

## NOTICE OF DETERMINATION

A notice made under section 318 of the *Legal Profession Uniform Law (Victoria)* ("Uniform Law").

**Complainant:** [REDACTED]  
**Respondent Lawyer / Law Practice:** [REDACTED]  
**Case reference:** [REDACTED]

Pursuant to section 292 of the Uniform law, I make a binding determination about the costs of the Respondent Lawyer's bill dated 3 June 2016, which is the subject of the dispute.

I consider the amount of legal costs that are fair and reasonable in all circumstances in relation to this bill to be **\$996.94** (GST inclusive), which the Complainant must pay the Law Practice in relation to this bill.

### Orders

1) Pursuant to section 290(2)(a) of the Uniform Law, I make the following order –

The Respondent Lawyer be cautioned for failing to –

- meet the mandatory disclosure requirements pursuant to section 174(1)(a) of the Uniform Law; and
- meet his ongoing disclosure obligations under section 174(1)(b) of the Uniform Law.

2) Pursuant to section 290(2)(c) of the Uniform Law, I make the following order –

The Law Practice reduces its fees from **\$2,750.00** to **\$996.94**. The Complainant is to pay this amount to the Law Practice within 7 days of this determination being made.

3) Pursuant to section 290(2)(d) of the Uniform Law, I make the following order –

The Respondent Lawyer undertakes a professional development course with focus on practice management: specifically, appropriate billing and compliance with costs disclosure obligations, to be approved by me **within 6 months** of this date.

### Statement of Reasons

#### **Background**

1. On or around 2 March 2016, the Complainant engaged the Respondent Lawyer to assist him with a financial settlement between him and his wife, and first met with the Respondent Lawyer on this date. At this meeting, the Respondent Lawyer verbally estimated that the Law Practice's legal costs would be between \$1,000.00 and \$1,500.00.

2. On 2 June 2016, the Complainant and his wife agreed on a financial settlement. The Complainant's wife's lawyer drew up the documents. These documents were signed in the Respondent Lawyer's office on this date.
3. On 3 June 2016, the Respondent Lawyer issued the Complainant with a bill in the amount of \$2,750.00 (incl GST).
4. On 7 June 2016, the Complainant made a complaint to this office about the Respondent Lawyer.
5. The Complainant and Respondent Lawyer attempted to resolve the dispute informally. Both made offers to one another. However, these offers did not result in a satisfactory resolution of the matter.
6. The Respondent Lawyer's bill remains unpaid.

### **ISSUES IN DISPUTE**

The issues that remain in dispute are whether –

- (a) The Respondent Lawyer's bill dated 3 June 2016 is fair and reasonable;
- (b) The Respondent Lawyer provided proper costs disclosure; and
- (c) The Respondent Lawyer provided any costs updates.

### **Complainant's Case**

The Complainant raised the following concerns in his complaint –

*a. Costs disclosure*

He was provided a verbal estimate for legal costs. This estimate was that costs would be between \$1,000.00 and \$1,500.00. He was not provided with any written disclosure or a costs agreement.

*b. The costs incurred are significantly higher than quoted*

The final costs of \$2,750.00 are significantly higher than the amount provided in the verbal estimate. The additional costs are unreasonable.

*c. Failure to update costs estimate*

He did not receive any written update in relation to an increase in costs.

The Complainant offered \$900.00 in full and final settlement to resolve the complaint. This offer was rejected by the Respondent Lawyer.

## Respondent Lawyer's case

The Respondent Lawyer said the following in response to the complaint –

*a. Costs disclosure*

He failed to provide the Complainant with his usual Cost Agreement and Disclosure documents.

*b. The costs incurred are significantly higher than quoted*

He provided a preliminary estimate of fees of \$1,200.00 and \$1,500.00, but indicated this was an estimate only and could increase, depending on what work was required. This estimate was not set in stone. This was later conceded to have been a quote for between \$1,000 and \$1,500, not \$1,200.

*c. Failure to update costs estimate*

His original verbal estimate was subject to variation, depending on the work carried out. As such, he made the Complainant aware that the final costs may be different from those that were initially quoted. There was, however, no initial written disclosure or written update provided to the Complainant, as he thought it was unnecessary to do so.

