



CIVIL JUSTICE RESEARCH CENTRE
A PROJECT OF THE LAW FOUNDATION OF NEW SOUTH WALES

THE COSTS
OF
CIVIL
LITIGATION

Deborah Worthington
and Joanne Baker
DECEMBER 1993



THE COSTS OF
CIVIL LITIGATION:
Current Charging Practices

New South Wales and Victoria

Deborah Worthington

and

Joanne Baker

December 1993

CIVIL JUSTICE RESEARCH CENTRE

Charter of the Civil Justice Research Centre

The principal purpose of the Civil Justice Research Centre is to help make the processes for resolving Civil Claims in New South Wales more efficient, more cost effective, and more accessible to the public.

The Centre examines the policies that shape the civil justice system, the behaviour of the people who participate in it, the operation of its institutions, and its effects on the community's social and economic systems.

The Centre adopts an interdisciplinary approach to the study of public policy issues; widely disseminates the results of its work to Government officials, legislators and judges; the unions; the business, consumer affairs, legal and research communities; and to the general public.

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Foreword

There has been something missing from the current debate over the costs of justice in Australia. The recent Trade Practices Commission inquiry into legal services is only the latest of many inquiries and reviews into this issue. However Professor Fels and Hilmers' report clearly demonstrates that little empirical research has been conducted, despite heated arguments and much media controversy. This report represents the beginnings of a response to a serious gap in the information available to policy makers in New South Wales and Victoria, and indeed the rest of Australia.

In 1992 the Civil Justice Research Centre began an examination of a sample of civil matters heard in the District and Supreme Courts of New South Wales. At the same time the Victorian Law Reform Commission began collecting data from a similar sample in its courts. The cases were analysed for such factors as the length cases took to completion, the legal costs to both plaintiffs and defendants and the proportion of these costs to overall payouts. The findings make interesting reading, particularly where the Victorian and New South Wales findings are compared.

I commend this report to anyone who wishes to examine the costs of the legal system from an objective and empirical standpoint. The CJRC hopes to build on this work to create the body of research which is currently missing from the Australian scene.

Terence Purcell
Director
Law Foundation of New South Wales

Acknowledgments

The Law Society of New South Wales has been considering the issue of speculative fee arrangements in litigated matters for some time. During 1990 a Committee of the Society undertook a study of the subject and submitted a report to the Council of the Law Society. The Council resolved that the report be referred to the CJRC with a request that the Centre consider whether it might conduct research into the desirability and feasibility of various alternative speculative arrangements.

In researching the speculative fee issue, the CJRC considered its priority must be the provision of original information on the operation of the current legal fees system in New South Wales. Such information would allow a more informed debate and enable the profession to examine the impact of any proposed changes which may subsequently be introduced.

The interests of the CJRC coincided with work being undertaken by the Victorian Law Reform Commission (VLRC), and we saw a long term benefit in coordinating a similar research program in both States. Research initiatives were developed in consultation with the Victorian Law Reform Commission, and parallel research was undertaken with the Victorian legal profession.

The full support of the Law Society of New South Wales was provided to the CJRC in undertaking this research, and in particular we would like to mention the valuable input which was received from Mr Robert Clifton-Steele.

The CJRC consulted closely with members of the legal profession in designing the research and their generously contributed advice has been vital to the project. Most importantly we express our appreciation to the law firms in New South Wales and Victoria who undertook the time-consuming task of completing the questionnaires for their support, cooperation and effort.

The issues addressed in this research were formulated by the interim steering committee of the CJRC consisting of Dr Terence Beed (Terence Beed & Associates), Dr Peter Cashman (Cashman & Partners), Terence Purcell (Director, Law Foundation), and Peter Truda (KPMG Peat Marwick), in close consultation with Ted Wright (Commissioner, VLRC) and John Schwarzkoff (MSJ Keys Young).

MSJ Keys Young Planners Pty Limited were engaged to conduct the pilot study and oversee the conduct of the data collection. Statistical advice was provided by Dr Peter Phibbs of the University of Sydney.

The CJRC would also like to acknowledge the support and contribution of Ms Helen McKelvie (Research Officer, VLRC) and Ms Cathy Hancock (Secretary, VLRC) for coordinating the project in Victoria.

