made to pay the legal costs; and
- (b) does not prevent proceedings being maintained against the one to whom the disclosure was made for the recovery of those legal costs.

(3) The Uniform Rules may provide that subsections (1) and (2)-

- (a) do not apply; or
- (b) apply with specified modifications-  
in specified circumstances or kinds of circumstances.

disclose something to the [client](#) solely because the retained [law practice](#) failed to disclose relevant information to the first [law practice](#) as required by section 310 (2), then subsections (1)-(4):

(a) do not apply to the [legal costs](#) owing to the first [law practice](#) on account of [legal services](#) provided by it, to the extent that the non-disclosure by the first [law practice](#) was caused by the failure of the retained [law practice](#) to disclose the relevant information, and

(b) do apply to the [legal costs](#) owing to the retained [law practice](#).

(6) Circumstances where [associated](#) third party payer involved In a matter involving both a [client](#) and an [associated](#) third party payer where disclosure has been made to one of them but not the other:

(a) subsection (1) does not affect the liability of the one to whom disclosure was made to pay the [legal costs](#), and

(b) subsection (2) does not prevent proceedings being maintained against the one to whom the disclosure was made for the recovery of those [legal costs](#).

(7) Non-disclosure capable of constituting [unsatisfactory professional conduct](#) or [professional misconduct](#) Failure by a [law practice](#) to comply with this Division is capable of being [unsatisfactory professional conduct](#) or [professional misconduct](#) on the part of any [Australian legal practitioner](#) or [Australian-registered foreign lawyer](#) involved in the failure.

**331 [Legal costs](#) cannot be recovered unless bill has been served**

- (1) Subject to section 332A (Person may request itemised bill), a [law practice](#) must not commence legal proceedings to recover [legal costs](#) from a person until at least 30 days after the [law practice](#) has given a bill to the person in accordance with sections 332 (Bills) and 333 (Notification of [client](#)'s rights).
- (2) The Supreme Court may make an order authorising a [law practice](#) to commence legal proceedings against a person sooner if satisfied that:
- (a) the [law practice](#) has given a bill to the person in accordance with sections 332 and 333, and
- (b) the person is about to leave [this jurisdiction](#).
- (3) A court or [tribunal](#) before which any proceedings are brought in contravention of subsection (1) must stay those proceedings on the application of a party, or on its own initiative.
- (4) This section applies whether or not the [legal costs](#) are the subject of a [costs](#) agreement.

**332A Request for itemised bill**

- (1) If a bill is given by a [law practice](#) in the form of a lump sum bill, any person who is entitled to apply for an assessment of the [legal costs](#) to which the bill relates may request the [law practice](#) to give the person an itemised bill.
- (2) The [law practice](#) must comply with the request within 21 days after the date on which the request is made.
- (3) If the person making the request is liable to pay only a part of the [legal costs](#) to which the bill relates, the request for an itemised bill

**194 Restriction on commencing proceedings to recover legal costs**

- (1) A law practice must not commence legal proceedings to recover legal costs from a person unless a bill has been given for the legal costs and the bill complies with the requirements of this Law and the Uniform Rules.
- (2) A law practice must not commence legal proceedings to recover legal costs from a person who has been given a bill until-
- (a) where the legal costs are the subject of a costs dispute before the designated local regulatory authority-the authority has closed or resolved the dispute; and
- (b) at least 30 days after the later of-
- (i) the date on which the person is given the bill; or
- (ii) the date on which the person receives an itemised bill following a request made in accordance with section 187.

**187 Request for itemised bills**

- (1) If a bill is given by a law practice in the form of a lump sum bill, any person who is entitled to apply for an assessment of the legal costs to which the bill relates may request the law practice to give the person an itemised bill.
- (2) A request for an itemised bill must be made within 30 days after the date on which the legal costs become payable.
- (3) The law practice must comply with the request within 21 days after the date on which the request is made in accordance with subsection (2).

## LEGAL PROFESSION ACT 2004

- (4) Subject to subsection (5), a [law practice](#) must not commence legal proceedings to recover [legal costs](#) from a person who has been given a lump sum bill until at least 30 days after the date on which the person is given the bill.
- (5) If the person makes a request for an itemised bill in accordance with this section, the [law practice](#) must not commence legal proceedings to recover the [legal costs](#) from the person until at least 30 days after complying with the request.
- (6) A [law practice](#) is not entitled to charge a person for the preparation of an itemised bill requested under this section.
- (7) Section 332 (2), (5) and (6) apply to the giving of an itemised bill under this section.

