



Costs – 2025 update

COMMERCIAL LAW CPD DAY

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Solicitors' costs – what's new and what's not

Paul Duggan:

- Victoria's new costs scales (Supreme, County, VCAT and Magistrates)
- Reintroduction to the *Uniform Law*.

Annabelle Ballard:

- What can go wrong.
- Lessons from the cases.

What's new in 2025

New Supreme Court scale -

- time costing (including at up to \$990 + GST p/h)
- more focus on time-billing (cf former per letter/folio/item approach).

County Court scale -

- effectively abolished [by adoption of SC scale per CCR 1.13]

VCAT scale (*de facto*) –

- resurrection of the 2024 County Court scale in VCAT

Magistrates' Court scale –

- CPI –related rate increases only.

The new rates illustrated

Scale rates for a solicitor's attendance in 2025 (ex GST)

NEW MODEL	Solicitors' post admission experience -		
	< 5 years'	5 to 10 years	> 10 years
Supreme Court	Up to \$450 p/h	Up to \$650 p/h	Up to \$900 p/h
County Court	Up to \$450 p/h	Up to \$650 p/h	Up to \$900 p/h
OLD MODEL	<i>(Solicitors' post admission experience irrelevant)</i>		
VCAT	(\$482 x 80% =) \$385.60		
Magistrates' Court* - Scales A to G (\$0k to \$100k)	\$248 [+ 'general preparation' etc]	\$248 [+ 'general preparation' etc]	\$248 [+ 'general preparation' etc]

The new Supreme Court scale

- Scale rates are ceilings - not defaults.
- Each rate is “a reasonable hourly rate, as allowed, up to a maximum of \$XXX per hour.”
- Likely to make time-costing (cf item analysis) the default basis for costs assessments.
- Issue becomes ‘What was a reasonable time required to draw the Bloggs affidavit?’ Not ‘How many folios @ \$71.20 each are in the Bloggs affidavit?’
- Individual soli’s PQE is now relevant to costs assessment.

The new County Court scale

- Effectively abolished.
- CCR 1.13 now adopts Supreme Court scale but without CC's former 20% discount.
- Consider choice of forum implications of Supreme and County now having –
 - Largely (but not always) identical jurisdictions; and
 - The same costs scale.

VCAT's new (but old) scale

- VCAT never the 'no costs' jurisdiction it often pretends to be.
- See s. 109 - 114 of the *VCAT Act* for VCAT's costs powers.
- VCAT *formerly* adopted the County costs scale as its default scale.
- VCAT now adopts the 2024 County scale (ie 2024 Supreme Court scale x 80 %) as its default costs scale [Reg. 1.07 VCAT Rules].
- VCAT hence preserves the rates and costing methods that the County has jettisoned.
- (How will CPI increases etc now be dealt with in VCAT?)

The Magistrates' Court scale -

- Customary annual increase in rates for 2025
- No wholesale systemic changes.
- Most solicitors' tasks NOT time-costed (eg taking instructions, briefing counsel etc) costed per item rather than per hour.
- 'General preparation' item remains as a standalone. Eg:
 - \$491 for disputes up to \$500(!)
 - \$6683 for \$70k to \$100k disputes.

Don't be misled ...

- Scale costs are not defaults automatically chargeable as between solicitors and clients.
- *Uniform Law* (not court scales) = basis of solicitors' costs rights and obligations.
- Timely and accurate costs disclosure to clients is fundamental for *UL* purposes.

Model costs disclosure?

“I don’t get out of
bed for less than
\$10,000 per day”

- Linda Evangelista
1990



Costs 101 and the *Uniform Law*

- Lawyers charging their own clients = an inevitable conflict of interests.
- The *Uniform Law* seeks to manage that conflict.
- The *UL* regime is complex, difficult and frequently not even uniform as between its 3 member states.
- Only 'fair and reasonable' costs are recoverable -
 - as between solicitor and client [or TPP]; and
 - as between parties.
- Parties in p/p assessments will potentially have legitimate *UL*-based arguments available to them.