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PART A

Introduction

1.0 Background

The problem of providing affordable justice to the community is a serious one. There have been a number of recent national inquiries into the costs of justice, and the Law Society of New South Wales has conducted an examination of the costs of litigation, to consider in particular the introduction of a speculative fee arrangement.

As with many longstanding issues, little hard evidence is available to those involved in discussing them. In this case in particular facts are hard to gather as most litigation costs and compensation payments are private expenditures which are not reported publicly. It is not known, for example, how much litigants are currently charged, how litigants' costs compare with the amounts they recover, and the types of fee arrangements which currently exist between lawyers and their clients.

Following a request by the Law Society to conduct research on current costs and fee arrangements, the CJRC made provision in its research agenda for an examination of the costs of civil litigation. As the interests of the CJRC coincided with work being undertaken by the Victorian Law Reform Commission (VLRC) a parallel research program was undertaken in both New South Wales and Victoria.

In conducting this research, the CJRC did not intend to pass judgement on whether the costs of civil litigation are too high or too low, or to make policy recommendations for reforming the civil justice system. The research was conducted to assist those currently examining the costs of litigation, and to provide a baseline against which the impact of any future reforms may be measured.

2.0 Research Approach

This study focuses on a sample of finalised civil matters which were conducted in either New South Wales (District Court or Supreme Court) or Victoria (County Court or Supreme Court). A two-stage sampling approach was adopted. The first stage involved the selection of a sample of law firms, the second a sample of matters conducted by those firms.

The same procedures were adopted in New South Wales and Victoria. The sample of law firms was based on those which had a major role in conducting litigation before the selected courts in each state.

In New South Wales, law firms were identified for the sample on the basis of information provided by the courts. The Supreme Court provided a list of firms representing parties in 1500 matters listed for "special sittings" held during 1992 in the Common Law Division. A selection of the 25 firms most frequently appearing for plaintiffs, and the 25 firms most frequently appearing for defendants was made. The District Court provided details of firms currently listed as using the court, together with "year to date" statistics. Fifty firms were selected, 25 identified as acting for plaintiffs, 25 as acting for defendants.

The CJRC wrote to each of the 100 firms selected, explaining the nature and purpose of the study. Firms which agreed to participate were then asked to identify and provide information on the 20 matters most recently completed and final billed by that firm.¹

As in New South Wales, law firms in Victoria were identified for the sample on the basis of court lists provided by the County Court and the Supreme Court. The VLRC wrote to each of the 100 firms selected, explaining the nature and purpose of the study. Firms which agreed to participate were then asked to identify and provide information on the 20 matters most recently completed and final billed by that firm.

The firms in both states were asked to include only those matters in which they had represented a plaintiff or defendant from initial instructions to the conclusion of the matter; where the principal claim was for money; where a defence was filed; where the proceeding was not transferred from one court to another; and where the matter was not the subject of an arbitration. If an appeal was involved, the information provided was required to relate only to the proceedings at first instance.

3.0 The Questionnaires

Three questionnaires were provided to the participating firms. The format of the questionnaires was the same in both states (see Appendix). The first related to characteristics of the firm, and only needed to be filled out once for each firm. This sought information on the size of the firm, and whether the firm kept records of the actual time spent by employees working on particular client matters.

The second questionnaire related to the individual matters included in the survey. Information was sought which described the type of claim, the nature of the charging arrangement used, and direct expenditures of time and money. Finally, it was requested that the third questionnaire be sent to the firm representing the opposing party so that further information on costs could be obtained.

4.0 Organisation of this Report

The results from the New South Wales and Victorian surveys are presented separately in Part B and Part C of this report. For each state, some descriptive information on the sample of cases is provided together with details of the participating firms. The analysis of the questionnaire data is then reported, this focuses on:

- the types of fee arrangements which currently exist between lawyers and their clients;
- how solicitors calculate their fees;
- the amounts charged to litigants in fees and disbursements;
- how party-party costs compare with solicitor-client costs;
- the hours input by firms in conducting civil matters;
- the relationship between the stage of disposal and legal costs;
- the relationship between the duration of cases and legal costs;
- amounts recovered by plaintiffs;
- a comparison of legal costs and amounts recovered; and
- a comparison of the legal costs incurred by opposing sides in the same matter.

