



# Supreme Court of Victoria

## Notice to the Profession

### Costs Court

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## INTRODUCTION

1. The Chief Justice has authorised the issue of this Notice.
2. The main purpose of this Notice to the Profession is to provide information about the upcoming amendments to the Rules relating to legal costs commencing 1 January 2025 and how the practice of the Costs Court will change to reflect this. This Notice also refers to some practices in the Costs Court that have already developed significantly since 2018.
3. The Court will issue a new version of Practice Note SC Gen 11 to accompany the amendments to the Rules commencing 1 January 2025 and reflect the significant developments in the practice of the Costs Court since 2018. The Practice Note will reflect the content in this Notice, but as an enduring document will not have the same level of commentary regarding the upcoming changes.
4. From 1 January 2025, as an outcome of a recent review of litigious costs–
  - (a) substantial amendments will be made to Order 63 (Costs) of Chapter I of the Rules of the Supreme Court in relation to legal work done on and after 1 January 2025;
  - (b) principally, there will be major changes to the scale of party/party costs;
  - (c) the new scale will be based primarily on time costing rather than item costing;
  - (d) in consequence, there will be new requirements for preparing party-party bills of costs; and
  - (e) the Costs Court will have wider powers to deal with costs disputes, including by methods other than traditional item by item taxations.

## DEFINITIONS

5. In this Notice, unless the contrary intention appears:

*Appendix A* means Appendix A to the *Rules*, as in force from 1 January 2025;

*assessment in chambers* means assessment of costs by way of estimate under or in accordance with Part 8 of Order 63 of the *Rules*;

*costs* means legal costs and includes professional fees and disbursements;

*costs assessor* means a Costs Judge, Judicial Registrar, Costs Registrar or the Prothonotary;

*entitled party* means a party entitled to be paid party/party costs in relation to a proceeding;

*law practice* has the same meaning as in the *Legal Profession Uniform Law (Victoria)* except that it does not include counsel at the Victorian Bar or at any other independent Bar;

*Legal Profession Legislation* includes the *Legal Profession Uniform Law Application Act 2014*, the *Legal Profession Uniform Law (Victoria)*, the *Legal Profession Act 2004* and the *Legal Practice Act 1996*;

*liable party* means a party liable to pay party/party costs in relation to a proceeding;

*party* has the same meaning as in Order 63 of the *Rules* (being its defined meaning as set out in r 63.01(1) of the *Rules*);

*party/party costs* means costs payable as between parties in relation to a proceeding;

*proceeding* means a proceeding in relation to which the Costs Court has jurisdiction under s 17D of the *Supreme Court Act 1986* to hear and determine the assessment, settling, taxation or review of costs;

*Rules* means either (according to the context) the *Supreme Court (General Civil Procedure) Rules 2015* as in force from time to time, or those Rules as in force from time to time after the coming into operation on 1 January 2025 of the *Supreme Court (Chapter I Costs Amendment) Rules 2024*, and includes any Rules that may be made in substitution for those Rules;

*solicitor/client costs* means costs charged to a client by a law practice for the provision of legal services;

*2024 Scale* means the Supreme Court scale of costs in Appendix A and Appendix B of the *Rules* as the *Rules* stood on 1 January 2024.

## **APPLICATION OF CIVIL PROCEDURE ACT 2010**

6. The *Civil Procedure Act 2010* ('CPA') requires courts (including the Costs Court) to give effect to the overarching purpose of facilitating the 'just, efficient, timely and cost-effective resolution of the real issues in dispute' (ss 7-8). Parties have overarching obligations to use the most efficient practices to resolve a dispute (s 22), narrow the issues in dispute (s 23), and ensure that costs are reasonable and proportionate (s 24). Procedures in the Costs Court seek to facilitate these aims.
7. Under Part 4.5 of the CPA, and under s 65C of the CPA in particular, a court (including the Costs Court) may make any order as to costs it considers appropriate to further the overarching purpose.
8. Pursuant to Chapter 5 of the CPA, a court (including the Costs Court) may refer any matter before it to appropriate dispute resolution at any stage of the matter.

## MAJOR CHANGES RELATING TO THE SUPREME COURT SCALE OF COSTS FROM 1 JANUARY 2025

9. Reflecting recommendations of the Supreme Court and County Court Review of Litigious Costs,<sup>1</sup> major changes concerning the Supreme Court scale of costs and related matters are to be introduced from 1 January 2025. To give effect to the changes, Order 63 of the *Rules* will be amended by the *Supreme Court (Chapter 1 Costs Amendment) Rules 2024*. Those amending Rules have been made by the Judges of the Supreme Court and are due to come into operation on 1 January 2025.
10. Until 1 January 2025, the scale will continue to appear in two appendices to the *Rules*, namely Appendix A (Scale of costs) and Appendix B (Witnesses' expenses and interpreters' allowances). From 1 January 2025, there will be a single new Appendix A which will cover professional costs and disbursements and will treat witnesses' expenses and interpreters' allowances as disbursements.
11. The new Appendix A is expressed to relate to party/party costs only. It will apply in respect of work done on and after 1 January 2025 in relation to matters in the Supreme Court of Victoria.
12. The new scale of costs is based principally on time costing, whereas the previous scale was based principally on items of legal work or particular legal services.
13. The new scale is divided into nine sections.
14. Section 1 reflects the largest change from the previous scale. Section 1 applies to the extent that an entitled party has been charged by a law practice on the basis of hourly rates for work done. Section 1 provides that the costs payable to the entitled party are to be allowed on the basis of reasonable hourly rates. Maximum rates apply according to the category of the legal practitioner or other person doing the work and according to the general nature of the work.
15. Section 2 sets out matters to which the Court may have regard in determining reasonableness.
16. Section 3 provides that where the entitled party has not been charged on the basis of hourly rates, a reasonable amount for doing the work is to be allowed, having regard to such of the matters listed in Section 2 as may be relevant.
17. Section 4 deals with counsel's fees. These are to be allowed in reasonable amounts up to specified maximums and remain largely unchanged. There will be common principles applicable to the assessment of the reasonableness of hourly rates as between counsel fees and law practice costs.
18. Section 5 provides that witnesses' expenses and interpreters' allowances are to be allowed at reasonable amounts as disbursements.

