

MORE REGULATION = HIGHER COMPLIANCE COSTS

This is only one view of regulatory change.

(Sep 05)



The neighbours in the nearby state of New South Wales are about to experience some changes in their compliance regime. Currently a formal 'Client Care' system operates whereby law firms must set out costs and other matters BEFORE commencing a new matter. The Legal Profession Act 2004 (New South Wales) comes into force next month and further regulates the client engagement process. The Bill is far reaching and a comprehensive revision of the whole legal practice regimen including solicitor client relationships, complaints, discipline, partnership structures and qualification standards. Among the details that should interest the NZ profession are new rules on conditional fee arrangements, fee uplift, charges for service/billing time and solicitor client communication among the raft of changes. The Bill runs to a mere 493 pages!

Clause 309, Chapter 3 part 3.2 sets out the provisions on costs disclosure to a client, the mandatory disclosure of intervals between interim bills, the client's rights to progress reports, details of who to contact to discuss costs, client's rights to receive itemised bills and a whole lot more. Clause 318 deals with progress reports and introduces the obligation to provide a written report of progress and costs whilst expressly preventing any billing for either.

Clause 324 deals with fee uplifts where conditional cost agreements prevail and limits uplift to 25% of the net fee assuming an agreement has been reached with the client *in advance*.

For the first time a limit is to be applied on the amount of fee uplift permitted for urgency, value and due expedition. This will be limited to a maximum of 25%. In addition, the practice of charging for time taken to calculate and draw up a client bill and service charges is to be proscribed. Conditional Fee Agreements become highly regulated and the minimum requirement of 'Client Care' is changed to resemble that required by the English Law Society. For those who are unfamiliar with this it is a requirement for all new files to have a written standardised matter opening protocol with the client being informed of the solicitor's understanding of the instructions, projected outcome, costs, disbursements, billing arrangements and complaints procedure. It should come as no surprise to find that 59 pages of the Bill are devoted to complaints and discipline. Finally, there are other regulations setting a minimum standard of solicitor client communication where change of circumstances occurs. The profession, perhaps not unsurprisingly, sees the new regulations as a major imposition and yet more compliance. Clients see it as the development of a mature consumer rights environment for services which only goes to show how far apart the two sides are!

Readers of this newsletter should not be surprised at our editorial view, which endorses the broad thrust of the changes even if the detail is somewhat prescriptive and lacking in any discretion where pre-existing solicitor client relationships may already exist. Solicitors should not have to be reminded that many of the services they deliver are hostage to a monopoly and from the clients' perspective represent a 'distress' purchase. The regulations are unlikely to have a significant impact on commercial work where high level communication is already a prerequisite for client retention. For the occasional private user of services the result should see a reduction in complaints. For those of a statistical bent the number of service complaints in NSW exceeds a rate equivalent to one complaint for every ten solicitors per year. (N.B. the rate of complaints that are upheld is a fraction of this.)

Given the way international standards of service delivery are harmonising, LegalBestPractice assumes the NSW regulatory regime will be introduced this side of the Tasman before too long. Whatever happens it will be interesting to see how the new regime works over time.

For those who would like to have a look at the legislation the Bill can found at: www.lawlink.nsw.gov.au/lawlink and 'click' on 'New Legislation'.