What costs are 'fair and reasonable'?

- Applicable court scales ≠ automatic default
 - No such presumption in the *UL* (cf predecessor legislation in Victoria).
 - *Civil Procedure Act* requirement as to proportionate costs.
 - Court's inherent jurisdiction.
- Costs agreements ≠ ordinary contracts [cf s. 184 of the *UL*].
- Valid costs agreements can (mainly) be enforced as ordinary contracts.
- Cost agreements will be voided by inadequate costs disclosure.

The UL's *costs requirements are not uniform*

- UL requirements vary according to client types and the matters' anticipated total costs.
- LSBC has published costs guides on its website.
- Written costs disclosures –
 - < \$750: not required;
 - \$750 to \$3000: required (but LSBC-published proformas will suffice);
 - \$3000 +: reasonable estimates of total costs to be provided ASAP and kept up to date.

Costs disclosure → costs agreement → 'fair and reasonable'

Key concepts –

- Costs to be "fair and reasonable in all the circumstances".
- Compliant costs agreement is prima facie evidence that soli's costs are fair and reasonable.
- Costs agreements are predicated upon proper costs disclosure.
- Costs disclosure should be timely, accurate, dynamic, written and [apparently] understood.
- (Beware the Amadio client!)

Estimating '*total legal costs*'

174. Disclosure obligations of law practice regarding clients

(1) Main disclosure requirement

A law practice—

- (a) must, when or as soon as practicable after instructions are initially given in a matter, provide the client with information disclosing the basis on which legal costs will be calculated in the matter and an estimate of the total legal costs; and
- (b) must, when or as soon as practicable after there is any significant change to anything previously disclosed under this subsection, provide the client with information disclosing the change, including information about any significant change to the legal costs that will be payable by the client ...

“an estimate of total legal costs”

- LSC/LSBC publications refer to –
 - UL s. 174(1)(a) requiring a “single figure estimate of the total legal costs”; and
 - A range of estimated total costs being “no longer allowed”.
- Beware of the false precision trap in any ‘single figure estimate’.
- Consider giving a ranged estimate and also nominating its midpoint as your quantified “single figure total estimate of total costs”.
- Staged estimates are allowed but are NOT required.

The final costs disclosure hurdle?

- Failure to disclose net costs to the client prior to settlement of litigation can void an otherwise valid costs agreement (s. 177 UL).
- No express requirement for that requirement to be in writing (but why risk it?)
- Pre-mediation costs update email to client = excellent practice.

