

Your Right to Challenge Legal Costs

The following avenues are available to you if you are not happy with a bill from your solicitor:

1. Requesting an itemised bill

Under clause 34(1) of schedule 3 of the Legal Practitioners Act you have a right to request an itemised bill from a solicitor 21 days after receiving an unitemised bill. If you do so, then your solicitor is obliged to provide you with an appropriately itemised bill (that is a bill which lists each item of work performed and states the separate amount charged for that individual item) within 21 days of receiving the request and is prohibited from suing you upon the bill until 30 days after providing the itemised bill.

2. Discussing your concerns with your solicitor

It is always open to you to approach your solicitor to raise your concerns regarding the bill and seek a reduction of it. The retainer agreement you signed when you engaged the solicitor should specify a person who you may contact in this regard. This should usually be your first step, as it may be the quickest and cheapest way to resolve matters. However, if discussions with your solicitor do not succeed in resolving the matter you may need to proceed to further steps.

3. Having the solicitor's costs adjudicated

- (a) You may apply to the Supreme Court under clause 37(1) of Schedule 3 of the Legal Practitioners Act for the Supreme Court to adjudicate your solicitor's costs bill.
- (b) Such an application should be made within 6 months of receiving the bill. If you are an unsophisticated client (which covers most clients other than public companies and their subsidiaries, large private companies, solicitors, government bodies, trustees in bankruptcy and liquidators) you may apply to the Court under clause 37 (5) of Schedule 3 to the Legal Practitioners Act to extend this time.
- (c) The form for making the application is Form 54 to the Supreme Court Rules. It requires you to annex the bill or bills you are seeking to have adjudicated to the application form.
- (d) If such an application is made, the Court will likely go through the bill on an item by item basis, allowing or disallowing each item of

charges. If a properly itemised bill has not been delivered by your solicitor, the Court will likely order such bill to be delivered. You are likely to be required to file a document at Court identifying which particular items in the itemised bill you dispute and why.

4. Applying to set aside the costs agreement with the solicitor

If you have a costs agreement with the solicitor, then the Court will normally assess the solicitors costs under it. However, you can apply to set aside the agreement under section 30 of Schedule 3 to the Legal Practitioner's Act if the agreement is not fair and reasonable. Fair means procedurally fair and reasonable means substantively reasonable.

If the agreement is set aside, the costs will default to the Supreme Court scale, which is a scale published by the Supreme Court which is used to assess costs as between party and party (that is when one party to proceedings is ordered to pay another party's costs) and also to assess solicitors costs where there is no valid fee agreement. A copy of that scale can be obtained at the Law Society Website, www.lawsocietyysa.asn.au. There is a considerable amount of law as to applying to set aside a costs agreement and if you are intending to do this, you may well wish to obtain independent legal advice.

5. Making a complaint to the Legal Profession Conduct Commission (if you believe there has been overcharging)

The Commissioner or his delegate may resolve a disputed bill if the amount in issue is ten thousand dollars or less. Accordingly, this may well be the most economical way of proceeding if the dispute is for such an amount. If the bill is more than ten thousand dollars while the Commissioner can make a recommendation to the solicitor and the client as to how to resolve it, that recommendation will not be binding. The contact details for the Commissioner are

Further Research and Advice

If you wish to further research your rights as to costs, the first step you may wish to obtain a copy of the Legal Practitioners Act and the regulations under it. This may be obtained at the South Australian Government Printer or online on austlii.edu.au. If you wish to research the law of costs further, the three recommended texts are:

1. G Dalpont, Law of Costs, second edition
2. Quick on Costs
3. Butterworths Legal Costs South Australia.

Copies may be purchased from any legal bookstore or they may be capable of being accessed at the Supreme Court Library or a University Law Library.

Finally, if the amount in dispute is sufficient to justify it, you may wish to engage your own lawyer to represent you in the costs dispute. There are several lawyers in Adelaide who specialise in costs matters. You can obtain the identities of lawyers who practise in this area by contacting the Law Society.