

Your Ref: Itemised Bills - A Regulatory Guide 1-2011

Our Ref: Litigation Rules Committee: 21000342/87

30 November 2011

Legal Services Commission
PO Box 10310 Adelaide St
BRISBANE QLD 4000

By Email: lsc@lsc.qld.gov.au

Dear Mr Britton

ITEMISED BILLS - A REGULATORY GUIDE 1-2011

The Society provides the following comments on the guide. These comments are provided after consideration by the Litigation Rules Committee and Accident Compensation and Tort Law Committee of the Queensland Law Society.

Status of the Guide

The Itemised Bills Regulatory Guide sets out the relevant principles and the Commission's approach to itemised bills. However to ascertain the binding force of the guide, one would be required to download the Overview (accessible http://www.lsc.qld.gov.au/data/assets/pdf_file/0005/108572/regulatory-guides.pdf) to determine that:

"...the guides will be persuasive but they are not, nor could they ever be binding. The Commission is responsible for promoting, monitoring and enforcing appropriate standards of conduct in the provision of legal services, not for setting them. The standards are set by legislation, by the professional bodies¹⁰ and by the disciplinary bodies and the courts.

The guides are not 'rules' or 'rulings' upon the rules. They simply articulate for the benefit of lawyers and users of legal services alike the factors we will take into account in exercising our responsibilities, most relevantly our responsibilities:

- *to settle consumer disputes including costs disputes between lawyers and their clients;¹¹ and*
- *to decide after investigating a lawyer's conduct if it is inconsistent with the lawyer's professional obligations and whether to commence disciplinary proceedings."*

As the guide is intended for members of the profession and legal users alike, with the issue of legal status being of critical importance when working through the guide, it is highly recommended that this essential passage of commentary be included as an appendix for this guide and for every future guide.

Conflict of laws – *Legal Profession Act 2004 (QLD)* and the *Australian Consumer Law*

As you would be aware the Queensland Parliament passed the *Fair Trading (Australian Consumer Law) Amendment Bill 2010* (Qld) late last year. Section 55 of the *Fair Trading Act 1989 (QLD)* relevantly states:

“55 Limitation on right to itemised bill

‘(1) This section applies if -

(a) apart from this section, under the Australian Consumer Law (Queensland), section 101, a person is entitled, as a consumer, to request the supplier of legal services to give the consumer an itemised bill, complying with that section, relating to the legal services; and

(b) under the Legal Profession Act 2007, section 332, the person is entitled to request a law practice to give the person an itemised bill relating to the legal services.

‘(2) The Australian Consumer Law (Queensland), section 101 ceases to have application to the legal services.’”

Section 55 sensibly recognises a Queensland Legal Practitioner’s overarching obligations for itemised fee disclosure under the *Legal Profession Act 2007* as well as recognising that the regulation of the Queensland legal profession is and has always been within the jurisdiction of the State of Queensland and not a power reserved to the Commonwealth under the Constitution.

While Queensland has adopted the correct position, we are concerned that there may now be a conflict with the Commonwealth law, the *Competition and Consumer Law Act 2010*, where a mirroring clause does not appear. Queensland practitioners, who are engaged by interstate clients, would be faced with confusion as to whether the timeframes under the *Legal Profession Act 2007* are to apply or whether the timeframes under the *Australian Consumer Law* are to apply.

The Society respectfully requests that the Guide be updated to provide practitioners and users guidance as to the relevant timeframes which are to apply for the relevant classes of clients.

Thank you for the opportunity to make comments on the Regulatory Guide. If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Louise Pennisi on 3842 5872 or l.pennisi@qls.com.au

Yours faithfully

Bruce Doyle
President