Consequences of a void costs agreement

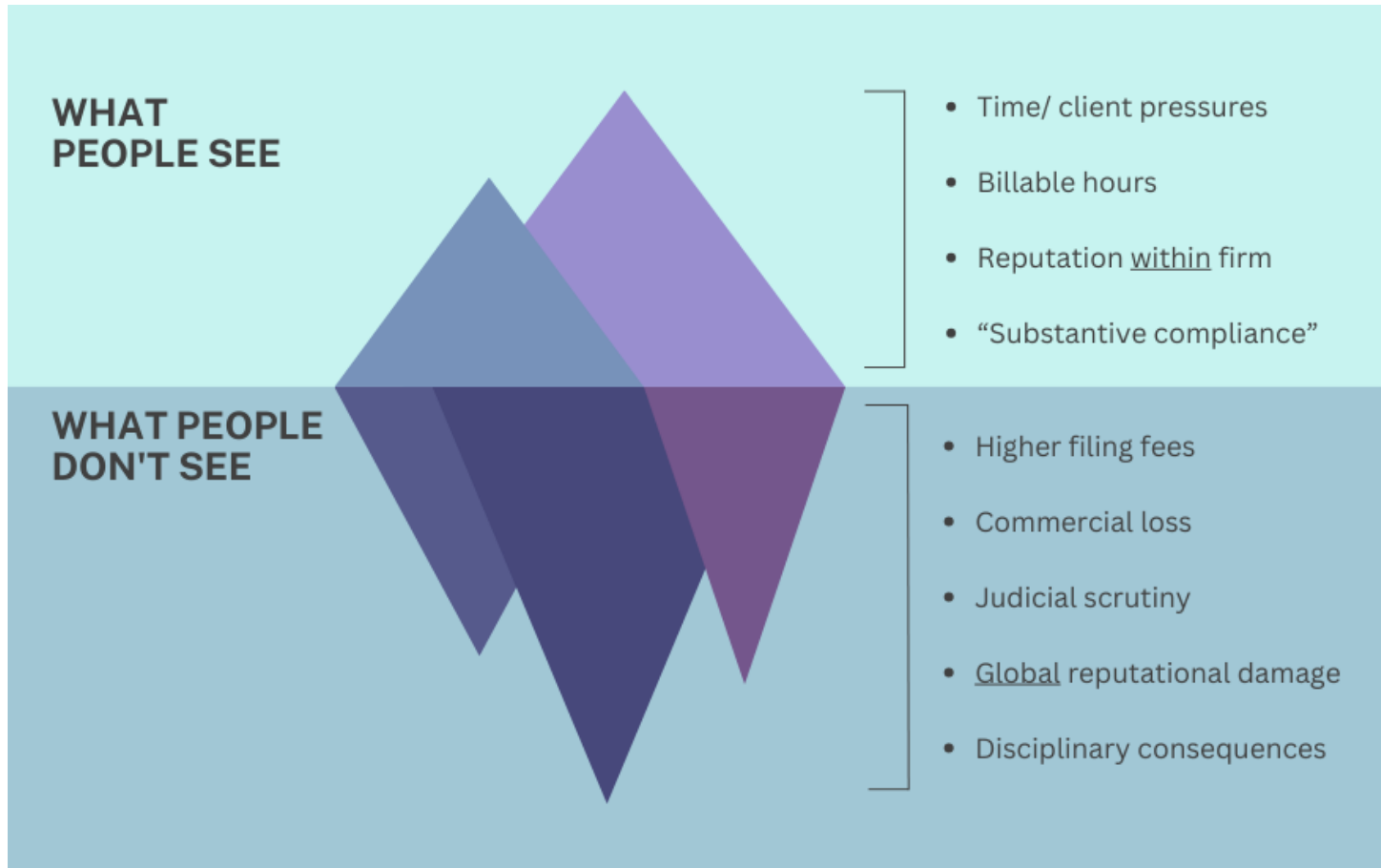
- Absent a valid costs agreement, a soli's costs won't be recoverable without prior –
 - 'Binding determination' by the VLBC (for bills/disputed amounts up to \$18,550);
 - Costs assessment by VCAT (for bills/disputed amounts of between \$18,550 and \$59,650); or
 - The Costs Court.

Pursuing costs likely to be expensive

- Expense, reputational risks and opportunity costs of litigation generally.
- Fresh uncertainty as to the costs lawyers can claim for acting in their own litigations (compare *Bell Lawyers Pty Ltd v Pentelow* [2019] HCA 29 and *Birketu Pty Ltd v Atanaskovic* [2025] HCA 2).
- Presumption that lawyers will pay the costs of the costs assessment where there has been non-compliance with UL and/or costs are reduced by $\geq 15\%$

Next -

Annabelle Ballard looks at the potential consequences of non-compliance (and some cases!)