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<sup>1</sup> Justice Jack Forrest and Her Honour Kathryn Kings, Supreme Court of Victoria and County Court of Victoria, '[Report on Litigious Costs](#)' (3 May 2022). See also '[Review of Litigious Costs. Stage 1 Implementation](#)' (Consultation Paper, 14 December 2022) by their Honours.

19. Section 6 specifies amounts that may be recovered in respect of the costs of obtaining a company winding up order under the short form bill procedure referred to in Rule 17.7 of Chapter V of the Rules of the Supreme Court.
20. Section 7 relates to travelling expenses.
21. Section 8 makes provision for the costs of reproduction of documents.
22. Section 9 deals with disbursements generally.
23. The key guiding principle of party/party costs recovery is that the entitled party is entitled to their reasonable costs by way of an indemnity against the expense of litigation.
24. The new scale is intended to provide a simplified, cost effective, fair, transparent and reasonable scheme for party/party costs recovery in Victoria.

**Section 1 of Appendix A: where an entitled party has been charged on the basis of hourly rates**

25. Section 1.1 provides a three-tiered scale incorporating applicable *maximum* hourly rates for legal practitioners (other than counsel), depending on their years of post-admission experience.
26. Section 1.2 provides for *maximum* hourly rates for employees of a law practice (including law graduates) who are not legal practitioners and who:
  - (a) perform work requiring legal skill or knowledge (formerly known as clerks); or
  - (b) perform work not requiring legal skill or knowledge, which is capable of performance by a clerk.
27. Section 1.2(c) recognises that some law practices employ professionals such as accountants, financial advisors, information technology specialists and data and forensic analysts. If work performed by these employees was referred to external providers, the amount charged would be claimable as disbursements. To the extent that the work of such employees complements or supports the delivery of legal services in relation to a proceeding, reasonable hourly rates may be allowed, up to the maximum rate specified in section 1.2(c).
28. There are no *minimum* hourly rates for legal practitioners or employees.
29. From 1 January 2025, a bill of party-party costs under Section 1 must itemise the claim in accordance with the new provisions of rr 63.42(2) and (3) of the *Rules*. That will involve, among other things, referring to and applying the relevant hourly rates. Under r 63.42(10), matters relied on in relation to the determination of reasonableness – unless already stated in the bill pursuant to other requirements – are to be stated briefly in a separate part of the bill of costs.
30. The inclusion of maximum hourly rates in Section 1 should not be seen as an endorsement by the Court that those rates are reasonable in every case or even

in most cases. It is not an invitation for practitioners to charge their clients the maximum hourly rate and claim that rate as between parties. All claims must be reasonable.

31. Equally, claiming a full unit of six minutes where the amount charged would not be reasonable for the work done is discouraged. For example:
  - (a) claiming one full unit of charge for reading incoming correspondence of say 20 words or less may not be considered reasonable; or
  - (b) claiming two units of charge when the work done took seven minutes may not, in all the circumstances, be considered reasonable.

A person drawing a bill of costs must use their discretion to appropriately moderate claims that may not be reasonable. Whether it is the hourly rate itself or the number of units claimed, all claims must be reasonable.

32. Where party/party costs are payable on the standard basis, the onus will be on the entitled party to satisfy the Costs Court that the hourly rates claimed are reasonable.
33. Where party/party costs are payable on the indemnity basis, all costs are to be allowed except insofar as they are of an unreasonable amount or have been unreasonably incurred, and any doubt in those respects is to be resolved in favour of the party to whom costs are payable: see Rule 63.30.1. Nevertheless, in a taxation on the indemnity basis, the scale in Appendix A remains applicable. Thus all claimable costs remain subject to the reasonableness requirements and, in the case of a party who has been charged on the basis of hourly rates, to the maximums set out in Section 1 of Appendix A.
34. An entitled party who has been charged on the basis of hourly rates may claim the actual rate they have been charged, exclusive of GST, provided that:
  - (i) the hourly rate is within the maximum rates allowed in Section 1; and
  - (ii) the rates are considered by the entitled party to be 'reasonable' having regard to Section 2 of Appendix A. The entitled party must make a self-assessment of the rates claimed and certify at the end of the bill that, in their opinion, the rates are reasonable.

35. If there is an objection to an hourly rate claimed in the bill of costs, the costs assessor will determine the reasonableness of the rate and of the overall amount charged for the work done, based on the criteria in Section 2 of Appendix A.

36. The objective will be to determine whether the amount claimed relative to the work done is reasonable. For example, the costs assessor may consider whether the work done required legal skill or knowledge, or other professional skills and expertise. The same hourly rate will not necessarily be allowed for all time spent or work done by the same individual. It follows that the hourly rate allowed for a lawyer drafting a letter requiring legal skill may be higher than the hourly rate allowed for the same lawyer collating court books.

37. Where a matter proceeds to a full taxation, any general objection in relation to the hourly rates charged will be dealt with at the taxation. There will not be a separate preliminary hearing to determine the applicable hourly rates.

**Section 3 of Appendix A: where an entitled party has not been charged on the basis of hourly rates**

38. Section 3 of Appendix A relates to cases where the party entitled to costs is not charged on the basis of hourly rates. In such cases, a reasonable amount is to be allowed and the considerations of reasonableness in Section 2 of Appendix A apply.
39. A bill of costs under Section 3 must itemise the claim in accordance with rr 63.42(2) and (4) of the *Rules*. Again, under r 63.42(10), matters relied on in relation to the determination of reasonableness (but not yet stated in the bill pursuant to other requirements) are to be set out briefly in a separate part of the bill. In claims under Section 3, this will commonly require the entitled party to identify the general basis on which they have been charged, e.g. a fixed cost agreement or some other pricing model.
40. Correspondingly, the notice of objections of the liable party must not only address the itemised claims made and their reasonableness, but must address any statement made in the separate part of the bill relating to reasonableness, such as any reliance by the entitled party on a particular model of pricing.
41. Section 3 recognises that law practices are adopting innovative pricing models such as value pricing and fixed pricing, as an alternative to time-based costing. The intention of the *Rules* is not to discourage any form of pricing model, while still seeking to ensure that a liable party is able to adequately test the reasonableness of the costs claimed.
42. It is understood that some law practices may continue to charge on the 2024 Scale. For example, if after 1 January 2025 a personal injury law practice chooses to continue to charge their client on the basis of the 2024 scale, the client, as between parties, will be entitled to claim costs by reference to the 2024 scale and recover an amount that is reasonable.
43. Although it is likely that over time many law practices will adopt cost agreement structures based on Section 1 of Appendix A in order to facilitate party/party recovery based on time costing, there will be no obligation to do so, much less to re-negotiate existing arrangements. This is of particular significance if, for example, a matter is nearing completion and a change in the mode of charging would cause undue inconvenience or uncertainty. The law practice and client may choose to continue with their existing arrangement until the matter is completed. It should be noted, however, that the Court will not update the 2024 Scale.



