

# FAQs – Costs disclosure

This fact sheet explains the common questions around costs disclosure.

## INFORMATION FOR LAWYERS

### Is costs disclosure always required?

No, costs disclosure is not required if the total legal costs in a matter are not likely to exceed \$750. However, a lawyer may nonetheless choose to provide a client with the standard form of costs disclosure. Costs disclosure is also not required to be given to a commercial or government client.

### What does giving costs disclosure involve?

Lawyers must give an estimate of the total legal costs payable in the matter, and the basis on which costs will be charged. Where the total legal costs in a matter are likely to be between \$750 and \$3,000, lawyers may use the standard form of costs disclosure.

### When do I give costs disclosure?

Disclosure must be made in writing either before the law practice is retained, or as soon as practicable thereafter, in order to avoid any unwelcome surprises for the client.

### Is there any other information that must be given to clients under the costs disclosure provisions?

Section 174 of the Legal Profession Uniform Law sets out a number of clients' rights that must be disclosed to a client, including the right:

- to negotiate a costs agreement;
- to negotiate a billing method;
- to receive a bill and to request an itemised bill; and
- to seek the assistance of the Victorian Legal Services Commissioner in the event of a dispute about legal costs.

### How do I give a costs estimate without knowing how a matter will evolve?

Setting out standard parameters and stages in a matter will help the client to understand the legal process, the scope of work to be done and the likely cost at each stage. This approach also sets up a framework where non-standard items or complications can be discussed. It should also ensure that the costs and benefits of continuing are regularly discussed, along with the potential final cost.

### What do I do if circumstances change after initial disclosure?

Lawyers are required to provide updated costs disclosure as soon as practicable. Ongoing disclosure should be provided as soon as it is apparent that the events or costs associated with initial costs disclosure have been reached or concluded, for example within a reasonable time before any major new event such as a mediation or hearing, or a new stage in litigation.

### Do I have to give costs disclosure in a 'no win – no fee' matter?

Yes, it is not just your own professional fees which you must disclose, but all other potential costs which the client may incur, such as disbursements and another party's costs. Such agreements must always be signed.

### How can I ensure I meet the costs disclosure requirements?

Clear and transparent communication is at the core of costs disclosure. A 'no surprises' approach is best, whereby the client is given clear warning when costs are exceeding previous estimates and fresh instructions are sought as complications occur or costs increase.

Some lawyers can be uncomfortable discussing costs, however it is crucial to do so to avoid bigger discomfort in the long term – and potentially not being able to recover your costs.

### **What's likely to happen if I don't give costs disclosure?**

There are a range of consequences that follow where adequate costs disclosure is not given:

- the costs agreement (if any) is void;
- the client is not required to pay the legal costs until they have been assessed or any costs dispute has been determined;
- the legal costs cannot be recovered until they have been assessed or any costs dispute has been determined; and
- the contravention is capable of constituting unsatisfactory professional conduct or professional misconduct.

### **Why do I have to give costs disclosure?**

Apart from being legally required, giving clear costs disclosure ensures your client is kept informed, is good communication practice, will reduce the chance of complaints being made to the regulator and will provide evidence that you have met your obligations under the law and the Rules.

### **When can I charge interest on unpaid legal costs?**

The bill for the costs must contain a statement that interest is payable if costs are not paid and set out the relevant interest rate in order for interest to be chargeable. Provided this has been done, interest can be charged on unpaid legal costs (1) if costs remain unpaid 30 days after a bill was provided, or (2) in accordance with a costs agreement.

The interest rate cannot be more than 2% higher than the Reserve Bank of Australia Cash Rate Target.

### **When must I give an itemised bill and what should it include?**

Provided a client requests an itemised bill within 30 days of receiving a lump sum bill, a law practice must comply within 21 days of the request. An itemised bill should include sufficient information to allow a client to ascertain whether the charges for individual items are reasonable, such as relevant dates, descriptions of tasks, the person who did the work, the time spent on the task and the amount charged for it.

### **Can an itemised bill be higher than the lump sum bill?**

If an itemised bill is higher than a lump sum bill, the additional costs may only be recovered if:

- when the lump sum bill was given, the law practice made an appropriately worded disclosure in writing to the client indicating that the total amount of the legal costs specified in any itemised bill may be higher than the amount specified in the lump sum bill; and
- the costs are determined to be payable after a costs assessment or after a binding determination by the Commissioner.

### **Where can I learn more?**

The Victorian Legal Services Board + Commissioner's website provides information on [legal cost disclosure and agreements](#). The Commissioner can provide guest presenters to speak to groups on regulatory obligations regarding costs.

### **Is training available on estimating costs?**

The Legal Practitioners' Liability Committee periodically offer courses on estimating costs effectively, including how to scope, plan and price legal work. Training courses may also be available from other organisations.

### **Further information**

Contact the Victorian Legal Services Board + Commissioner

Tel: 1300 796 344

Email: [admin@lsbc.vic.gov.au](mailto:admin@lsbc.vic.gov.au)