In Part D a comparison is made between New South Wales and Victoria on charging practices in civil litigation, drawing out similarities and differences that emerged between the two states in this study.

¹ Seven firms were identified as having a major role in both the District Court and the Supreme Court. These firms were asked to provide information on 20 matters in the District Court and 20 matters in the Supreme Court.

PART B

New South Wales Results

1.0 The Respondents

1.1 Characteristics of the Participating Firms

Completed forms were received from 26 of the 100 firms invited to participate in this study and information was provided on a total of 259 matters.² Table B.1.1 illustrates the source of the matters in the survey: either the District Court or the Supreme Court; the size of the relevant firm; and the number of matters for which information was provided by each firm.

As already mentioned, the sampling approach was to select firms having a major role in either the District Court or the Supreme Court. This is reflected in the significant number of "large" firms in the sample. Large firms were defined as having more than 15 principals or employees holding a practising certificate. Eight large firms provided information on District Court matters, six large firms provided information on Supreme Court matters.

Although details of 259 matters were provided to the CJRC, the information was not always complete in each case. For example, in a number of matters, the terms of a settlement were not disclosed. For this reason, the "total" figures in the tables provided do not always relate to the full sample of matters, but indicate the number of matters in which the relevant information was provided.

Table B.1.1. Source of the matters in the survey in New South Wales: size of firms and number of matters provided

District Court:		Supreme Court:	
Size of firm*	No. of matters provided	Size of firm*	No. of matters provided
Small:	9	Small:	7
Medium:	20		5
	10	Medium:	12
	7		6
	6	Large:	20
	2		20
	2		8
Large:	20		6
	20		5
	20		2
	14		
	13		
	10		
	7		
	6		
	2		
Total matters	168	Total matters	91

Source: CJRC survey.

*Small firm: 1-5 principals or employees with practising certificates.

Medium firm: 6-15 principals or employees with practising certificates.

Large firm: more than 15 principals or employees with practising certificates.

1.2 Characteristics of the Matters

1.2.1 Type, Party, Court

Of the full sample of 259 matters, 192 involved a claim for damages following personal injury. The remaining 67 matters involved claims for economic loss, professional indemnity, or defamation. Most of the matters were commenced in the District Court (168 matters) compared with the Supreme Court (91 matters), see Table B.1.2. There was a fairly even distribution of matters in which the firm represented a plaintiff (138 matters) and in which the firm represented a defendant (121 matters), see Table B.1.3.

Information on the opposing side's costs was obtained in only 22 matters. These are considered on a comparative basis in Section B.6.0.

Table B.1.2. Type of matter in New South Wales

Type of matter	District Court		Supreme Court	
	n	%	n	%
Personal injury	126	75	66	73
Other	42	25	25	27
All cases	168	100	91	100

Source: CJRC survey.

Table B.1.3. Party represented by type of matter in New South Wales

Type of matter	Plaintiff		Defendant	
	n	%	n	%
District Court:				
Personal injury	81	79	45	69
Other	22	21	20	21
Total	103	100	65	100
Supreme Court:				
Personal injury	25	71	41	73
Other	10	29	15	27
Total	35	100	56	100
All cases	138	100	121	100

Source: CJRC survey.

1.2.2 Stage of Disposal

In both the District Court and the Supreme Court, most matters settled prior to verdict: 79% in the District Court and 90% in the Supreme Court. A number of matters reached settlements either on the trial date, or after the trial had commenced: 19% in the District Court, 26% in the Supreme Court (Table B.1.4).

Two recent studies in the County Court, Victoria, and the District Court, Queensland found that the stage of disposal was a statistically significant determinant of firm costs and disbursements.⁸ This current report will consider the relationship between costs and the stage of disposal in Section B.3.0.

Table B.1.4. Stage of disposal in New South Wales

Stage of disposal	District Court		Supreme Court	
	n	%	n	%
Settled before day of hearing	100	60	58	64
Settled on or after day of hearing	31	19	23	26
Verdict	35	21	9	10
All cases	166	100	90	100

Source: CJRC survey. Based on 256 matters in which information on the stage of disposal was provided.

1.2.3 Date of Completion and Duration of Matters

Firms were asked to identify matters which were recently finalised. Most of the 259 selected matters were finalised in 1990, 1991 or 1992. Five matters were completed in 1989, two in 1988.