### **Transitional cases: examples**

44. For work performed before 1 January 2025 in relation to proceedings in the Supreme Court, party/party costs will be recoverable in accordance with the scale of costs that applied at the time the work was done. For work performed after 1 January 2025, party/party costs will be recoverable on the basis of the new scale applicable from 1 January 2025.
45. The following examples demonstrate how Appendix A will operate in relation to a proceeding in the Supreme Court which was issued before 1 January 2025 but which (apart from costs) is finalised after that date. The examples differ according to the basis upon which the law practice charges their client:
  - (a) In February 2024, a party to a proceeding instructs a law practice that charges on the basis of a set hourly rate pursuant to a costs agreement. In July 2025, the matter is finalised and the party becomes an entitled party. For all work undertaken between February 2024 and 31 December 2024, the costs are assessed in accordance with the 2024 Scale. For all work undertaken on 1 January 2025 and beyond, the costs are assessed in accordance with Section 1 of Appendix A.
  - (b) In February 2024, a party to a proceeding instructs a law practice that charges on the basis of the 2024 Scale pursuant to a costs agreement. In July 2025, the matter is finalised and the party becomes an entitled party. At no time was the costs agreement amended as to the basis of charging. For all work undertaken between February 2024 and 31 December 2024 the costs are assessed in accordance with the 2024 Scale. For all work undertaken on or after 1 January 2025, party/party costs will be assessed under Section 3 of Appendix A. They will be assessed at a reasonable amount, taking into account the actual amounts charged to the entitled party under the costs agreement (see paragraph (a) of Section 2 of Appendix A) and taking into account any other relevant matters referred to in Section 2.
  - (c) In February 2024, a party to a proceeding instructs a law practice that charges on the basis of the 2024 Scale. In anticipation of the new scale of costs, the law practice and the client vary the terms of the cost agreement, and from 1 January 2025 the law practice charges on the basis of hourly rates. In July 2025, the matter is finalised and the party becomes an entitled party. The work undertaken prior to 1 January 2025 is assessed in accordance with the 2024 Scale. For all work undertaken on 1 January 2025 and beyond, the costs are assessed in accordance with Section 1 of Appendix A.

### **Applications to increase the maximums in the new scale**

46. From 1 January 2025, certain provisions of Order 63 that have authorised the allowance of amounts above scale will be revoked. However r 63.34(3), which for many years has authorised the allowance of amounts up to 30% above scale

in certain circumstances, will in substance be retained, albeit in a substituted form.

47. From 1 January 2025, r 63.34(3) will provide that the Court or the Costs Court, on special grounds arising out of the nature or importance or the difficulty or urgency of the case, may allow an increase, not exceeding 30%, of the maximums set out in Sections 1 and 4 of Appendix A, with respect to the proceeding generally or with respect to any application, step or other matter in the proceeding.
48. On the other hand, the Court has not readily increased costs above scale pursuant to r 63.34(3): see *Jenkins v GJ Coles & Co Ltd* [1993] 1 VR 155 (Hayne J); and *Lenehan v Powercor Australia Ltd* [2020] VSC 82, [74]–[75] (Nichols J). As stated by Nichols J, an increase in the costs otherwise to be allowed will not be justified on the basis that the case in question is difficult, complex, or “heavy”. A “special” factor must arise. What may constitute a special factor will vary from case to case.
49. As a general observation, if a matter goes to trial, then the trial judge, being familiar with the issues and the work required to deal with them, will usually be in the best position to determine an application to increase the maximums in the scale. However, if a matter settles before trial, the Costs Court may be in as good a position as the Court to determine such an application.
50. Any application for an increase under the substituted r 63.34(3) of the *Rules* must be foreshadowed in the Party/Party Taxation Information Form (see below).
51. Any such application is to be included, also, in the summons for taxation. It must be supported by appropriate affidavit material. The extent of the increase sought must be specified.
52. In such cases, the summons for taxation will be made returnable, in the first instance, at a directions hearing.
53. At least seven days before the directions hearing, the liable party must file a written response to the application for an increase in the maximums.

## **COMMENCEMENT AND CONDUCT OF PARTY/PARTY APPLICATIONS IN THE COSTS COURT**

54. Applications for party/party taxation in the Costs Court are commenced by summons filed with the Prothonotary: r 63.38. From 1 January 2025, the following additional requirements will apply.

### **Party/Party Taxation Information Form**

55. Before filing or serving a summons for taxation, the entitled party must email a completed Party/Party Taxation Information Form (Annexure A) to: [costs.court@supcourt.vic.gov.au](mailto:costs.court@supcourt.vic.gov.au).

56. The Form largely speaks for itself. However, the following matters, in particular, are worth noting:
- (a) An estimate must be given of the time required to tax the bill of costs. The Costs Court should be notified as soon as practicable in the event of a revised estimate and, wherever possible, revisions should be as agreed between the parties.
  - (b) Where the entitlement to costs arises from a court order in respect of which a written judgment has been published, the medium neutral citation of the judgment is to be given. If there is a written judgment but it has not been published, a copy of the judgment should be attached to the completed Form.
  - (c) Where there is no written judgment, a short summary (no more than 300 words) of the principal proceeding, with sufficient detail to enable a basic understanding of it, is to be included.
  - (d) If the entitled party proposes that on the first return of the summons for taxation there should be a directions hearing, the entitled party must give a reason or reasons (e.g. that the respondent is self-represented).
  - (e) Details are to be given of any application for an increase beyond the maximums set out in Section 1 or Section 4 of Appendix A.
  - (f) Where orders are sought by consent, signed minutes of the proposed consent orders, both in PDF form and in editable form (Rich Text or Word), are to be attached. At the same time, copies of the minutes are to be sent to the Costs Court. A return email address is also required.
57. A return date for the summons for taxation will not be allocated without a completed Party/Party Taxation Information Form.
58. Once the Form has been received and accepted, the Registry will allocate a return date for a mediation, assessment or directions hearing, and will notify the entitled party accordingly.

