



Deeper dive into Victoria's new Supreme Court Costs regime

New time-based costing regime for party/party costs

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Effective from 1 January 2025, the implementation of the *Supreme Court (Chapter I Costs Amendment) Rules 2024* and associated amendments to the *Supreme Court (General Civil Procedure) Rules 2015* ushers in a significant overhaul of party/party costs recovery in the Supreme Court of Victoria. While the broad shift from a traditional scale-based system to one primarily based on time costing is a fundamental change, a closer examination of the new rules reveals several nuanced and critical aspects beyond this core principle.

Navigating the new hourly rates: Maximums, loadings and reasonableness

While the new regime marks a departure from the traditional scale-based system to time-based costing, where maximum hourly rates for different levels of legal practitioner and support staff are now stipulated (\$290 to \$900 per hour),¹ the new regime includes a specific mechanism for exceeding these amounts. The Court or Costs Court has the discretion to increase these maximum rates by up to 30% where special grounds are demonstrated, as provided under r 63.34(3) of the *Supreme Court (General Civil Procedure) Rules 2015* (the Rules).²

However, these prescribed rates are maximums – not default entitlements. Most practitioners will not recover at or near the maximum unless the rate is found to be reasonable in the specific circumstances of the case. The mere fact that a rate is listed as a maximum does not render it reasonable or recoverable in all, or even most, matters. The indemnity principle must be observed, which dictates that a paying party in a party/party costs dispute cannot be made to pay more than the receiving party is legally obliged to pay their solicitor for the work performed.³ Therefore, even if the scale permits a maximum rate of \$900 per hour, a law practice cannot claim this amount in a party/party bill of costs if their actual charge to their client for that work was a lower hourly rate (for example, \$500 per hour). The total amount claimed on a party/party basis is limited by the client's actual liability to their solicitor, typically evidenced by costs agreements and tax invoices.

Further, solicitors cannot simply revise their costs agreements to reflect the maximum allowable rates and expect those amounts to be recoverable on a party/party basis. Recovery is subject to the Court's discretion, guided by factors such as those listed in s2 of App A to the Supreme Court Scale of Costs,⁴ including the complexity of the matter, specialised knowledge of the practitioner, and responsibility involved.

Flexibility for non-hourly charging firms

The Court appears to acknowledge that not all law practices charge fees on an hourly rate basis and has included a provision addressing how costs will be calculated for the purpose of costs assessment in such circumstances. Where costs are not charged hourly, a reasonable amount for the work performed must be allowed.⁵ In determining this amount, the Court or Costs Court may consider relevant factors outlined in s2 of App A. This suggests that law firms that continue

to charge fees based on the Supreme Court scale or any other method can continue doing so, with costs assessed accordingly, as long as the method of calculation of costs is fair and reasonable.

Enhanced requirements for bills of costs

The new r 63.42 introduces stricter requirements for the preparation of bills of costs, focusing on transparency and detail.⁶ Not only is every item claimed in the bill of costs required to be numbered consecutively and set out in chronological order, but for each item claimed under s1 of App A, the bill must also state the date the work was done; briefly describe the work performed; name the person who performed the work; state the time taken; identify the relevant category under s1.1 or s1.2 of App A; state the amount actually charged to the party (excluding GST); and state the amount claimed for the item.⁷ These are far more cumbersome requirements than the previous r 63.42.

A bill must include sufficient detail to enable the liable party to assess the reasonableness of charges. Generic descriptions such as 'email to counsel', 'conference with client' or 'reading affidavit' are deemed inadequate.⁸ Additionally, bundled claims (claims covering multiple tasks exceeding one unit) require detailed task-specific information to justify the charges.⁹ These detailed requirements are especially critical in cases assessed on the papers under pt 8 of O 63.

Changes to notices of objections

The preparation of objections to costs has also been redefined: previously the objecting party only needed to lay out the grounds of objections; pursuant to the new r 63.47(2)(c) and (d), notices of objections from 2025 must state the *amount* of reduction sought and cite relevant authorities in support.¹⁰

Objections with vague descriptors such as 'excessive' or 'unreasonable', or simple document production requests, will be disregarded.¹¹ These changes emphasise the need for specific and concise objections, fostering more meaningful cost assessments.

