

'No win – No fee' costs agreements

No win – no fee does not mean you pay nothing if you lose. This fact sheet explains what you should know about no win – no fee agreements

INFORMATION FOR CONSUMERS

What is a 'no win – no fee' agreement?

A no win – no fee agreement is generally used where a client has limited finances to pay for legal services, and where a lawyer believes there is a realistic chance of winning the case. They are also known as 'conditional costs agreements'.

In a no win – no fee agreement, your lawyer agrees that you will only need to pay their legal costs if you *'win'* your case. It is very important that you understand what exactly is meant by a 'win' and how it is defined in the agreement. It is also very important that you be aware that there will also be other costs, disbursements and fees you will be required to pay, whether you win or not.

The fees charged in a no win – no fee agreement can also be *higher* than those charged in a standard costs agreement. This is because the lawyer is taking a risk that the matter might not be successful, and as a consequence might not be paid for their services.

What other costs or fees might I have to pay?

The other side's legal costs

If you lose your case, you will usually have to pay for the other side's legal costs. Even if you may not need to pay your own lawyer, you may still be out of pocket.

You should ask your lawyer about the costs you will need to pay if you are not successful.

Disbursements

Lawyers are entitled to be reimbursed for payments which they have made to third parties connected with your matter. These payments are known as *disbursements*. They are not legal costs and they may be payable whether you win your case or not.

Disbursements include items such as photocopying expenses, medical report fees, court fees, title searches and barrister's fees. Ask your lawyer to explain the disbursements you will be expected to pay before you sign the agreement.

Uplift fees

An uplift fee is an amount added on top of any legal fees if you win your case. If your agreement includes an uplift fee, it must include how the uplift fees will be calculated.

Uplift fees are usually described as a percentage of the legal fees charged, although it might be stated in dollar terms. In Victoria it must not be more than 25% of the legal costs (disbursements are not included in this calculation).

You do not have to pay a contingency fee

A contingency fee is where a firm charges a client a percentage of the damages or costs awarded by a court.

Victorian lawyers are **prohibited** from charging contingency fees, however these may be allowed in other states.

What must a no win – no fee agreement include?

There are several things this agreement must contain:

Estimate of total costs

Your lawyer must give you an estimate of how much your total legal costs may end up being. The agreement must also include details of how those costs will be calculated as well as when and how they will be payable.

Cooling-off period

Your agreement must include a cooling-off period of at least five clear business days. During this time you can end the agreement if you change your mind or decide on using another lawyer. To end the agreement you must

write to your lawyer within that cooling-off period. Be aware that your lawyer may still be able to charge you for any work they performed for you before you ended the agreement. It is a good idea to keep a copy of any notification you send to your lawyer.

Definition of a 'win'

No win – no fee agreements must set out the circumstances that form a 'win' in your matter. An agreement will usually refer to a 'win' as a 'successful outcome'. It is when one of these conditions are met that your lawyer is then able to charge you their legal fees.

A win could mean many different things under the agreement, not simply winning your case. A win may also mean:

- an out-of-court or pre-litigation settlement where you receive compensation;
- a court or tribunal decision awarding you compensation;
- accepting advice to agree to a settlement offer made by the other side; or
- rejecting a settlement offer your lawyer recommends that you should accept.

It is important to understand that a lawyer is entitled to charge you their legal fees under certain other circumstances where you do not win your case, such as if you drop the case or change lawyers before the matter has concluded.

Independent advice

The agreement must also include a statement that you have been informed of your right to get independent legal advice before signing the agreement.

A no win – no fee agreement must be made in writing, in clear and plain language. It must be signed by you before it becomes a legal contract with your lawyer. It is very important that you carefully check and understand the wording of your agreement before you sign.

When can a no win – no fee agreement be entered into?

In Victoria a law firm can offer you a no win – no fee agreement for any type of legal matter except for criminal law or family law matters.

Can I challenge my legal costs?

There are several ways that you can challenge your legal costs. For more information please refer to our fact sheet: [Legal costs – What rights does a consumer have?](#)

Further information:

Contact the Victorian Legal Services Commissioner

Tel: 1300 796 344

Email: admin@lsbc.vic.gov.au