### **The summons for taxation**

59. The entitled party must e-file the summons for taxation together with copies of:
- (a) the completed Party/Party Taxation Information Form;
  - (b) the email from the Registry advising the return date of the summons;
  - (c) the bill of costs and counsel's invoices and/or memoranda of fees together with a certification of payment or an undertaking in accordance with r 63.43 of the *Rules*; and
  - (d) where applicable, the order for costs or the agreement pursuant to which the costs are claimed.

60. The entitled party must pay the requisite filing fee.<sup>2</sup>

### **The bill of costs**

61. From 1 January 2025, the *Rules* will prescribe new requirements for the drawing of bills of costs. While the general requirements of the current r 63.42(1) will remain, there will be new specific requirements under rr 63.42(2)–(10) of the *Rules*. These new requirements will differ according to the Section or Sections of Appendix A under which the claims in the bill of costs are made. All of these requirements will be strictly enforced.
62. Some of the new requirements for preparing bills of costs under Section 1 or Section 3 of Appendix A are mentioned under the corresponding headings above.
63. As a general principle, the bill of costs for a party-party taxation must specify in sufficient detail the work done and the amount charged for each item, so that the costs respondent can assess whether or not the charges for the work are reasonable, and can make an informed decision about the utility of challenging the bill.
64. The detail provided in the description of each item will be important to the determination of reasonableness. For example, the length of a document produced or read will inform the liable party and the costs assessor of the reasonableness of the time spent on the task. Descriptions limited to a few words such as ‘email to counsel’, ‘conference with client’ or ‘reading affidavit’ are insufficient to determine reasonableness.
65. Where a claim in a bill of costs is a ‘bundled claim’, i.e. the claim exceeds one unit and relates to more than one task performed by a legal practitioner, employee of the legal practice or counsel, the entitled party must provide sufficient information with respect to each task included in the bundled claim to enable the liable party to consider, and the costs assessor to determine, its reasonableness.
66. The content of the bill of costs is particularly important in matters assessed pursuant to Part 8 of Order 63, where the assessment is done on the papers and in the absence of the parties. Providing sufficient detail in the bill of costs justifying the claim achieves better outcomes.
67. Where an entitled party is relying on multiple bills, a schedule must be included setting out, in columns, the date of each bill, the number by which the bill is identified and the amount of professional fees and disbursements charged in each bill, with the amounts totalled at the bottom of each column.

### **Notice of objections**

68. Under existing requirements, namely under r 63.47 of the *Rules*, the liable party must file a notice of objections at least seven days prior to the return date of a summons for taxation. The notice of objections must state specifically and

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<sup>2</sup> For filing fees, see the ‘[Prothonotary’s Fees](#)’ information on the Supreme Court of Victoria website.

concisely the grounds of objection to each item. The objections to each item must provide sufficient information to enable the entitled party to understand the nature of the objection. Objections in the nature of 'excessive', 'unreasonable' and the like, or simply requesting the production of a document, do not comply with the *Rules* and will be disregarded.

69. Further, as from 1 January 2025, the notice of objections will need to address the specific matters relied on by the entitled party pursuant to the new requirements for bills of costs, including as to reasonableness.
70. The notice of objections must state the amount by which it is contended the items or the claim should be reduced, and identify any authority upon which the liable party relies in support of that contention.

### **DETERMINATION OF PARTY/PARTY COSTS DISPUTES**

71. The Costs Court utilises various procedures to deal with party/party costs disputes:
  - (a) Mediations are the most time and cost efficient means of dealing with costs disputes. They are particularly effective with respect to more complex matters with large costs claims, resulting in more efficient use of Court resources and significant cost savings to the parties.
  - (b) Assessments in chambers, pursuant to Part 8 of Order 63 of the *Rules*, are done at first instance on all claims under \$100,000. They are also done on all matters that fail to resolve at mediation, irrespective of the amount of the claim. In most cases, they are cost neutral as they are done on the material filed up to the point of assessment.
  - (c) In certain cases, the Costs Court may determine costs on a gross sum basis. From 1 January 2025, the Costs Court will have wider powers in that regard (see below).
  - (d) Taxations are the last option for dealing with costs disputes.
72. The Costs Court will continue to prioritise its procedures in this way.

### **Mediation**

73. Except where a party is self-represented, claims for costs over \$100,000 will generally be listed, in the first instance, for mediation pursuant to rr 50.07, 50.07.1, 57.07.02 and 50.07.4 of the *Rules*. The mediation will usually be fixed to take place within approximately six weeks after the filing of the summons for taxation.
74. Where the Party/Party Taxation Information Form indicates that any party will be self-represented, the matter will be listed, in the first instance, for the next available directions hearing. These are held monthly.

75. As mentioned above, a notice of objections in accordance with the *Rules* must be filed by the liable party at least seven days prior to the return date of the summons for taxation – in this case at least seven days prior to the date fixed for the mediation.
76. The costs assessor assigned to mediate the matter will convey to the parties any further requirements regarding preparation for the mediation, such as requirements to provide specified documents or information, position papers or confidential offers.
77. Mediations will be scheduled to take place via the Zoom platform. If any party wishes to have the mediation conducted other than online, they should inform the assigned costs assessor by sending an email to the Costs Court on [costs.court@supcourt.vic.gov.au](mailto:costs.court@supcourt.vic.gov.au), stating reasons for the proposed change to the mode of mediation (see *Notice to the Profession - New SCV Mediation Centre 21 April 2023*).
78. Unless parties are otherwise advised, they should assume that the mediation is listed for one day, and practitioners are expected to be available for the duration of the mediation.
79. Parties attending the mediation must have full authority to settle without the need to revert to an authorising party during the course of the mediation.
80. No later than two business days before the mediation, parties must advise the assigned costs assessor of the contact details (phone number, email address and any other necessary details) of all persons who will be attending – including solicitors, counsel, costs consultants, clients, and all persons with instructions to settle the matter. This advice must be sent to the Costs Court email address: [costs.court@supcourt.vic.gov.au](mailto:costs.court@supcourt.vic.gov.au).
81. If the matter resolves at mediation, consent orders will be made accordingly. If the matter does not resolve at mediation, it may be listed for an assessment in chambers, for taxation or for a directions hearing.