## LEGAL PROFESSION UNIFORM LAW (NSW) 2014

- (4) If the person making the request is liable to pay only a part of the legal costs to which the bill relates, the request for an itemised bill may only be made in relation to those [costs](#) that the person is liable to pay.
- may only be made in relation to those costs that the person is liable to pay.

### 332 Bills

- (1) A bill may be in the form of a lump sum bill or an itemised bill.
- (2) A bill must be signed on behalf of a [law practice](#) by an [Australian legal practitioner](#) or an employee of the [law practice](#).
- (3) It is sufficient compliance with subsection (2) if a letter signed on behalf of a [law practice](#) by an [Australian legal practitioner](#) or an employee of the [law practice](#) is attached to, or enclosed with, the bill.
- (4) A bill or letter is taken to have been signed by a [law practice](#) that is an [incorporated legal practice](#) if it has the practice's seal affixed to it or is signed by a [legal practitioner director](#) of the practice or an officer or employee of the practice who is an [Australian legal practitioner](#).
- (5) A bill is to be given to a person:
  - (a) by delivering it personally to the person or to an agent of the person, or
  - (b) by sending it by post to the person or agent at:
    - (i) the usual or last known business or residential address of the person or agent, or
    - (ii) an address nominated for the purpose by the person or agent, or
  - (c) by leaving it for the person or agent at:
    - (i) the usual or last known business or residential address of the person or agent, or
    - (ii) an address nominated for the purpose by the person or agent, with a person on the premises who is apparently at least 16 years old and apparently employed or residing there, or
  - (d) by sending it by facsimile transmission to a number specified by the person (by correspondence or otherwise) as a number to which facsimile transmissions to that person may be sent, or

### 186 Form of bills

A bill may be in the form of a lump sum bill or an itemised bill.

### 188 Responsible principal for bill

- (1) A bill given by a law practice, or a letter accompanying the bill, must-
  - (a) be signed by a principal of the law practice designated in the bill or letter as the responsible principal for the bill; or
  - (b) nominate a principal of the law practice as the responsible principal for the bill.
- (2) If a principal does not sign or is not nominated as the responsible principal for a bill given by a law practice, each principal of the law practice is taken to be a responsible principal for the bill.

### 189 Giving bills

A bill is to be given to a client in accordance with the Uniform Rules.

### 191 Charging for bills prohibited

A law practice must not make a charge for preparing or giving a bill, and any charge made for that purpose is not recoverable by the law practice.

- (e) by delivering it to the appropriate place in a [document](#) exchange in which the person has receiving facilities, or
- (f) in any other way authorised by the regulations.
- (6) A reference in subsection (5) to any method of giving a bill to a person includes a reference to arranging for the bill to be given to that person by that method (for example, by delivery by courier).
- (6A) Despite anything in subsections (2)-(6), a bill may be given to a [client](#) electronically if the [client](#) is a sophisticated [client](#) and requested the bill to be given electronically.
- (7) In this section:

"**agent**" of a person means an agent, [law practice](#) or [Australian legal practitioner](#) who has authority to accept service of legal process on behalf of the person.

### **333 Notification of [client](#)'s rights**

- (1) A bill must include or be accompanied by a written statement setting out:
  - (a) the following avenues that are open to the [client](#) in the event of a dispute in relation to [legal costs](#):
    - (i) [costs](#) assessment under Division 11,
    - (ii) the setting aside of a [costs](#) agreement or a provision of a [costs](#) agreement under section 328 (Setting aside [costs](#) agreements or provisions of [costs](#) agreements),
    - (iii) mediation under Division 8, and
  - (b) any time limits that apply to the taking of any action referred to in paragraph (a).

### **192 Notification of client's rights**

A law practice must ensure that a bill includes or is accompanied by a written statement setting out-

- (a) the avenues that are open to the client in the event of a dispute in relation to legal costs; and
- (b) any time limits that apply to the taking of any action referred to in paragraph (a).

**Note :** These matters will already have been disclosed under section 309 (1) (Disclosure of [costs](#) to [clients](#)).

(2) Subsection (1) does not apply to a bill if disclosure under:

(a) section 309 (Disclosure of [costs](#) to [clients](#)), or

(b) section 310 (1) (Disclosure if another [law practice](#) is to be retained),

in relation to the relevant [costs](#) agreement was not or would not be required in the circumstances referred to in section 312 (1) (c) or (d) (Exceptions to requirement for disclosure).

(3) Subsection (1) does not apply in relation to a sophisticated [client](#).

(4) A [law practice](#) may provide the written statement referred to in subsection (1) in or to the effect of a form prescribed by the regulations for the purposes of this subsection, and if it does so the practice is taken to have complied with this section in relation to the statement.