Potential Consequences of Non-Compliance



Following
standard
procedure



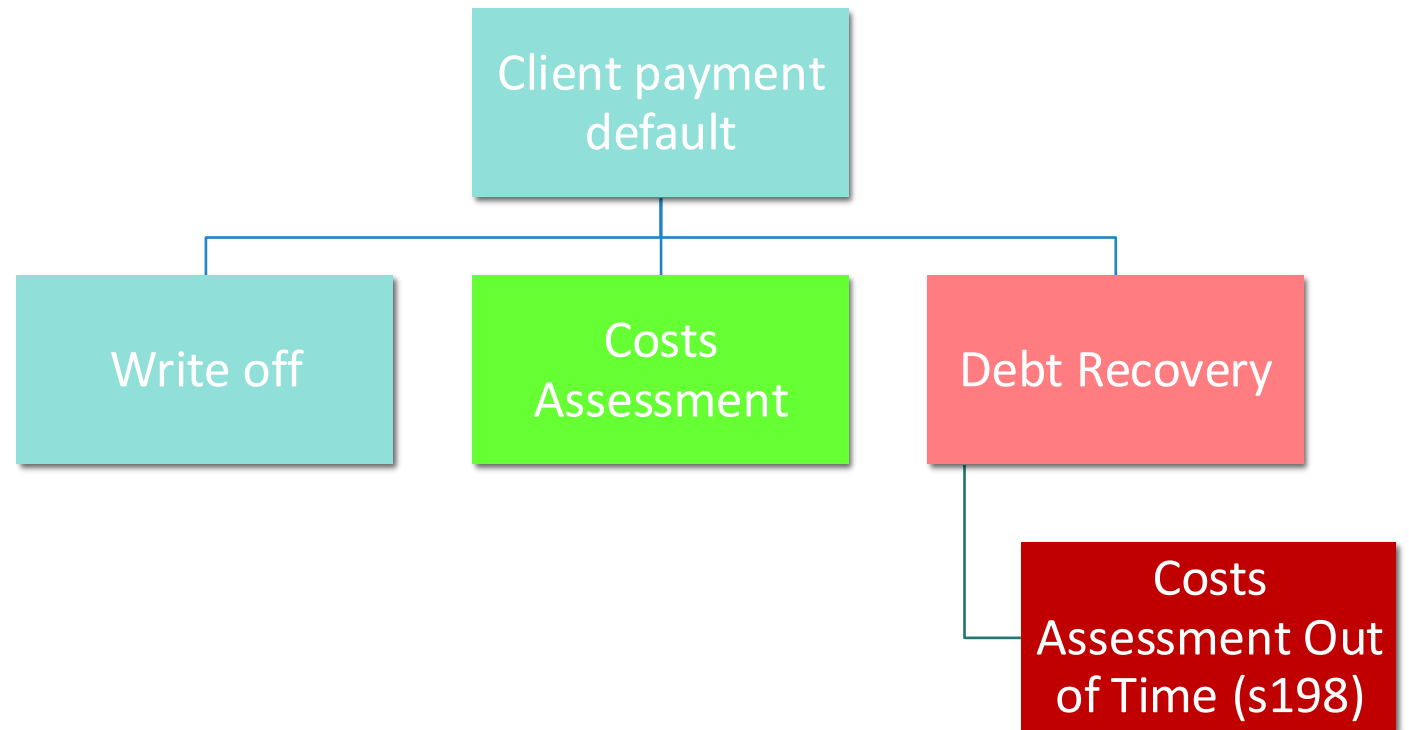
Thinking
deeply
about risk

“Substantive Compliance”

- General rule: *Johnston v Dimos Lawyers* (2019) 59 VR 16, [19]-[20]
- Limited Exception/ Defence: *Legal Profession Uniform General Rules 2015* r72A
 - Three cumulative requirements; *Cohen v Fung* [2024] NSWDC 228, [38]
- Other recent examples:
 - *Orsini v Habambo* [2024] NSWSC 289
 - *Ellis Palmos v Pravlik* [2020] VSC 112