#### **Assessment in chambers**

82. Party-party claims for costs of less than \$100,000 will generally be listed directly for assessment in chambers pursuant to Part 8 of Order 63 of the *Rules*.
83. The entitled party will be given details of the assessment procedure in an assessment notice when the summons for taxation and bill of costs are filed. The entitled party must serve a copy of the assessment notice when serving the summons for taxation and bill of costs.
84. Where the Party/Party Taxation Information Form states that the liable party will be self-represented, the matter will be listed for the next available directions hearing, unless the entitled party satisfies the Costs Court that, for some special reason, the claim can nevertheless be assessed.

85. Where a claim is to be assessed in chambers, the liable party's notice of objections must be filed at least seven days prior to the date fixed for the assessment.
86. If the liable party does not file a notice of objections, the entitled party must file an affidavit of service two business days prior to the date fixed for the assessment.
87. An assessment in chambers does not require the costs assessor to make a determination on each or any individual item in the bill of costs as the assessor would in a *seriatim* taxation of costs. It requires the assessor to provide an 'estimate of the approximate total for which, if the bill were to be taxed, an order on taxation under r 63.56 would be likely to be made': see r 63.88(1).
88. If any party objects to the assessment within 21 days, the matter will be listed for taxation. Otherwise, the assessor may make an order as on taxation for the amount of the estimate: see r 63.88(4).
89. From 1 January 2025, a costs sanction may result from a failure to accept an estimate. There will be a new r 63.89.1, based on a corresponding provision of the *Federal Court Rules 2011*. Under new r 63.89.1(1), where the entitled party objects to the estimate and thus triggers a taxation, the entitled party will be required to pay the costs of the taxation unless the costs are taxed at more than 115% of the estimate. Where the liable party objects to the estimate and thus triggers the taxation, the liable party will be liable to pay the costs of the taxation unless the costs are taxed at less than 85% of the estimate. These consequences are intended to encourage parties to carefully consider whether to object to the Cost Court's estimate.
90. Parties will still be able to make a potentially useful offer of compromise as to the costs in dispute at any point in the proceeding. New r 63.89.1(2) gives the Costs Court the discretion to order that r 63.89.1(1) does not apply if a party offered to compromise the costs on terms more favourable than the costs as taxed.

### **Gross sum costs**

91. For many years, the *Rules* have provided that, where the Court orders that costs be paid to a party, the Court may order that that party will be entitled to a gross sum specified in the order instead of taxed costs, or to a sum in respect of costs to be determined in such manner as the Court directs: rr 63.07(2)(c) and (d).
92. Applications for orders under those provisions are necessarily dealt with, in the first instance, by the judicial officer conducting the principal proceeding. Where such applications have not been dismissed, the Court has adopted one or other of the following three approaches:
  - (a) the Court makes an order for gross sum costs and the Court itself quantifies the sum to be paid (see, for example, *Deutsch v Deutsch (No 3)* [2014] VSC 494).

- (b) The Court makes an order for gross sum costs but refers the quantification of the amount to the Costs Court (see, for example, *Sunland Waterfront (BVI) Ltd v Prudentia Investments Pty Ltd (No 3)* [2012] VSC 399).
  - (c) The Court refers to the Costs Court both the hearing of the application for an order for gross sum costs and any resulting process to quantify such costs (see, for example, *Wieland v Texxcon Pty Ltd; Nominexx v Wieland* [2015] VSCA 305).
93. Separately, under the (existing) *Rules*, where costs are incurred improperly or by negligence or misconduct, the Costs Court itself has had power to disallow the excessive costs and to allow only costs which were reasonable and proper, and to assess those costs at a gross sum: see r 63.71.
94. From 1 January 2025, in the absence of any order by the Court to the contrary, the Costs Court will have a new power to order that costs be determined on a gross sum basis in lieu of being taxed, and to fix the gross sum itself pursuant to its own order. New r 63.07(3) will provide:
- (3) *Unless the Court otherwise orders, the Costs Court may order a gross sum in lieu of taxed costs:*
    - (a) *on application by any party; or*
    - (b) *on its own motion.*
95. Thus, under new r 63.07(3), any party will be able to make an application to the Costs Court for an order for a gross sum in lieu of taxed costs. Alternatively, the Costs Court will be able to make such an order of its own motion.
96. It is anticipated that most applications for gross sum costs orders will be made by entitled parties rather than by liable parties; and that such applications will usually be made before the entitled party has filed any summons for taxation. In that situation, the following procedure will apply:
- (a) Before filing the (appropriate) summons, the entitled party will need to complete a Gross Sum Information Form (Annexure B) and email it to: [costs.court@supcourt.vic.gov.au](mailto:costs.court@supcourt.vic.gov.au);
  - (b) Once again, this form largely speaks for itself. However, the entitled party should also note the corresponding information set out above relating to the Party-Party Taxation Information Form (so far as applicable);
  - (c) A return date for the summons for a gross sum costs order will not be allocated without a completed Gross Sum Information Form;
  - (d) Once the Form has been received and considered, the Registry will allocate a return date for the summons and will notify the entitled party accordingly;
  - (e) The summons will need to be supported by an affidavit deposing to the matters being relied upon by the entitled party to justify proceeding by way of a gross sum determination;