On 13 December 2016, the Respondent Lawyer offered to reduce the bill to \$1,200.00. This was rejected by the Complainant.

## Findings on Issues in Dispute

*(a) Costs disclosure*

The Respondent Lawyer has not meet his disclosure obligations pursuant to section 174(1)(a) of the Uniform Law. The Respondent Lawyer failed to provide a written estimate of costs, a costs agreement or disclosure documents.

As the initial estimate of legal costs was above \$750.00, the Respondent Lawyer was required to provide written disclosure in either a short-form disclosure, or if the costs were to exceed \$3,000.00, full written disclosure. A consequence of failing to provide adequate disclosure is that the costs agreement (if any) is void. This means costs will be assessed according to the most appropriate Court scale – in these circumstances, the Family Law scale, rather than the Respondent Lawyer's billing rate.

The Respondent Lawyer's failure to provide the Complainant with adequate costs disclosure warrants the issuing of a consumer matter caution, as well as his attendance at a professional development course with a focus on practice management: specifically, appropriate billing and compliance with costs disclosure obligations.

*(b) The costs incurred are significantly higher than quoted*

A costs review has been undertaken of the Respondent Lawyer's file and finalised by my office. I consider that **\$996.94** (including GST) represents the fair and reasonable level of

legal costs, which amounts to a reduction of **\$1,753.06** from the bill dated 3 June 2016 from the Respondent Lawyer's bill for **\$2,750.00**.

The costs billed are significantly higher than the initial quote of \$1,000.00 to \$1,500.00. The Costs Court of the Supreme Court of Victoria ("Costs Court") would likely apply the Family Law scale to the attendances and items billed. In particular, the following items have been reduced:

Attendance date	Attendance description	Amount charged	Amount allowed
5 May 2016	File review	\$851.40	\$129.12
10 May 2016	File review	\$851.40	\$129.12
3 June 2016	Photocopying	\$77.00	\$53.60
3 June 2016	Opening file and instruction conferences	\$396.00	\$158.47

The Costs Court is likely to further account for the failings above and reduce the skill and care loading. As such, I have reduced the General care, skill and consideration charged by the Respondent Lawyer from \$440.00 and allowed \$90.63 to be charged.

*(c) Failure to update costs estimate*

A lawyer is required, under Section 174(1)(b) of the Uniform Law, to provide clients with an updated costs estimate disclosing any significant change to costs estimates, when or as soon as practicable. The Respondent Lawyer failed to meet his disclosure obligations. No written or verbal updates were provided to the Complainant in relation to an increase in costs which were initially quoted as being between \$1,200.00 and \$1,500.00, and escalated to \$2,750.00.

The submission made by the Respondent Lawyer on 26 July 2016, that the initial amount given for potential costs was an estimate only and as a great deal of additional work was carried out on the Complainant's behalf the costs increased, only supports my view that the Respondent Lawyer was aware that original estimate was insufficient. On becoming aware of the increasing quantum of work and associated costs, the Respondent Lawyer should have provided an updated estimate to the Complainant.

The Respondent Lawyer's failure to provide the Complainant with an updated costs estimate warrants the issuing of a consumer matter caution, as well as his attendance at a professional development course with focus on practice management: specifically, appropriate billing and compliance with costs disclosure obligations.

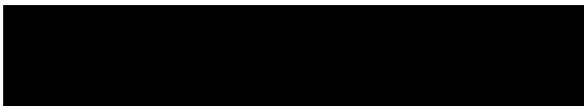
**Determinations & Reasons**

Having considered all of the evidence and relevant law, and having made the above findings on the issues in dispute, I determine that it is fair and reasonable in all the circumstances to make the orders detailed above.

Further, in making a determination as to costs, I have determined that the amount is fair and reasonable in all the circumstances having regard to section 200 of the Uniform Law, and the following matters. I have also considered the principles in section 172.

**Non-compliance**

Please be aware that a failure to comply with a determination in a consumer matter may amount to conduct capable of constituting unsatisfactory professional conduct or professional misconduct.



---

**Michael McGarvie**  
**Victorian Legal Services Commissioner**  
**1 May 2017**