



Taxation of Costs

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In Victoria, the process by which an independent arbiter makes a review or assessment of a Bill of Costs is referred to as Taxation. The primary function of a review is for the Taxing Master or Registrar to make a determination as to whether a cost is necessary and proper in the attainment of justice. However, additional aspects may also be taken into consideration that impact significantly on the ability of a practice to recover their costs.

Possibly the factor most likely to affect the recovery of solicitor-client costs is exposure of any deficiency in the practitioner's disclosure to their client. The effect of a failure to disclose has serious consequence for costs recovery and may significantly reduce a practice's entitlement to professional costs and disbursements.

Solicitor-Client Disputes

Applications for review may be made by a client, third party payer or a legal practice. The conditions giving rise to lodgement of and participation in a costs review are regulated under Division 7 of LPA 2004 (as Amended) ("the Act").

The party making an application must do so in accordance with the designated time following issue/receipt of a Bill of Costs and observe the formal process for the relevant jurisdiction. The Taxing Master may deal with out of time client applications unless the legal practice shows that unfair prejudice to the practice would result.

Application may be made:

- for the whole or part of a Bill of Costs;
- where legal costs have been wholly or partly paid; and
- even if any legal costs have been paid without a bill.

The law practice must participate in the review process, irrespective of which party initiates an application.

Making an application

While there are procedural variations from one jurisdiction to another, the basic process of Taxation occurs as follows:

- application/summons to the court including –
 - the Bill of Costs;
 - copy of authenticated order or signed agreement (if applicable); and
 - payment of the prescribed fee(s);
- service on the party ordered to pay costs (and other parties as prescribed by application rules) of –
 - notice of assessment/summons;
 - Bill of Costs; and
 - copy of authenticated order or signed agreement (if applicable);
- party ordered to pay costs files any formal objections to the Bill of Costs;
- mediation, negotiation and Offers of Compromise;
- Taxing Master or Registrar conducts an assessment/review of costs;
- Certificate of Taxation issued.

Under the Federal, Federal Magistrates' and High Court rules a Bill of Costs must be submitted for assessment prior to formal Taxation. The Registrar will provide an estimate as to the value allowed by the court if the bill is taxed. In the absence of objections, this estimate is deemed to be the amount for which a Certificate of Taxation is issued.

In circumstances where there are no objections to an application within the court designated timeframe, a matter may proceed to Taxation on an unopposed basis. However, in event of dispute, negotiation and

compromise alternatives should be exhausted. Rejecting a good Offer of Compromise may result in an adverse costs order, applicable from the date of offer and taxed at the higher indemnity rate.

In the Magistrates', County and Supreme Courts, matters are listed for Callover to provide parties with an opportunity to highlight any concerns and obtain orders from the Taxing Registrar. All parties should be represented to avoid an order that the matter be taxed *ex parte* or prevent the striking out of the Summons for Taxation.

On the day

In determining whether a cost was necessary and proper in the attainment of justice, the Taxing Master or Registrar must consider:ⁱ

- was it reasonable to carry out the work to which the costs relate;
- was the work carried out in a reasonable fashion;
- the fairness of the legal costs in relation to the work performed.

The Act details a number of provisions regarding what the Taxing Master might regard as fair and reasonable, including:ⁱⁱ

- compliance with the Act, regulations or professional rules;
- retainer validity and scope;
- disclosure obligations;
- the practitioner's level of diligence and accountability;
- quality of the work given the level of complexity or difficulty;
- time taken to complete the work;
- location of the practice and any cost or skill level advertised.

In examining individual costs the Taxing Master requires practitioners to attend the court with comprehensive and ordered

records. Full and complete detail of disbursements, file notes, Counsel briefs/backsheets, witness attendance and so on must be produced, as required.

At the conclusion, a Certificate of Taxation will be issued for the taxed Bill of Costs and that amount becomes a debt enforceable from the date of Taxation. The Taxing Master will also determine the cost of the review and whether the legal practice is liable to pay those costs.ⁱⁱⁱ

Taxation is one tool in a statutory framework designed to regulate the level of legal costs and shield clients from excessive charging. Subtle and constant change in the process has effectively resulted in the time consuming field of legal costing developing into a specialist practice area.



ⁱ LPA 3.4.44(1)

ⁱⁱ LPA 3.4.44(2)

ⁱⁱⁱ LPA 3.4.45