

Fact sheet

Legal Costs

LEGAL COSTS AND COURT PROCEEDINGS

The Legal Profession Conduct Commissioner is established by the *Legal Practitioners Act 1981* (SA) (**Act**) to regulate the conduct of all lawyers in South Australia (from both the private and public sectors), as well as interstate and Australian-registered foreign lawyers who practice in South Australia. The Commissioner is an independent statutory agency of the Crown.

The Commissioner has the power to investigate complaints about overcharging by lawyers. The Commissioner's powers in relation to legal costs are limited, and there is some overlap between the role of the Commissioner and the role of the Courts.

This Fact Sheet is designed to explain the role and powers of the Commissioner in relation to legal costs, and how the Commissioner's role interacts with that of the Courts. References in this Fact Sheet to sections or Schedules are references to section or Schedules in the Act.

COURT PROCEEDINGS ABOUT LEGAL COSTS

There are two types of Court proceedings that may be issued where there is a dispute between a lawyer and a client about legal costs.

SUPREME COURT – TAXATION (ADJUDICATION) PROCEEDINGS

An application for taxation (or adjudication) of costs may be made to the Supreme Court by a law practice, a client or the person paying the costs on the client's behalf, or the Commissioner.

Such an application must be made by a client within 6 months of a bill being given, a request for payment being made or the costs being paid, although an extension of time can be sought.

The Supreme Court has power to determine:

- the basis on which the costs should be calculated – that is, either:
 - in accordance with a valid and enforceable costs agreement;
 - in accordance with rates set by the Court (the Higher Courts costs scale); or
 - according to the fair and reasonable value of the legal services provided; and
- the amount of the costs.

MAGISTRATES COURT – DEBT RECOVERY PROCEEDINGS

If a law practice has issued a bill to a client which has not been paid, the law practice can issue debt recovery proceedings in the Magistrates Court.

The Magistrates Court can determine contractual and liability issues. Those issues include whether or not the law practice was engaged or retained, the identity of the parties to the costs agreement or retainer, and whether and when the costs agreement or retainer was terminated.



The Magistrates Court cannot determine the quantum or amount of disputed legal costs.

THE COMMISSIONER'S POWERS IN RELATION TO LEGAL COSTS

The Commissioner must investigate complaints of overcharging which are received within 2 years of the law practice having provided the final bill to which the complaint relates. The Commissioner has a discretion to extend that period of time.

At the conclusion of an investigation into a complaint of overcharging, the Commissioner will prepare a report on the results of the investigation and may make recommend a reduction or refund of some or all of the costs.

A recommendation by the Commissioner is not binding, but if the Supreme Court conducts a taxation of the costs it must have regard to a recommendation of the Commissioner.

If the costs dispute remains unresolved, the Commissioner may arrange for the costs to be assessed by a suitably qualified costs assessor, and they must do so before making a binding determination as to whether there has been overcharging and if so the amount that has been overcharged. A binding determination can only be made where the amount in dispute does not exceed \$50,000.

The Commissioner can, and ordinarily will, require the complainant to pay the reasonable cost of obtaining a costs assessment upfront (**Costs Assessment Fee**). The Costs Assessment Fee varies depending on the size of the file which is to be assessed. If the complaint is upheld, then the Costs Assessment Fee may be refunded to the complainant and recovered from the Practitioner.

INTERACTION BETWEEN AN OVERCHARGING COMPLAINT TO THE COMMISSIONER AND COURT PROCEEDINGS

SUPREME COURT – ADJUDICATION PROCEEDINGS

If an application for the taxation of costs is issued in the Supreme Court, the Commissioner **cannot** proceed to investigate a complaint of overcharging regarding the same costs. In those circumstances the Commissioner will, ordinarily, close the complaint or the part of the complaint about overcharging.

MAGISTRATES COURT – DEBT RECOVERY PROCEEDING

If the law practice issues debt recovery proceedings in the Magistrates Court, and a complaint of overcharging either has been or is made to the Commissioner, what happens depends on the amount of the costs in dispute.

For these purposes, in this Fact Sheet:

- **Small Recovery Proceedings** means recovery proceedings in the Magistrates Court where the amount in dispute is \$50,000 or less; and
- **Large Recovery Proceedings** means recovery proceedings in the Magistrates Court where the amount in dispute is more than \$50,000.

If Small Recovery Proceedings have been issued and a complaint of overcharging is or has been made to the Commissioner, the Commissioner will suspend the investigation of the complaint until the Magistrates Court has considered and determined any contractual and liability issues.

Once that has occurred, the Commissioner's investigation of the complaint will resume. The costs dispute may be referred to conciliation. If the costs dispute is not resolved at or not referred to conciliation, the Commissioner will proceed to make a report and may make a binding determination as to the amount of costs payable.

If Large Recovery Proceedings have been issued and a complaint of overcharging is or has been made to the Commissioner, the Commissioner will usually close the investigation of the complaint (or the part of the complaint about overcharging).

WHAT YOU NEED TO KNOW ABOUT THE COMMISSIONER'S ROLE IF COURT PROCEEDINGS ARE ISSUED

- The Commissioner's office cannot provide legal advice, representation or advocacy in relation to Court proceedings or any other matter.
- If you require legal advice, you may approach a solicitor of your choosing, the Legal Services Commission of South Australia on 1300 366 424 or your nearest Community Legal Centre at www.saccls.org.au
- Making a complaint to the Commissioner does not prevent a law practice from issuing or pursuing proceedings or a Court from dealing with those proceedings.
- The Commissioner has no power to vary, suspend or set aside an Order or Judgment of a Court.

If Court proceedings are issued and you intend to defend or participate in the same, it is important that you take steps to do so yourself by contacting the Court Registry