

RPA News

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

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Costs disclosure under the Legal Profession Uniform Law

The Legal Profession Uniform Law (Victoria) (LPUL) requires that you give costs disclosure in writing to your client as soon as practicable after instructions are given. This disclosure document must:

- disclose the basis on which legal costs will be calculated in the matter and an estimate of the total legal costs;
- include information about the client's right:
 - to negotiate a costs agreement with the law practice;
 - to negotiate a billing method (e.g. by reference to timing or task);
 - to receive a bill and to request an itemised bill; and
 - to seek the assistance of the Legal Services Commissioner in the event of a costs dispute.

If there is any significant change to what has been disclosed, you must update the information by disclosing the change to the client. These obligations are consistent with the objectives of the LPUL, which include: 'to ensure that clients of law practices are able to make informed choices about their legal options and the costs associated with pursuing those options'.

If you negotiate a settlement of a litigious matter on behalf of a client, before the settlement is executed you must disclose a reasonable estimate of the amount of legal costs payable by the client if the matter is settled (including any legal costs of another party), and a reasonable estimate of any contributions towards those costs likely to be received from another party.

Client's consent and understanding

In addition to providing written costs disclosure, the LPUL requires you to take all reasonable steps to satisfy yourself that your client has understood and given consent to the proposed course of action for the conduct of the matter and the proposed costs. This is to ensure that clients of law practices are able to make informed choices about their legal options and the costs associated with pursuing those options.

Exceptions to costs disclosure

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 commercial or Government client (refer to s.170(2) of the LPUL).

Fair and reasonable costs

The LPUL provides that you must not charge more than fair and reasonable amounts for legal costs. Section 172(2) sets out factors that can be considered in determining whether what is charged is fair and reasonable. In particular, costs must be proportionately and reasonably incurred, as well as proportionate and reasonable in amount. Section 200 of the LPUL sets out further the factors which are to be taken into account in a costs assessment in considering whether legal costs for legal work are fair and reasonable.

Costs estimates

A costs estimate should provide consumers with sufficient information to allow them to make informed choices about their legal options and their costs exposure. Legal costs estimates need to be tailored to the particular circumstances of the client's matter and instructions. Lawyers should avoid merely setting out a range of possible fees in their estimates and provide a genuine estimate of total legal costs for the client's matter. Express mention of an estimate in the Uniform Law, not a range, confirms this.

The Uniform Law requires that an estimate of the costs be provided to the client, with further disclosure given where there is a significant change in circumstances, including legal costs. In a simple matter, a first estimate, with a later revised estimate following a significant change, will fulfil the requirement of s.174. In a more complex matter, practitioners can comply by providing an estimate of legal costs for different stages of a matter. Each stage should have a description of the factors that would influence the estimate for that stage. Essential elements of proper costs disclosure include monitoring and updating the estimate as the work progresses, and keeping the client informed (including as changes occur). Again, this is designed to ensure clients are making informed choices when receiving legal services.

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