In the District Court, the median duration from the commencement of proceedings to disposal was 43 months, and in the Supreme Court the median duration was 38 months (Table B.1.5).⁴ In both courts, the median duration of personal injury matters was considerably longer than for "other" matters.

Table B.1.5. Duration: commencement of proceedings to disposal in New South Wales

Type of matter	Number of matters with data	Median months
District Court:		
Personal injury	113	48
Other	37	30
Total	150	43
Supreme Court:		
Personal injury	64	41
Other	23	28
Total	87	38
All cases	237	43

Source: CJRC survey. Based on 237 matters in which both the date of commencement and disposal were provided.

2.0 Fee Charging Arrangements

Little hard data has in the past been available on the way in which the private legal profession charges its fees. The CJRC survey sought to shed light on this issue by asking lawyers to describe how they calculated their fees, whether the fee arrangement was agreed at an early stage of the proceedings, and whether interim accounts were issued.

This section will focus on the charging practices of lawyers, rather than the dollar values charged. The latter will be discussed in B.3.0.

2.1 Fee Arrangement Agreed at an Early Stage

Solicitors were asked whether the basis on which their fees would be charged was agreed at an early stage of the proceedings. Most often this was the case, however in 38% of matters it was reported that a charging arrangement was not agreed at an early stage. This proportion did not differ significantly when considering plaintiff and defendant matters separately, or when comparing District Court and Supreme Court matters.

A fee arrangement was more often agreed at an early stage in personal injury litigation (68%) than in "other" litigation (46%). In small firms the fee arrangement was agreed at an early stage in 76% of the matters; the corresponding figures were 67% in medium firms and 59% in large firms.⁵

2.2 Interim Accounts

Interim accounts for solicitors' fees were issued in 45% of the matters. Defendants were more often issued with interim accounts (77%) than plaintiffs (17%).

District Court matters were less likely to involve interim accounts for solicitors' fees (39%) than Supreme Court matters (57%). Personal injury litigants were also less likely to receive interim accounts for solicitors' fees than litigants in "other" matters. Normally, where interim accounts for solicitors' fees were issued, interim accounts for disbursements were also issued.

2.3 Calculation of Fees

In a paper on Lawyers' Fees prepared for the Senate Standing Committee on Legal and Constitutional Affairs, it is reported that "scales determine the billing of many lawyers".⁶ However, there is little hard data on what proportion of legal work is

billed on what basis. Table B.2.1 illustrates how solicitors' fees were calculated in 252 of the matters included in this study.

Table B.2.1. Calculation of solicitors' fees in New South Wales

Method of fee calculation	n	%
Mainly by calculation of time spent	163	64.7
Mainly by calculation of time spent and:		
Court scale	9	3.6
A reasonable amount having regard to the result	25	9.9
A subjective assessment of the value of the work done	12	4.7
Mainly by court scale	10	4.0
A reasonable amount having regard to the result	9	3.6
Mainly by a subjective assessment of the value of the work done	13	5.1
Other:		
Costs reduced to assist in reaching a settlement	2	0.8
Agreed scale with client	4	1.6
All of the above	5	2.0
Total	252	100.0

Source: CJRC survey. Based on 252 matters in which information on the calculation of the fees was provided.

Firms were asked to indicate which one of the following best described the way the firms' professional fees were calculated:

- mainly by calculation of the time spent;
- mainly by court scale;
- a reasonable amount having regard to the result;
- mainly by a subjective assessment of the value of the work done; or
- by some "other" method.

The questionnaire had sought the single answer which best described the situation, and in 206 matters respondents nominated one of these methods. In the remaining matters, firms responded by nominating more than one of the suggested methods.

In 163 matters (64.7%) the fee was calculated mainly *on the basis of time spent* on a matter; in a further 46 (18.2%) the fee was calculated mainly on the basis of time spent in conjunction with some other method.

