

RPA News

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News update for all practitioners from the Victorian Legal Services Board + Commissioner

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Lawyers must give valid costs disclosure

Billing issues give rise to the largest category of complaints made to the Legal Services Commissioner. These are often handled as costs disputes. In a significant number of these complaints, appropriate costs disclosure has not been provided to the client, even though this is required under the law.

All lawyers must understand their obligations for costs disclosure, as breaches of the legislative requirements may lead to recovery of costs being denied together with a disciplinary finding.

As a lawyer, you are required to:

- disclose to your clients **in writing** the basis on which you propose to calculate their bill for their legal costs, before or as soon as practicable after you accept a client's instructions (ss 3.4.9 and 3.4.11 of the *Legal Profession Act 2004*, and cl 174(1)(a) and (6) under the Legal Profession Uniform Law); and
- provide **ongoing disclosure in writing** in relation to any substantial changes to previous disclosures as soon as reasonably practicable after you become aware of the changes (s 3.4.16 of the 2004 Act, and cl 174(1)(b) of the Uniform Law).

Disclosure should include an estimate, or a range of estimates, of total legal costs, but the range should not be so wide as to be meaningless. If you do not provide costs disclosure, a client is not obliged to pay the legal costs unless or until the costs are reviewed by the Costs Court. In such circumstances lawyers who have not provided costs disclosure may have to bear the cost of the review process.

There are limited exceptions to the disclosure requirement, primarily relating to where total legal costs are not likely to exceed \$750 or you are dealing with a sophisticated client (categories set out at s 3.4.12(1)(c) of the 2004 Act, and cl 170(2) of the Uniform Law).

Further information on costs disclosure obligations is set out in a series of [frequently asked questions on costs disclosure](#). The obligation to provide disclosure in writing will continue under the [Legal Profession Uniform Law](#), which is expected to commence operation in mid-2015.

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