

No Win No Fee Agreements



Do I have to pay for legal costs?

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

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.

A law firm is not required to offer you a no win – no fee agreement. The Law Society of Tasmania can assist you with names of lawyers who may consider a no win – no fee agreement.

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 Tasmania it must not be more than 25% of the legal costs (disbursements are not included in this calculation).

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Contingency fees

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.

Tasmanian 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:

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.

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.

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.

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 Tasmania 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, including under the Adoption Act; Children, Young Persons and Their Families Act; Youth Justice Act; Relationships Act or the Family Law Act.

The most common cases are personal injury claims and some types of deceased estate matters.

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Can I challenge my legal costs?

There are several ways that you can challenge your legal costs. For more information please refer to the LPBT fact sheets:

'Legal Costs - Your Right to Know'

'Your Right to Challenge Legal Costs'

The information contained in this fact sheet does not constitute legal advice.



Further information

If you have any questions or require further information, please contact the Legal Profession Board of Tasmania.

We are located at Level 3,
147 Macquarie Street
Hobart Tasmania.

Website:
www.lpbt.com.au

Postal address:
GPO Box 2335,
Hobart 7001

Telephone:
(03) 6226 3000

Email:
enquiry@lpbt.com.au

Fax:
(03) 6223 6055

The normal hours of opening
at our office are between
9:00am and 5:00pm on
weekdays.