Only in 10 matters (4%) was the fee calculated mainly *on the basis of a court scale*. Although two of these were matters which had gone to verdict, the remainder were settled matters, indicating that matters calculated on this basis may not just be those which have been taxed.⁷

In 13 matters (5.1%) the fee was calculated on the basis of *a subjective assessment of the value of the work done*, and in nine (3.6%) it was regarded as *a reasonable amount having regard to the result*. Where firms indicated that some *other* method was used, this was done either on the basis of *a scale agreed with the client* (four matters); because the costs were reduced in order to assist in reaching a settlement (two matters); or on the basis of all the five methods listed (five matters).

2.4 Speculative Arrangements

Where solicitors responding to the survey indicated that the basis on which the fee would be charged was agreed at an early stage, they were then asked whether the fee was to be payable in any event, or only if the client succeeded, that is, a speculative arrangement.

In seven of the 259 matters it was stated that there was to be no payment of solicitors' fees if the client did not win. Six of these seven matters involved one firm, and they were all District Court motor vehicle injury matters.

It will be recalled that firms were requested to send a questionnaire to the firm representing the opposing party (see A.2.0 Research Approach). Information was provided on the costs and disbursements incurred by the opposing party in only 22 matters. From this further information, five more speculative arrangements were identified. These arrangements all concerned different firms, two involved motor vehicle injuries and three, other personal injuries.

3.0 Solicitors' Fees and Disbursements

This section provides descriptive information on solicitors' fees and disbursements incurred in the matters in the survey.⁸ The next section will consider the amount recovered by plaintiffs, or conversely, paid out by defendants.

3.1 Solicitors' Fees

Information on solicitors' fees was provided in 258 matters. In 138 matters these were the fees incurred by the plaintiff, in 120 matters they were incurred by the defendant.

Plaintiffs were charged amounts for solicitors' fees which ranged from \$781 to \$160,300; *defendants* were charged amounts which ranged from \$450 to \$110,862. Figures B.1 and B.2 illustrate the distribution of the fees paid by plaintiffs and defendants respectively.

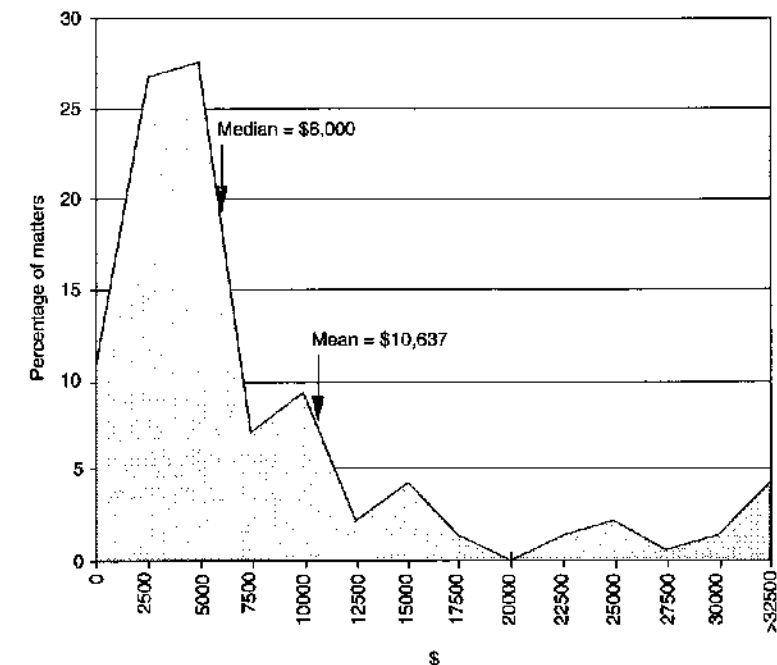
The median fee paid in all the *plaintiff* matters was \$6,000. In personal injury litigation, the median for plaintiffs was \$5,500 in the District Court and \$11,650 in the Supreme Court. In "other" litigation, the median was \$3,138 and \$20,185 in the District Court and the Supreme Court respectively (Table B.3.1).

In the *defendant* matters the median fee was \$7,493. In personal injury litigation the median in the District Court was \$5,695; in the Supreme Court the median was \$8,066. In "other" litigation the median was \$7,487 in the District Court and in the Supreme Court it was \$25,000.

The coefficient of variation, as reported in Table B.3.1, indicates that there was less variability in the fees charged in personal injury litigation than in "other" litigation.⁹ Fees charged in District Court matters were less variable than those charged in Supreme Court matters.