- (f) A bill in taxable form will not be required when an entitled party makes an application to the Costs Court for an order for gross sum costs;
  - (g) If the liable party proposes to oppose the application, they must file an affidavit responding to the matters raised in the entitled party's summons and affidavit at least seven days before the return date for the summons.
  - (h) Unless the Costs Court otherwise orders, on the return of the summons the Costs Court will give directions in the matter, including as to:
    - (i) further affidavits;
    - (ii) written submissions;
    - (iii) a date for the hearing of the application for the order; and
    - (iv) whether, if the order is granted, the quantification of the gross sum will proceed on the same day.
97. Where an entitled party proposes to make an application for a gross sum costs order *after* having filed a summons for taxation, the entitled party must notify the Costs Court accordingly and apply for a directions hearing.
98. If, before any proceeding relating to the relevant costs is on foot in the Costs Court, a liable party proposes to apply for a gross sum costs order, the application will need to be made by filing and serving an appropriate summons, supported by affidavit material containing relevant evidence. The matter would then be listed for a directions hearing.
99. If there is already a proceeding on foot in the Costs Court relating to the relevant costs, and the liable party proposes to apply for a gross sum costs order, the liable party will not be required to file a summons but must notify the Costs Court and the entitled party of their proposal, and apply for a directions hearing.
100. Gross sum costs orders are designed to avoid the expense, delay and aggravation that can arise in large scale taxations concerning complex and sizeable claims.
101. The onus will be on the party applying to the Costs Court for an order for gross sum costs to satisfy the Costs Court that a gross sum determination is more appropriate than taxed costs. Circumstances where gross sum costs orders may be appropriate include where:
- (a) significant costs have been incurred in large scale litigation;
  - (b) the volume of material in the matter is large and complex;
  - (c) drawing a bill of costs in taxable form will cause significant expense;
  - (d) the time to tax the bill will be significant, causing undue delay; and
  - (e) the complexity of the principal proceeding creates significant complexity in relation to the taxation of the costs.

## **Taxation**

102. Taxations now constitute a very small part of the Costs Court's work. Matters will be listed for taxation following an unsuccessful mediation or where any party objects to the estimate in an assessment in chambers, or after both procedures have failed to yield a result. It will be rare that a matter is listed for taxation at first instance.
103. In preparation for the taxation, parties should therefore use their best endeavours to narrow the scope of the items in dispute in order to shorten the time required to tax the bill of costs.
104. Where a party proposes to rely upon an authority which has not been published, the party is required to provide a copy to the Costs Court and the other party.

## **SOLICITOR/CLIENT APPLICATIONS - LEGAL PROFESSION LEGISLATION MATTERS**

105. Applications to the Costs Court as between law practices and their clients under the Legal Profession Legislation are to be commenced by summons for taxation filed with the Prothonotary: rr 63.38, 63.63.

### **The summons for taxation**

106. The summons for taxation should be headed '*IN THE MATTER of ... section ...*' and refer to the relevant section of the applicable Legal Profession Legislation and must clearly identify the costs that the applicant seeks to have taxed.
107. Before filing or serving the summons for taxation, the applicant must complete the Legal Profession Legislation Taxation Information Form (Annexure C) and email it to [costs.court@supcourt.vic.gov.au](mailto:costs.court@supcourt.vic.gov.au).
108. The Costs Court will send an email to the applicant allocating a directions hearing date. This date must be entered in the summons for taxation.
109. The applicant must file the completed summons in RedCrest, together with copies of the completed Legal Profession Legislation Taxation Information Form, the email from the Costs Court and the law practice's bills/invoices. Once those documents have been accepted, sealed copies of the documents will be available for download.

### **Directions hearings**

110. All solicitor/client summonses are listed for directions hearings. Cost Court directions hearings are held on the first Tuesday of every month.
111. Where possible, minutes of proposed consent orders for directions should be exchanged between the parties and, once signed by all parties, forwarded to the Costs Court email address: [costs.court@supcourt.vic.gov.au](mailto:costs.court@supcourt.vic.gov.au).

112. Parties must advise the Costs Court of contact details (phone number, email address and any other necessary details) of one person who is fully briefed and authorised to attend.
113. At the directions hearing, the costs assessor will decide whether the matter should be set down for mediation, for an assessment in chambers or for taxation. The costs assessor will ordinarily make orders requiring the law practice to file and serve:
  - (a) in cases where only lump sum bills have been filed, or where any invoices filed lack sufficient detail to be taxed – an itemised bill of costs or itemised invoices;
  - (b) all costs agreements and costs disclosure statements given to the client upon which the law practice seeks to rely; and
  - (c) a copy of the cash account.

### **Mediation**

114. The Costs Court can order a mediation in a solicitor/client taxation at any stage of the proceeding. Mediations will ordinarily be scheduled to take place via the Zoom platform. If either party wishes to have the mediation conducted other than online, they should inform the Costs Court of that fact by sending an email to [costs.court@supcourt.vic.gov.au](mailto:costs.court@supcourt.vic.gov.au), stating reasons for the proposed change to the mode of mediation (see *Notice to the Profession - New SCV Mediation Centre 21 April 2023*).
115. No later than two business days before the mediation, the parties must advise the costs assessor assigned to mediate the matter of the contact details (phone number, email address and any other necessary details) of all persons who will be attending – including solicitors, counsel, costs consultants, clients and all persons with instructions to settle the matter. This advice must be sent to the Costs Court email address: [costs.court@supcourt.vic.gov.au](mailto:costs.court@supcourt.vic.gov.au).
116. If the matter resolves at mediation, consent orders will be made accordingly. If the mediation is unsuccessful, the matter will be set down for assessment in chambers or for a taxation hearing.

### **Assessment in chambers**

117. In an assessment in chambers in a solicitor/client matter, the costs assessor will estimate the total amount payable to the law practice ‘on the papers’ and provide a notice of estimate to the parties. The parties will be given 21 days to consider the estimate. If no objection to the notice of estimate is filed within 21 days, then, ordinarily, the cash account will be confirmed, the costs of the proceeding in the Costs Court will be determined and final orders will be made. If either party objects, the matter will be listed for taxation.

### **Taxation hearing**

118. Where a solicitor/client matter is set down for taxation, the costs assessor will ordinarily make timetabling orders and any further orders required to facilitate the taxation, for example an order for inspection of the law practice's file.
119. If the matter proceeds to taxation, the hearing will occur in person. The costs assessor will go through each item in the law practice's bill that the client disputes, hear oral argument and determine the amount payable.

