

# Another article on fees and billing!

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Riskwatch is prepared by Law Claims to assist practitioners in identifying risky areas in practice and to highlight risk prevention strategies to allow for safer, more enjoyable practice. Riskwatch appears as a monthly column in the Law Society Bulletin as well as being distributed on a monthly basis to members of the Law Society's Professional Indemnity Scheme who do not receive the Law Society Bulletin.

**I** know what you're thinking: "*Not another article on Fees and Billing! Haven't we just had one of those?*"

Well, yes, but it was nearly two years ago (see Risk Watch, Law Society Bulletin, November 2012). Given the commencement of the substantial amendments to the *Legal Practitioners Act 1981 (LPA)* relating to billing and disclosure obligations on 1 July, it is, however, timely to throw the spotlight on these issues again.

The recent amendments to the *LPA* as regards billing and disclosure obligations are critical to all Legal Practices and have been the subject of a number of CPD sessions and publicity over the past few months. If you haven't familiarised yourself with these new obligations and ensured that your practice is compliant with them then, as soon as you have finished reading this, put down the Bulletin and go and address these issues. We will still be here when you get back.

If these issues have not been addressed and your practice is non-compliant then the next time you see a new client or open a new file you run a serious risk of not only buying a whole lot of trouble when you seek to get

paid for your firm's work, but there also may be disciplinary ramifications.

The new regime does, undoubtedly impose some quite onerous obligations on practitioners. Strict compliance with these obligations, however, will result in an easier time if and when fee disputes arise. Some of the highlights from November 2012 Risk Watch – which, of course, remain relevant today – were

- **Ask yourself at the initial stage before agreeing to take the client on whether the firm will get paid.** Does the client accept and sign off on the firm's fees and terms? The point is to assess upfront the risks of being paid or not.
- **Written fee agreements/letter of retainer/engagement.** Each engagement letter or Contingency Fee Agreement should contain a clear explanation of the legal fees that will be charged for the work to be performed. In addition, be specific regarding the types of out of pocket expenses for which the client will be responsible.
- **Don't allow unpaid fees to grow.** Bill on a regular basis unless some other arrangement has been entered into with the client. The key is to collect your fees on a frequent basis, if possible, in order to avoid large unexpected bills and to ensure the client will not be surprised by a large unexpected bill at the end of the matter.
- **Detailed bill.** Provide detailed billing statements that describe the work performed by each practitioner on a daily basis and how long it took.
- **Review all tax invoices/bills provided to clients.** The Practitioner responsible for the case or matter should review each and every bill for errors before it is sent to the client.
- **Copy the client on all correspondence and other materials relating to the client's matter.** The client who hasn't received a single sheet of paper from his/her practitioner in three months or

has had no communication whatsoever may query whether there is a need to pay for the bill.

- **Take prompt action on bill in arrears**
- **Suing for fees.** Law Claims' experience shows that those practitioners who sue for fees are met with a counterclaim for professional negligence which often seeks an amount far in excess of the legal fees in dispute.

As to reviewing all tax invoices/bills, it is a common theme in fee disputes for disgruntled clients to point to errors (e.g. wrong dates, entries from other files etc) in bills. Don't give them a free kick by sending out bills which are incorrect. It is much easier to deal with fee disputes if your bills are correct.

The last point is also worth some amplification. The experience of Law Claims since the November 2012 Risk Watch has been consistent with the previous experience, if anything the experience has intensified.

Suing for your fees will quite often result in a counterclaim for professional negligence and/or breach of retainer. This can turn into a nightmare for both you and Law Claims. Of course, it must be remembered that the Law Claims policy will respond in respect of allegations of negligence and/or breach of retainer, but it will *not* respond in relation to the aspects of the dispute that relate to fees. This can, in some cases, result in separate representation orders and will always result in angst and complication.

If you do find yourself in a fee dispute that escalates into a negligence claim, or even one that doesn't, you will be much better placed if you can point to your scrupulous compliance with all applicable *LPA* and Conduct Rule obligations relating to billing and disclosure.

*For any queries about this or other Risk Management Services offered by Law Claims, please contact the PII Risk Manager, Gianna Di Stefano on 8410 7677. B*