

# Legal costs: what rights does a consumer have?

This fact sheet explains your rights and your lawyer's obligations around legal costs

## INFORMATION FOR CONSUMERS

When you ask a lawyer to handle a legal matter for you, you should expect to pay for the professional skills and experience the lawyer applies to that work.

The costs that lawyers charge will vary depending on the type, duration and complexity of the work involved. As a consumer you have certain rights covering how your lawyer bills you for his or her work.

### What should your lawyer tell you?

When you first engage a lawyer, there are certain things your lawyer must tell you about their costs.

If your total bill is likely to be below \$750 in value, your lawyer is not obliged to give you an estimate of what the work will cost but you could ask for one.

If your legal costs are likely to exceed \$750, your lawyer must provide you with an estimate of the total amount they expect the work will cost, and information about how those costs will be calculated. This is called a costs disclosure and must be given to you in writing as soon as practicable after you give your instructions.

Your lawyer must also advise you about your right to:

- request and negotiate a costs agreement;
- negotiate the billing method;
- receive a bill, and to request an itemised bill if you received a bill that is not itemised or is only partially itemised; and
- seek the assistance of the Victorian Legal Services Commissioner if you wish to dispute your legal costs.

Your lawyer must also advise you if there have been any significant changes to anything they have previously disclosed to you, including your legal costs. This information must be in sufficient detail to allow you to make an informed decision about how you might wish to proceed with your legal matter.

### What will the cost disclosure look like?

Where legal costs are likely to be between \$750 and \$3,000, your lawyer may use a standard costs disclosure form to advise you about these matters. This is a simple form providing some basic details about the work the lawyer will do, how much it is expected to cost and how much the GST component will be.

If any part of the information you are given is not clear to you, ask your lawyer for clarification. You should be satisfied that you understand the proposed course of action and the expected costs for handling your legal matter.

Where your legal costs are likely to be greater than \$3,000, the costs disclosure provided will be in writing and much more detailed than the standard form.

You should note that when the lawyer gives you a costs agreement or disclosure document, you do not need to sign it in order for it to be binding on you, unless it is a 'no-win, no-fee' agreement. If you continue to instruct the lawyer you are taken to have agreed to its terms. For more information, see our fact sheet '[Meeting a Lawyer: Your first appointment](#)'.

### When should you get a bill?

Your lawyer must give you a bill before asking you to pay your legal costs. You cannot be charged for the preparation or giving of a bill.

A bill may be in one of the following forms:

- a lump sum bill, where all individual charges are collated into a single figure;
- an itemised bill, where each charge is accounted separately; or
- a partially itemised bill, where only some charges have been set out separately.

If you have received a lump-sum or a partially itemised bill, you may request the bill be itemised further. You must make this request within 30 days of the date that the costs became payable. Your lawyer must comply with your request within 21 days of receiving your request.

Please note that an itemised bill *may be higher* than an original lump sum bill. The additional costs, however, may only be recovered by the lawyer if:

- when the lump sum bill was given, the lawyer made an appropriately worded disclosure in writing 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 the Commissioner makes a binding determination.

#### **What is an Interim bill?**

You may receive an interim bill covering part only of the legal services your lawyer was retained to provide. For example, you may receive an interim bill on a monthly basis or at some other appropriate stage in the work.

All bills must include information about the options open to you in the event of a dispute about legal costs, as well as any time limits that apply to the taking of any action.

#### **Can I complain about or dispute my legal costs?**

You are entitled to complain to the Commissioner and dispute the legal costs you have been charged.

The Commissioner can receive and handle disputes about legal costs if:

- the total bill for legal costs is less than \$100,000; or
- the total bill for legal costs is more than \$100,000 but the total amount in dispute is less than \$10,000.

#### **Is there a time limit for complaints about legal costs?**

You must lodge a complaint with the Commissioner within 60 days of the legal costs becoming payable (usually the date on which the bill is issued by your lawyer). If you requested an itemised bill, this time limit decreases to 30 days after you received your itemised bill.

The Commissioner may accept a costs dispute outside of these time limits only if:

- your complaint is made within four months after the 60 or 30 day limit; and
- it is just and fair to deal with the complaint having regard to the delay and reasons for the delay; and
- your lawyer has not yet sued you to recover those legal costs.

If you are late in lodging your complaint about legal costs, you will need to explain why there was a delay.

#### **What does the Commissioner do with a costs dispute?**

The Commissioner's role is to try to help you and your lawyer resolve your costs dispute. This may involve:

##### *Informal dispute resolution*

There are a range of informal approaches we may take to encourage dispute resolution. While informal, we take this step seriously as it is usually at this early stage that there is the best chance to resolve the matter. This is often successful. We may examine the costs agreement, consider the circumstances of the dispute and investigate any service issues that arise so as to guide you and your lawyer towards a resolution. We also communicate offers of settlement between each party over the phone or in writing.

##### *Arranging for an independent legal costs assessment*

The Commissioner can arrange for a costing consultant to give an opinion on what legal costs would be fair and reasonable. This opinion may guide the parties towards a fair and reasonable settlement.

##### *Formal mediation*

The Commissioner may order the parties to attend a formal mediation. Where mediation fails, an investigation and determination may follow. If a complainant does not participate in the mediation in good faith, then the complaint may be closed with no further action to be taken on the matter.

#### **How long does dispute resolution take?**

There are no set time limits on dispute resolution. However, the Commissioner will use every effort to resolve matters as soon as possible. Where the Commissioner identified that a determination is to be made, the time for resolution will be extended to ensure both parties are given a full and proper opportunity to be heard and make their case.

Where a costs dispute is made alongside matters that also involve potential disciplinary action against the lawyer, the time for finalising the complaint may also be extended. The Commissioner can decide to prioritise resolution of the costs issues depending upon the circumstances surrounding the complaint.

### **What happens if dispute resolution fails?**

In certain limited circumstances, the Commissioner can determine that a bill should be reduced or other remedial action should be taken. The Commissioner may give the parties the right to refer their dispute to the Victorian Civil and Administrative Tribunal (VCAT) for determination (where the amount in dispute is under \$25,000) or to the Costs Court for assessment (where the amount in dispute is greater than \$25,000). The Commissioner is also able to close the matter without taking further action where appropriate.

### **Costs Court**

If your bills are too old or too high to be handled by the Commissioner, you could apply to the [Costs Court of the Supreme Court](#) for a review of the whole or any part of legal costs.

An application for a costs review may be made even if the legal costs have been wholly or partly paid.

You must apply for a review within 12 months of receiving your bill, a request for payment by your lawyer or after the legal costs were paid. You can make an application for an extension of time if 12 months have passed.

As this can be a costly alternative you may wish to seek legal advice.

### **Other Avenues**

[VCAT](#) can also hear cases about goods and services supplied to or by someone in Victoria. This may be an option for challenging legal costs where service issues are the reason for the dispute.

### **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)