

CONSUMER COMPLAINTS INVOLVING COSTS DISPUTES UNDER THE UNIFORM LAW

Costs disputes are a consumer matter

From 1 July 2021, complaints to the Legal Practice Board (LPB)¹ will be categorised as ‘disciplinary’ or ‘consumer’. A Consumer Matter is a complaint which relates to the provision of legal services to the complainant by a lawyer or law practice and may include a costs dispute.² Relief from the LPB in relation to a Consumer Matter (including costs) is not available to commercial or government clients.³

Mediation, settlement and withdrawal of consumer matters

The LPB is required to attempt to resolve a Consumer Matter by informal means as soon as possible.⁴ It may order the parties to mediate.⁵ Consumer matters may be settled between the parties⁶ or withdrawn by the complainant. However the LPB may initiate or continue any disciplinary matter despite the withdrawal.⁷

Determination of costs by the LPB – less than \$10,000

The LPB may deal with a costs dispute if the total bill for legal costs of any one matter is less than \$100,000 (indexed), or if the total bill for legal cost is more than \$100,000 (indexed) the total costs in dispute is less than \$10,000 (indexed)⁸ (including disbursements, excluding interest and excluding GST).⁹ If the LPB is unable to resolve the dispute relating costs,¹⁰ and the costs remaining in dispute is less than \$10,000 (indexed), the LPB may make a binding costs determination of less than \$10,000 (indexed), by having regard to what is fair and reasonable in the circumstances including consideration of the factors that a costs assessor would be required to consider.¹¹

When can costs disputes which are the subject of a complaint be referred for costs assessment?

A costs dispute which is, or has been the subject of a complaint to the LPB may not be the subject of a costs assessment except if the LPB is unable

to resolve the dispute¹² or if the matter is referred by the LPB for assessment for the purpose of investigating a disciplinary matter.¹³

Time limits on making a complaint and waiver¹⁴

In a Consumer Matter where the complaint relates to a costs dispute, the complaint must be made within 60 days after the legal costs become payable. Where an itemised bill is requested, the complaint must be made within 30 days after the itemised bill was provided.

These time limits may be extended up to 4 months if it is just and fair to do so and the lawyer or law practice has not commenced legal proceedings to recover those legal costs.

Decisions made in relation to granting or refusing any extension of the time limit are final.

Further Information

For further assistance or information please contact:

The Law Society of Western Australia

Call: (08) 9324 8600

Email: info@lawsocietywa.asn.au

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Endnotes

- 1 While the LPB is the Designated Local Regulatory Authority (the DLRA) for the sake of the *Legal Profession Uniform Law Application Bill 2020*, dealing with complaints will be delegated to the Legal Services and Complaints Committee (LSCC) (formerly Legal profession Complaints Committee) when the Bill is passed and the Uniform Law comes into force.
- 2 Legal Profession Uniform Law (WA), s.269
- 3 *Ibid.*, s.268(3), s.170 for definition of commercial and government client
- 4 *Ibid.*, s.287
- 5 *Ibid.*, s.288
- 6 *Ibid.*, s.289
- 7 *Ibid.*, s.273(2)(a)
- 8 *Ibid.*, s.291(1)
- 9 *Ibid.*, s 6 – definition of legal costs, s.294
- 10 *Ibid.*, s.287
- 11 *Ibid.*, ss.292, 200
- 12 *Ibid.*, ss.197(a), 293
- 13 *Ibid.*, ss.197(b), 284
- 14 *Ibid.*, s.272