(Lawyer's) Risks & Options



COSTS COURT				
Item no.	Item Description	Corporate	Standard	Concession
5.1	Commencement (includes the initial listing for costs assessment, mediation or taxation) Commencing a proceeding for an assessment of costs awarded to a party, whereby - (a) the costs claimed are less than \$50,000 (b) the costs claimed are \$50,000 or more but less than \$150,000 (c) the costs claimed are over \$150,000	\$442.50 \$602.60 \$718.50	\$222.10 \$300.50 \$359.30	\$111.00 \$150.20 \$179.60
5.2	Commencing a proceeding by a client liable to pay solicitor costs, whereby - (a) the costs claimed are less than \$50,000 (b) the costs claimed are \$50,000 or more but less than \$150,000 (c) the costs claimed are over \$150,000	\$757.70 \$947.10 \$1,134.90	\$378.90 \$473.60 \$568.30	\$189.40 \$236.80 \$284.10
5.3	Commencing a proceeding by a lawyer or law practice ("law practice applicant") under legal professional legislation for a costs assessment		\$1,513.80	
	Case Management (subsequent to the initial listing for assessment, mediation or taxation)			
5.4	Filing an interlocutory application (other than one referred to in item 5.5)	\$674.40	\$338.00	\$168.20
5.5	Filing an interlocutory application by a law practice applicant		\$1,268.80	
5.6	Mediation (other than one referred to in item 5.7 - per day or part of a day)	\$674.40	\$338.00	\$168.20
5.7	Mediation within a proceeding commenced by a law practice applicant (per day or part of a day)		\$674.40	
5.8	Taxation hearings or assessments (other than one referred to in item 5.9 - per day or part of a day)	\$674.40	\$338.00	\$168.20
5.9	Taxation hearings or assessments within a proceeding commenced by a law practice applicant (per day or part of a day)		\$1,268.80	
	Review or Reconsideration			
5.10	Filing a review or reconsideration of an order of the Costs Court (other than one referred to in item 5.11)	\$674.40	\$338.00	\$168.20
5.11	Filing a review or reconsideration of an order of the Costs Court by a law practice applicant in a proceeding commenced under item 5.3		\$1,268.80	

(Lawyer's) Costs in Costs Court

[88] A very large proportion of the costs during this stage involved attendances on potential group members, noting that there were more than 4,600 group members, this is not unusual. However, I note that during this period work was recorded (usually done by law clerk [REDACTED]) in providing email updates to various potential group members (with identical narrations in the itemised account save for the name) charged on the basis of one unit for each email when presumably this was a template email that was sent to large numbers of people. Each of these groups of entries is recorded, usually on the same date, with narrations such as “draw email to XX (enquirer) to discuss eligibility and matter update” or “draw email to XX (enquirer) for group member update. Later in the proceeding, these bulk updates were not generally recorded in the same manner. Whilst it is necessary for [REDACTED] to liaise and respond to claimant enquiries, in my experience it is not reasonable for each of these emails to be charged for separately if they were in fact template or pro-forma identical or almost identical emails. It is my opinion that some of these costs would not be considered to be reasonable on a solicitor client basis.

1692 My findings catalogue numerous instances of dishonest conduct by counsel. No honest legal practitioner would conduct themselves in the way that [REDACTED] and [REDACTED] did. The plain inference from the totality of the evidence is that they intended to deceive Mr [REDACTED], the group members, the SPRs, [REDACTED], the court, and the Contradictor on this remitter, to secure large financial rewards for themselves, each other, and [REDACTED] at the expense of the group members and to then keep their nefarious conduct concealed in order to enjoy those spoils.

1693 The conduct of [REDACTED] fell short of ordinary standards of honest behaviour and comfortably met the standard of equitable fraud. In particular, no honest solicitor would:

Reputational damage (cont'd)

31. It was argued in Mr [REDACTED] case that he was unaware of his failure to comply with s 174(1)(a) of the *Uniform Law* until he received the written submissions in the defendant's case on 3 June 2024. I reject this argument. The disclosure obligation was referred to in paragraph 12 of the Defence filed on 28 May 2024. In any event, Mr [REDACTED] should not have to be made aware of his obligations under the *Uniform Law*.