Encouragement to accept estimates

The previous r 63.85 (in force up to 31 December 2024), which prevented a party from recovering the costs of preparing a bill of costs and the costs of assessment if the bill was reduced by more than 15%, has now been abolished.¹²

Instead, a new r 63.89.1 introduces costs sanctions to discourage frivolous objections to court-issued notices of estimates.¹³

As before, party/party claims for costs under \$100,000 will generally be listed directly for assessment in chambers, pursuant to pt 8 of O 63 of the Rules. If a court's notice of estimate following assessment in chambers is not contested within 21 days of the estimate, it will be converted into an order, reflecting the amount of the estimate.¹⁴

From 1 January 2025, if a party objects to an estimate and triggers taxation, they may bear the costs of taxation unless the taxed amount varies by at least 15% from the estimate. Accordingly, if the entitled party objects to the estimate, they will be required to pay the costs of the taxation unless the costs exceed 115% of the estimate. Conversely, if the liable party objects to the estimate, they will be responsible for the costs unless the taxed costs are less than 85% of the estimate. These measures align with the Federal Court's approach and encourages acceptance of reasonable estimates.

Parties will still have the option to make an offer of compromise regarding the disputed costs at any stage of the proceeding. Under new r 63.89.1(2), the Costs Court has discretion to waive the sanctions in r 63.89.1(1) if a party made a compromise offer on terms more favourable than the taxed costs.

Introduction of gross sum costs

Under the new r 63.07(3), the Costs Court is now empowered to assess costs on a gross sum basis,¹⁵ a significant departure from previous practices where this power was solely held by the judicial officer overseeing the principal proceeding.¹⁶ This marks a shift from the former requirement for costs to be assessed on an *ad seriatim* basis.

The Costs Court may now fix a gross sum in lieu of taxed costs, either on application by a party or on its own motion. This change simplifies and expedites cost determinations, especially where detailed taxation would be disproportionate to the amounts in dispute.

Practical implications

- Preparation of bills of costs – practitioners must adopt more precise and descriptive billing practices. For

instance, specify the length of documents reviewed to justify the time claimed, and clearly identify and separate multiple tasks in bundled claims.

- Filing objections – liable parties must now provide well-supported objections, clearly quantifying reductions sought and referencing relevant case law. Generic objections will no longer suffice, increasing the burden of preparation.
- Strategic use of estimates – parties must carefully consider whether to object to a court's estimate, as an unjustified objection may result in adverse costs orders. Offers of compromise remain an important tool to resolve disputes efficiently.
- Gross sum applications – the new gross sum powers provide an alternative to lengthy taxations, particularly in straightforward or smaller claims. Practitioners should consider applying for gross sum assessments where appropriate.

Conclusion

The amendments to the Rules represent a significant shift in cost recovery practices in Victoria. The focus on time-based costing and detailed billing promotes transparency and reasonableness in party/party costs. Practitioners must adapt to these changes to ensure compliance and maximise recovery under the new regime.

Notes: **1** *Supreme Court (Chapter I Costs Amendment) Rules 2024* (Amendment), r 22, Items 1.1 and 1.2. **2** *Ibid* r 10. **3** *Gundry v Sainsbury* (1910) 1 KB 645 and *Anfrank Nominees Pty Ltd v Connell* (1991) 6 WAR 271. **4** Amendment, above note 1, r 22. **5** *Ibid*, r 22, s3. **6** *Ibid* r 13. **7** *Ibid*, Items (2) and (3). **8** *Supreme Court of Victoria, Practice Note SC Gen 11 Costs Court*, 29 November 2024 (Practice Note), [4.13]. **9** *Ibid*, [4.14]. **10** *Ibid*, [4.18]; Amendment, above note 1, r 14. **11** Practice Note, above note 8, [4.16]–[4.17]. **12** Amendment, above note 1, r 20. **13** *Ibid*, r 21. **14** *Supreme Court (General Civil Procedure) Rules 2015* (the Rules), r 63.88(1). **15** Amendment, above note 1, r 8. **16** The Rules, above note 14, r 63.07(2)(c) and (d).

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