



The peril of permissive estimates

A critical examination of the NSW District Court's stance on costs disclosure

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The recent decision by the NSW District Court in *ACN 627 087 030 Pty Ltd atf The YBL Trust v Elisabeth Theodore; ACN 627 087 030 Pty Ltd atf Andrew John Price*¹ (*YBL Trust*) has introduced a significant divergence in how costs disclosure requirements under s174(1)(a) of the *Legal Profession Uniform Law 2014* (NSW) (LPUL) are interpreted. The Court found that providing an estimate of legal costs either in ranges or as a sum of component parts complies with the LPUL.² This pragmatic stance contrasts sharply with former guidelines from regulatory bodies and potentially undermines the LPUL's core objective: client protection.

Background to the dispute

The plaintiff was a solicitor who provided legal services to the defendants in three litigation matters arising from a matrimonial dispute. The central issue in *YBL Trust* involved the solicitor's initial costs disclosure provided to the second defendant, Mr Price. This disclosure outlined hourly rates but provided fee estimates for various stages of work using ranges (for example, \$30,000 to \$40,000 plus GST for urgent applications, and stages ranging from up to \$75,000 plus GST for early resolution to up to \$250,000 plus GST for a fully contested hearing). Disbursements were also estimated separately, such as barrister fees ranging from \$40,000.00 to \$60,000.00 plus GST.³

A Costs Assessment Review Panel found this initial disclosure

non-compliant with s174(1)(a) of the LPUL. The Panel reasoned that because the disclosure was generic, used ranges and separate disbursement estimates, and listed fees as "plus GST", the client was required "to add the various fee stages, add the GST, add the expenses referred to and add the GST to arrive at fees, expenses and GST for various stages".⁴ This complexity meant the disclosure was "not a disclosure that was likely to assist Mr Price in determining whether to proceed".⁵ Consequently, the costs agreement was rendered void under s178 of the LPUL, and the solicitor lost the *prima facie* evidential presumption regarding the reasonableness of the disclosed rates, resulting in a reduced hourly rate determination at \$600 per hour, rather than the

higher hourly rates disclosed by the solicitor.⁶

The Court's interpretation

The District Court, presided over by Newlinds SC DCJ, overturned the Review Panel's finding regarding the initial costs disclosure, deeming it an error of law. Newlinds SC DCJ explicitly stated "I do not think it is right [as] a matter of law that a single figure estimate must always be provided".⁷ The Court's reasoning was multifaceted:

1. Acceptance of ranges:

The Court provided that "the provision of an estimate by way of a range, if that is the best estimate the legal practitioner can provide, satisfies the mandatory requirement".⁸ It argued that expecting a lawyer to provide a precise single figure is "not

consistent with the obvious purpose of the legislation" as providing such a figure is often impossible, making a range a more "honest" estimate.⁹

2. Acceptance of component figures:

The Court also found that providing an estimate through a series of component figures (for example, solicitors' fees, barristers' fees, other disbursements, plus GST) still satisfies the requirement for "an estimate of the total legal costs"¹⁰ when the information is read together.¹¹ It considered that mandating the estimate itself to perform the addition for a single ultimate figure "may be considered good practice, but that is not mandated by the legislation".¹²

3. Purpose and context: Applying the principles from *Project Blue Sky Inc v Australian Broadcasting Authority*,¹³ the Court stated that while s174 is "protective legislation" aimed at informing clients, providing estimates in litigation is an "inexact science" or a "guesstimate".¹⁴ The Court rejected the Review Panel's subjective test of whether the disclosure was "likely to assist the client", stating that s174(1) requirements are to be determined objectively.¹⁵

4. Rejection of Legal Services Council guideline:

The Court reviewed a Legal Services Council guideline which suggested that an estimate

of total legal costs should be "expressed as a single figure".¹⁶ The Court definitively stated that this guideline, in suggesting that s174(1)(a) requires a single figure only, is "wrong as a matter of law".¹⁷

As a result of this finding, the Court determined that the initial costs estimate was valid, entitling the plaintiff to the "prima facie evidential provision"¹⁸ under s172(4) of the LPUL, meaning the disclosed hourly rate was considered reasonable for all work except for one brief application.¹⁹

Critique of the Court's interpretation: A legislative divergence?

While the Court's approach recognises the inherent difficulty in precisely estimating legal costs, the interpretation is subject to critique because it appears to overlook a significant legislative shift, particularly when contrasting the LPUL with its predecessor.

Section 174(1)(a) of the current LPUL requires "an estimate of the total legal costs". In sharp contrast, the repealed *Legal Profession Act 2004* (NSW) in s309(1)(c)²⁰ expressly permitted the disclosure of "a range of estimates of the total legal costs" with "an explanation of the major variables that will affect the calculation of those costs" if a precise total is not reasonably practicable.

The deliberate removal of the explicit "range of estimates"

provision in the LPUL suggests a clear legislative intent to narrow the permissible form of disclosure to a singular, consolidated figure. The Court's assertion that "an estimate by way of a range is still one estimate"²¹ can be seen as a strained interpretation that reintroduces a concept the legislature seemingly chose to omit. The Court's dismissal of the Legal Services Council's former guideline as "wrong as a matter of law" further highlights this interpretive divide, as the guideline's preference for a single figure aligns more closely with the textual evolution of the legislation.

