

RPA News

Regulation. Protection. Action.

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

Bulletin No. 29

Issued October 2016

Poor file keeping can lead to costs being reduced

This past year I have used my new powers under the Legal Profession Uniform Law (Victoria) to make various binding determinations against lawyers to resolve disputes over legal costs. The determinations reduced the lawyers' bills where lawyers failed to provide sufficient evidence to demonstrate that their costs were fair and reasonable, as is required by section 172 of the Uniform Law.

Although disputes about legal costs are the most common type of complaint received each year, the majority of these complaints are quickly resolved through conciliation services provided by my office. The Uniform Law gives me the power to make binding determinations on legal costs where the lawyer and their client cannot informally resolve the dispute, the disputed amount is below \$10,000, and where there are no other grounds to close the complaint. Redacted examples of these determinations are now published on the [Board and Commissioner website](#).

Binding determinations are used as a tool of last resort, and before they are made in a costs complaint, my office undertakes a costs review of the lawyer's file to identify what the fair and reasonable legal costs should be.

What the costs reviews tell us

66% of costs reviews undertaken by my office revealed the lawyers' files recorded insufficient detail on attendances or a lack of evidence for items charged. Almost half of all costs reviews showed excessive charging for the work undertaken, which could not be justified by the information the lawyer had recorded on the file or elsewhere.

In undertaking a costs review, we are only able to include items charged by a lawyer to their client where there is evidence to show that the work has been done. If a lawyer's file does not contain such evidence, we have no choice but to reduce or deduct such items from the lawyer's bill, as would occur on a normal taxation by the court. Lawyers may well have done all of the work they had billed for, but due to their poor record-keeping they failed to prove that their legal costs were fair and reasonable.

It is difficult to understand how a lawyer can accurately cost their file when it contains little or no information about the work done or the time spent on their client's matter. I remind all lawyers that detailed file notes not only help prevent mistakes such as under or overcharging, but also allow the file to be used as evidence that costs charged are fair and reasonable in the event the bill is disputed.

Costs Disclosure issues including estimates

Costs disclosures are another area causing problems for lawyers. Many law practices are using the standard costs agreement and disclosure statement produced by the LIV, which is compliant with the Uniform Law. Problems arise however, when the terms of this precedent are altered; for example, when the *single-figure estimate* is changed to include only a *range of estimates*. The Uniform Law requires the provision of an ultimate single-figure estimate. Costs estimates for stages, including estimates of ranges of fees and charges, are only permitted when they include an *overall* single-figure estimate (see the March 2016 [Guideline and Direction](#) issued by the Legal Services Council).

Clients don't like unpleasant surprises

Consumers are generally unaware of the scope of work likely to be required by a lawyer, any disbursements likely to be incurred, and the kinds of issues that may affect legal costs. It is therefore not uncommon for my office to receive complaints where a client learns their costs have increased unexpectedly beyond the initial or updated costs estimate.

Lawyers are less likely to be faced with a complaint about their costs if they explain to clients the variables that may necessitate changes in the initial estimate (such as a lack of co-operation by the other party, delays in obtaining evidence, or an issue becoming more complex than first thought). Under the Uniform Law, lawyers are required to keep clients informed when changes affect their initial and subsequent costs estimates.

Some resources available

- Legal Services Council [Guideline and Direction – Costs Estimates](#), 11 March 2016
- Our [fact sheet on costs disclosures](#) provides more information on how and when to give costs disclosure. We have also produced a [fact sheet on consumer rights regarding legal costs](#) which explains what clients can expect from their lawyer regarding costs disclosure and billing.
- I also recommend the fact sheet produced by the New South Wales Law Society on [reasonable steps to take in costs disclosure](#).
- The [Legal Practitioners' Liability Committee](#) runs very popular courses covering legal costs. In instances where I have had cause to question a lawyer's ability to make an accurate estimate, I have recommended attendance at such courses.

Clear and timely communication with your client about costs, as with all other matters, goes a long way to establishing a strong lawyer-client relationship and minimising the chance of confusion or complaints.

Michael McGarvie

Victorian Legal Services Commissioner
CEO, Victorian Legal Services Board

Contact Us

Phone: (03) 9679 8001

Email: RPAAlerts@lsb.vic.gov.au