



CHIEF JUSTICE'S CHAMBERS
SUPREME COURT
MELBOURNE 3000

23 May 2023

Ms Heather Moore
Chief Executive Officer, Legal Services Council
Commissioner for Uniform Legal Services Regulation
PO Box H326
Australia Square NSW 1215

By email

Dear Ms Moore

Consultation paper on costs disclosure thresholds

Thank you for the opportunity to contribute to the review of costs disclosure thresholds.

The consultation paper states that in assessing how the costs of providing legal services have increased, the review is considering scales of costs, among other things. The paper also states that a review of the scale of costs in the Supreme Court of Victoria between 1997 and 2022 indicates the scales have increased by around a third more than inflation.

The Court would note that caution is required when comparing figures in the scale over time and using the scale as a basis to assess increases in the costs of providing legal services. In the period referred to in the paper, the scale has undergone significant reviews, including a review by the Law Institute of Victoria in 2005-9 resulting in an overhaul of the scale in 2013, and more recently a review by the Supreme Court and County Court.

In October 2021, the Supreme Court and County Court appointed the Hon Justice Jack Forrest and her Honour Kathryn Kings (the Reviewers) to review the current method by which litigious costs (party/party costs) are assessed in Victoria. They were asked to consider whether the scale of costs should be discarded and replaced by a contemporary method of assessing costs.

During their consultations, the Reviewers were informed of a 'rule of thumb' in Victoria that the successful party would recover 40-50 per cent of their actual legal costs, and this was based on practitioners' experience of recovering costs in accordance with the scale.

The Reviewers concluded that the scale should no longer be used as the method to assess costs, including because the scale:

- a) does not reflect the charging practices of almost all law practices in every area of practice;
- b) uses outdated language; and
- c) is opaque and difficult for clients and lawyers to understand.

The review recommended reform in two stages. The first stage of reform would be to repeal the scale and establish a time-based costing regime similar to that used in New South Wales. The second stage of reform would be to introduce fixed recoverable costs for matters where costs are reasonably predictable, and a costs budgeting approach for more complex matters.

The Supreme Court and County Court endorsed the recommendations, subject to consultation occurring on implementation.

In December 2022, the Supreme Court and County Court published a consultation paper on the design and implementation of the first stage of reform. In addition to the consultation paper, the Supreme Court and County Court published a survey seeking data from practitioners on the hourly rates they charge, to inform the setting of hourly rates in a time-based costing regime.

A working group co-chaired by the Reviewers considered material received in response to the consultation paper and survey, and is preparing a proposed time-based costing regime.

It is anticipated that the proposed regime will be considered by the Supreme Court's Council of Judges in the second half of 2023. In the event that the proposed regime is approved, Rules of Court will need to be amended, requiring further approvals. If the proposed time-based costing regime and amendments to the Rules are approved within the time periods currently estimated, the new regime is expected to apply from 1 July 2024.

I trust that this information will assist the review.

Yours sincerely



ANNE FERGUSON
Chief Justice