Furthermore, although the Court adopted an objective standard for determining compliance with s174(1), arguing that a series of component figures collectively represent the "total", the requirement to calculate

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costs (adding various stage-based estimates, disbursements, and GST) arguably falls short of providing information in a clear and easily digestible format necessary for clients to make “informed decisions”²² The Court also noted that while s174(1) requirements are to be determined objectively, s174(2)(b) does require a subjective judgment based on the understanding of a particular client,²³ as does s174(3). While there was no suggestion in this instance that Mr Price did not understand the document, it is likely that many clients would not, particularly when it is unclear whether the components of the estimates are presented as alternatives or cumulative figures.

The requirement for genuine guidance

Regardless of whether a single figure or a range is permitted, the estimate must provide “a genuine and reasonable reflection of anticipated costs”²⁴ An arbitrary or uninformative range, especially one spanning a substantial difference between lowest and highest estimates, is meaningless and demonstrates

disregard for the statutory obligation. For example, in *McLaren v Wiltshire Lawyers Pty Ltd*,²⁵ an estimate ranging from \$10,000 to \$250,000 was held insufficient to guide the client, leading to the costs agreement being set aside.

Also, a range on its own is unlikely to be compliant. Regulatory bodies suggest that where a range is provided, it must be a “reasonable range” accompanied by an explanation of the major drivers and variables influencing the final amount.²⁶ Nick Satouris, Professional Support Solicitor at the Law Society of NSW, offers the following guidance:

“An estimate that allows for a very wide range is less likely to fulfil the aims of the legislation than a single figure or a tighter range; however, rather than scrutinising whether the estimate provided is by way of a range or a single figure, practitioners should consider whether they have provided the best estimate they can provide based on the information and instructions before them.”²⁷

Ultimately, every case will turn on its own facts regarding compliance with s174(1)(a).²⁸ Practitioners should aim to provide the best estimate possible, whether as a single figure or a tight range, and satisfy themselves that the client has understood and consented to the proposed costs.²⁹

Conclusion

The *YBL Trust* decision, while aiming for practicality in handling the complexities of litigation costs, risks diluting the protective framework of the LPUL by validating broad ranges and component-based estimates without a clear total. This permissive approach challenges the apparent legislative design choice toward a more singular and consolidated

disclosure requirement through removal of the explicit range of estimates provision. The resulting interpretive tension creates the potential for inconsistency across jurisdictions, and it remains to be seen how this matter will be resolved in future appellate decisions or legislative refinements.

Notes: **1** [2024] NSWDC 592 (*YBL Trust*). **2** *Ibid* [2]–[3]. **3** *Ibid* [63]. **4** *Ibid* [91]. **5** *Ibid* [93]. **6** *Ibid* [89], [122]. **7** *Ibid* [104]. **8** *Ibid* [104] (emphasis added). **9** *Ibid* [95]. **10** *Legal Profession Uniform Law 2014* (NSW) (LPUL) s174(1)(a). **11** *YBL Trust*, above note 1, [96]. **12** *Ibid*. **13** (1998) 194 CLR 355. **14** *YBL Trust*, above note 1, [97]. **15** *Ibid*. **16** Legal Services Council, *Guideline & Direction – Cost Estimates* (Cth, 11 March 2016) [3], [8] <<https://legalservicescouncil.org.au/documents/Guidelines%20and%20Directions/LSC-Guideline-and-Direction-Costs-Estimates.pdf>>. Note that, as of 8 July 2025, this guideline has been revoked and removed from the Legal Services Council website. **17** *YBL Trust*, above note 1, [102]. **18** *Ibid* [122]. **19** *Ibid* [15]. **20** See also *Legal Profession Act 2004* (Vic) s3.4.9(1) (c)–(d). **21** *YBL Trust*, above note 1, [96]. **22** LPUL, above note 10, s174. **23** *YBL Trust*, above note 1, [97]. **24** Victorian Legal Services Board + Commissioner, “Commissioner Update – July 2025: Clarifying costs estimates under the Uniform Law” <<https://lsbc.vic.gov.au/news-updates/news/commissioner-update-july-2025>>. **25** [2019] QSC 305, [63]. **26** Victorian Legal Services Board + Commissioner, *Commissioner Update – July 2025: Clarifying costs estimates under the Uniform Law* (31 July 2025) <https://lsbc.vic.gov.au/news-updates/news/commissioner-update-july-2025>. Also see Victorian Legal Services Board and Commissioner, *Get your lawyer’s costs in writing* (15 October 2025) <<https://lsbc.vic.gov.au/consumers/legal-costs-and-billing/get-your-lawyers-costs-writing>>. **27** N Satouris, “Costs Disclosure Revisited”, *Law Society Journal Online* (Web Page, 26 May 2025) <<https://lsj.com.au/articles/costs-disclosure-revisited/>>. **28** *YBL Trust*, above note 1, [104]. **29** LPUL, above note 10, s174(3).

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