### **Self-represented litigants**

120. Self-represented litigants should familiarise themselves with the procedures applicable in the Costs Court by reference to the online information brochure titled 'A Guide to Representing Yourself When Requesting an Assessment of Your Solicitor's Bill in the Costs Court'. Other resources and contact details are available on the Court's website.

### **APPLICATIONS FOR REVIEW OR RECONSIDERATION OF COSTS DETERMINATIONS**

121. Applications (under s 17H of the *Supreme Court Act 1986* and r 63.91 of the *Rules* or under s 17HA of the *Supreme Court Act 1986* and r 63.94 of the *Rules*) for the review of costs determinations, and applications (under r 63.93 or r 63.95 of the *Rules*) for reconsideration of costs determinations, will be listed for directions at 9.30am on the monthly directions day.

### **APPLICATIONS BY A LAW PRACTICE FOR COSTS PURSUANT TO s 134AB(31) OF THE ACCIDENT COMPENSATION ACT 1985 OR s 344(7) OF THE WORKPLACE INJURY REHABILITATION AND COMPENSATION ACT 2013 FOLLOWING RESOLUTION OR JUDGMENT IN A DAMAGES PROCEEDING**

122. Where a law practice is seeking costs pursuant to s 134AB(31) of the *Accident Compensation Act 1985* or s 344(7) of the *Workplace Injury Rehabilitation and Compensation Act 2013* and has complied with County Court Practice Note PNCLD 2-2016 or paragraph [13] of the Supreme Court Practice Note SC CL 3 (Personal Injuries List), as the case may be, and where the Judge of the relevant Court decides that the claim for costs is to be reviewed by the Costs Court, the following steps will apply:

- (a) The Judge makes an order:
  - (i) referring the application for costs to the Costs Court for review; and
  - (ii) requiring the law practice to file a summons for taxation seeking a review of the costs.
- (b) The law practice files the summons for taxation.

(c) A Costs Court file is created.

123. The law practice must file with the summons for taxation a copy of the referral order and copies of any affidavits filed in the County Court or the Supreme Court in accordance with County Court Practice Note PNCLD 6-2016 or paragraph [13] of the Supreme Court Practice Note SC CL 3 (Personal Injuries List), as the case may be.
124. In the first instance, the review will be dealt with by way of an assessment in chambers by a costs assessor.
125. For the purpose of the assessment, the following additional requirements will apply.

**(a) Professional fees**

The law practice must file a breakdown of the professional fees being charged, itemised with sufficient particularity to enable the costs assessor to properly assess the reasonableness of the claim. To the extent that the Supreme Court scale as in force up to 31 December 2024 applies, the items in that scale should be used as a guide for the breakdown of professional fees, including details of the documents claimed as perused, scanned, drawn and engrossed, skilled and non-skilled attendances, etc. The loading for care, skill and responsibility, the uplift fee (if claimed) and GST must be separately identified.

To the extent possible, the law practice should file an estimate of the breakdown of professional fees and disbursements recovered as between parties, including a list of disbursements which were unrecoverable from the other party.

**(b) Disbursements**

In addition to a list of disbursements (including, where possible, recovered and unrecovered disbursements), the law practice must file:

- (i) all of counsel's invoices;
- (ii) the invoices of any other law practice claimed as a disbursement (if applicable), including the charges of costs lawyers or costs consultants for preparing assessments or bills of costs for party/party and solicitor/client costs recovery.

**(c) Compliance with ss 174(1)-(2) of *Legal Profession Uniform Law ('LPUL')***

The law practice must file a brief statement (**self-assessment**) indicating whether the law practice has complied with *LPUL* ss 174(1)-(2). If the law practice assesses itself as 'compliant', it must file the information or material referred to in (d), (e) and (f) below. If the law practice assesses itself as 'non-compliant', it must file a short statement on the appropriate

basis of charge that should be applied as a result of the absence of a valid costs agreement.

**(d) Disclosure pursuant to s 177 of LPUL**

Details of disclosures made to the client before settlement was executed in accordance with *LPUL* s 177.

**(e) Compliance with s 174(3) of LPUL**

A brief statement setting out the steps the law practice took to satisfy itself that the client understood and consented to the disclosures given under *LPUL* s 174(1).

**(f) Compliance with s 175(1) of LPUL - Counsel's Fees**

Evidence that the relevant disclosures with respect to counsel's fees were made to the client in compliance with *LPUL* s 175(1).

126. Upon completion of the assessment, the Costs Court will forward a notice of estimate to the Court that made the referral and to the law practice and the client. If no objection to the estimate is filed, the referring Court will be so advised and will further consider the application and whether to make an order pursuant to s 134AB (31) of the *Accident Compensation Act 1985* or s 344(7) of the *Workplace Injury Rehabilitation and Compensation Act 2013*, as the case may be.
127. If there is an objection to the estimate, the matter will be dealt with pursuant to the Legal Profession Legislation.

**APPEARANCES BY PERSONS WITHOUT AN ENTITLEMENT TO APPEAR IN THE COSTS COURT**

128. The right to appear on behalf of another in the Supreme Court is reserved to those admitted to legal practice. Those without a right to appear must obtain the leave of the Court.
129. All persons who do not have a right to appear before the Costs Court must indicate their intention to apply for leave to appear not less than 48 hours before the commencement of any hearing in which they seek to appear.
130. This should be done by letter addressed to the costs assessor before whom the matter is listed. The letter should contain an acknowledgement that the person seeking leave to appear has read and understands their obligations under the *CPA* and the potential sanctions for breach of those obligations. The letter must be filed with the Costs Court electronically and a copy of the letter sent to the other parties in the matter.
131. Where a person seeks leave to appear before the Costs Court, the person must disclose:

- (a) whether the person is a disqualified person or has been found guilty of a relevant offence under the Legal Profession Legislation; and
  - (b) if so, whether the person has so informed the client's solicitor on the record (if any) and whether the Legal Services Board has given approval under the Legal Profession Legislation.
132. Where a legal practitioner proposes to engage a person to appear before the Costs Court, and that person requires the leave of the Court to appear, the legal practitioner must first be appropriately satisfied that the person is suitable to appear on behalf of the client. Where the costs of that appearance would not be able to be claimed on taxation (see *Mietto v G4S Custodial Services Pty Ltd* [2010] VSC 304), the legal practitioner must inform the client of that fact before engaging the person.