55. The quantum and timing of these costs disclosures raises a serious question about the ability of the plaintiff to negotiate the terms of his representation as the solicitors were already retained and the proceeding had already commenced. It also runs contrary to one of the purposes of costs disclosure, namely, to ensure that clients of law practices can make informed choices about their legal options and the costs associated with pursuing those options.^[43] In addition, a law practice must ensure a client understands and consents to proposed costs as disclosed.^[44] These circumstances reinforce the need for the Court to independently consider the costs payable by the plaintiff in this matter, notwithstanding the compliance with the costs disclosure regime in the *LPUL*.

76. Firstly, while in the passage which I have quoted at [29] above the Assessor referred to a failure to update the costs estimate in accordance with *LPUL* s 174(1)(b), on his findings, and as accepted by Ms [REDACTED], there was also a failure to provide an initial estimate as required by s 174(1)(a). It is hard to see how Ms [REDACTED] could escape from the consequences of that non-disclosure.

77. Secondly, as already noted, there is a discrepancy in the evidence about whether the email on which Ms [REDACTED] relied as notice under *LPUGR* r 72A was sent to Mr [REDACTED] (see [25]-[26] above). Despite what Ms [REDACTED] said in her affidavit, the email itself is in evidence and it was only addressed to the [REDACTED]. The text of the email, which I have not reproduced in this judgment, also refers to earlier conversations with the [REDACTED], not with Mr [REDACTED].

78. I have not overlooked the fact that Ms [REDACTED] claims that she also notified Mr [REDACTED] of the \$250,000 estimate orally, but the purported r 72A notice does not refer to that conversation. In any event, even if the email was sent to him, it is hard to see how he could have received it, having been in gaol at the time.

79. The requirements of r 72A are stringent. There is likely to be real debate about the adequacy of Ms [REDACTED] purported notice. But so far as enforcement against Mr [REDACTED] is concerned, even if the disclosure was adequate, it seems unlikely that the notice was ever communicated to him, and that, seemingly, would be fatal to her claim.

80. There is a further point. Any proceedings in this Court will not be limited to the issues which were raised in the assessment about non-disclosure. The Court has power in a proper case to set aside the costs agreement in equity even if it is valid under the *LPUL*. The sort of issues which can arise are illustrated by *Malouf v Constantinou* [2017] NSWSC 923; see in particular at [94]-[121] (fiduciary conflict); [122]-[128] (undue influence); [129]-[132] (unconscionable transaction and misrepresentation); and [133]-[179] (reasonableness).

81. I may of course be overlooking something. Having mentioned these matters, I will leave it to Ms [REDACTED] and her advisors to **consider whether to proceed any further with her claim in these proceedings, or the review application.**

Reputational damage (cont'd)

Disciplinary Consequences

- Disciplinary sanctions are not always imposed in addition to a reduction on assessment
- However:
 - Disclosure failures or overcharging may constitute unsatisfactory professional conduct or professional misconduct
 - The state Supreme Courts have inherent jurisdiction to control the conduct of their officers
- Reported case examples where disciplinary action has been taken:
 - *New South Wales Bar Association v Evatt* [1968] HCA 20; 117 CLR 177
 - *Bolitho v Banksia Securities* (No 18) (remitter) (2021) 69 VR 28
 - *Council of the Queensland Law Society Inc v Roche* [2003] QCA 469; [2004] 2 Qd R 574
 - *Quinones v Council of the Law Society of New South Wales* [2023] NSWCATOD 43
- Features:
 - Protective (not punitive)
 - Power imbalance
 - Dishonesty (rather than mere mistake/ error)



In conclusion,
it's all about
your risk
appetite...



Questions?