## POINTS OF CONTACT

133. For assessment and mediation listing, contact the Principal Registry via:
- Email:** [costs.court@supcourt.vic.gov.au](mailto:costs.court@supcourt.vic.gov.au)  
**Phone:** +61 (03) 9603 9393
134. Where a matter settles or the mediation is no longer required, the solicitor for the applicant must notify the Court immediately, via:
- Email:** [costs.court@supcourt.vic.gov.au](mailto:costs.court@supcourt.vic.gov.au)  
**Phone:** +61 (03) 9603 9324  
**Facsimile:** +61 (03) 9603 9320
135. Minutes of proposed consent orders must be sent in an editable Word document to [costs.court@supcourt.vic.gov.au](mailto:costs.court@supcourt.vic.gov.au) as soon as practicable prior to the hearing and preferably no later than 4pm the day before the hearing.
136. Following the issue of proceedings, the point of contact for all Legal Profession Legislation matters is the Associate to Judicial Registrar Conidi, via:
- Email:** [costs.court@supcourt.vic.gov.au](mailto:costs.court@supcourt.vic.gov.au)  
**Phone:** +61 (03) 8600 2469
137. No party should communicate either by email or by telephone directly with the Costs Registrars, unless otherwise advised. These communications must be to the Court, via:
- Email:** [costs.court@supcourt.vic.gov.au](mailto:costs.court@supcourt.vic.gov.au)  
**Phone:** +61 (03) 9603 9393  
**Facsimile:** +61 (03) 9603 9320

Vivienne Mahy  
Executive Associate to the Chief Justice  
25 September 2024



Annexure A

**COSTS COURT – Party Party Taxation Information Form**

<b>Hearing Return Date</b> (Court Use Only)							
<b>Proceeding number:</b>							
<b>Estimated time required for taxation hearing:</b>							
<b>Relevant order, agreement or Rule</b> Identify and summarise the court order, the agreement or the Rule that establishes the entitlement to costs.							
<b>Media neutral citation of relevant judgment or copy thereof or short summary of principal litigation</b>							
<b>Who is bringing the application?</b> Party type and name of party.							
<b>Do the claims under Appendix A arise mainly under:</b> (a) Section 1; (b) Section 3; or (c) some other (and what) Section of Appendix A?							
<b>Will an application claiming rates above the maximums in the scale be made?</b>  For the amounts in Section 1 of the Scale    YES        NO For the amounts in Section 4 of the Scale    YES        NO	<b>Details</b>						
<b>Amount of costs claimed</b> The amount of professional charges and disbursements claimed in the bill of costs	<table border="1"> <thead> <tr> <th>Professional charges</th> <th>Disbursements</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>\$</td> <td>\$</td> <td>\$</td> </tr> </tbody> </table>	Professional charges	Disbursements	Total	\$	\$	\$
Professional charges	Disbursements	Total					
\$	\$	\$					
<b>Any reason why the matter should be referred to a directions hearing – e.g. self-represented litigant as applicant or respondent.</b>							
<b>Is the matter likely to be opposed/unopposed/ex parte/by consent?</b> If by consent, attached signed minutes of consent order.							
<b>Details of respondent’s legal practitioner if known</b>							
<b>Applicant’s firm name:</b>							
<b>Practitioner with conduct:</b>							
<b>Costs lawyer or consultant who drew the bill</b>							

<b>Direct telephone number:</b>	
<b>Email address:</b>	
<b>Unavailable hearing date/s (if any):</b> List any dates within two months of the filing date that the filing party is <b>not</b> available	
<b>Date and signature</b>	

## Annexure B

### COSTS COURT – Gross Sum Information Form

<b>Directions Hearing Return Date</b> (Court Use Only)			
<b>Proceeding number:</b>			
<b>Estimated time required for application for gross sum costs order:</b>			
<b>Relevant order, agreement or Rule</b> Identify and summarise the court order, the agreement or the Rule that establishes the entitlement to costs.			
<b>Media neutral citation of relevant judgment or copy thereof or short summary of principal litigation</b>			
<b>Who is bringing the application?</b> Party type and name of party.			
<b>Amount of costs claimed</b> The amount of professional charges and disbursements claimed as a gross sum	<b>Professional charges</b> \$	<b>Disbursements</b> \$	<b>Total</b> \$
<b>Is the application for gross sum costs likely to be opposed/unopposed/ex parte/by consent?</b> If by consent, attached signed minutes of consent order			
<b>Details of respondent's legal practitioner if known</b>			
<b>Applicant's firm name:</b>			
<b>Practitioner with conduct:</b>			
<b>Costs lawyer or consultant engaged in the matter</b>			
<b>Direct telephone number:</b>			
<b>Email address:</b>			
<b>Unavailable directions hearing date/s (if any):</b> List any dates within two months of the filing date that the filing party is <b>not</b> available			
<b>Date and signature</b>			

Annexure C

**COSTS COURT – Legal Profession Legislation Taxation Information Form**

<b>Hearing Return Date</b> (Court Use Only)			
<b>Proceeding number:</b>			
<b>Estimated time required for taxation hearing:</b>			
<b>Summary of application including details of retainer</b>			
<b>Media neutral citation of relevant judgment or copy thereof or short summary of principal litigation</b>			
<b>Who is bringing the application?</b> Party type and name of party.			
<b>Amount of costs charged</b> The amount of professional charges and disbursements charged in the bill of costs	<b>Professional charges</b> \$	<b>Disbursements</b> \$	<b>Total</b> \$
<b>Is the applicant self-represented? Any other relevant matter.</b>			
<b>Is the matter likely to be opposed/unopposed/ex parte/by consent?</b> If by consent, attached signed minutes of consent order			
<b>Details of Respondent</b>			
<b>Applicant's firm name:</b>			
<b>Practitioner with conduct:</b>			
<b>Costs lawyer or consultant engaged on behalf of the applicant</b>			
<b>Direct telephone number:</b>			
<b>Email address:</b>			
<b>Unavailable mediation/hearing date/s (if any):</b> List any dates within two months of the filing date that the filing party is <b>not</b> available			
<b>Date and signature</b>			