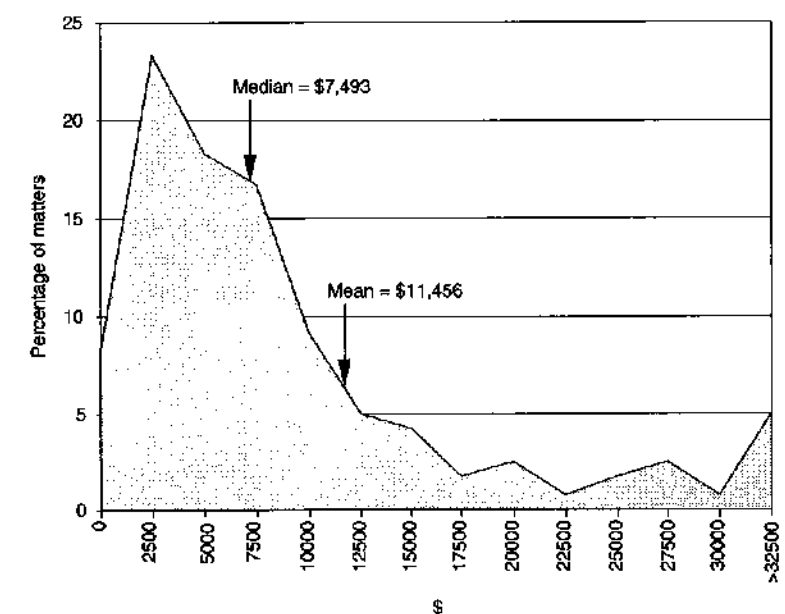
The high figures reported in the Supreme Court "other" litigation category reflect the fact that there are a number of very large matters in this grouping. The small number of matters in this category and the large range of values (\$6,000 to \$160,000 for plaintiffs; \$3,935 to \$110,862 for defendants) require that the measures of central tendency (i.e. the median) be treated cautiously.

Figure B.1. Plaintiffs' solicitors' fees in New South Wales



Source: CJRC survey. Based on 138 matters in which information on solicitors' fees was provided by the plaintiff.

Figure B.2. Defendants' solicitors' fees in New South Wales



Source: CJRC survey. Based on 120 matters in which information on solicitors' fees was provided by the defendant.

Table B.3.1. Solicitors' fees in New South Wales

Plaintiff	n	Median \$	Mean \$	Coefficient of variation %
District Court:				
Personal injury	81	5,500	6,195	64
Other	22	3,138	4,466	97
Total	103	5,177	5,826	70
Supreme Court:				
Personal injury	25	11,650	16,295	79
Other	10	20,185	46,058	125
Total	35	16,000	24,798	139
All cases	138	6,000	10,638	182
Defendant	n	Median \$	Mean \$	Coefficient of variation %
District Court:				
Personal injury	45	5,695	6,374	65
Other	19	7,487	9,224	74
Total	64	6,100	7,220	72
Supreme Court:				
Personal injury	41	8,066	10,029	75
Other	15	25,000	33,431	92
Total	56	9,029	16,297	122
All cases	120	7,493	11,456	128

Source: CJRC survey. Based on 258 matters in which information on the calculation of solicitors' fees was provided.

Comparisons between types of matters should also be treated cautiously as the matters in each category may be quite varied. The fees charged to plaintiffs and defendants, for example, do not relate to a matched set of matters. The median provides only a measure of the central figure in each group.

Section B.6.0 provides a comparison of the fees and disbursements charged to plaintiffs and defendants in the same matter. These were the 22 matters in which details of costs were available for both parties.

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3.2 Disbursements

During the conduct of a case a number of expenses or disbursements may be incurred by a solicitor, for example, fees for Counsel and expert witnesses, court filing fees or the cost of medical reports. These are then billed to the client. Information on the disbursements billed to clients was obtained in 244 matters.

In the 129 plaintiff matters where details of disbursements were provided, a total of \$956,664 was spent on disbursements. In the 115 defendant matters a total of \$477,135 was spent on disbursements.

Figures B.3 and B.4 illustrate the distribution of the disbursements incurred by plaintiffs and defendants. The median amount billed in plaintiff matters was \$2,702; in defendant matters it was \$1,258 (Table B.3.2).

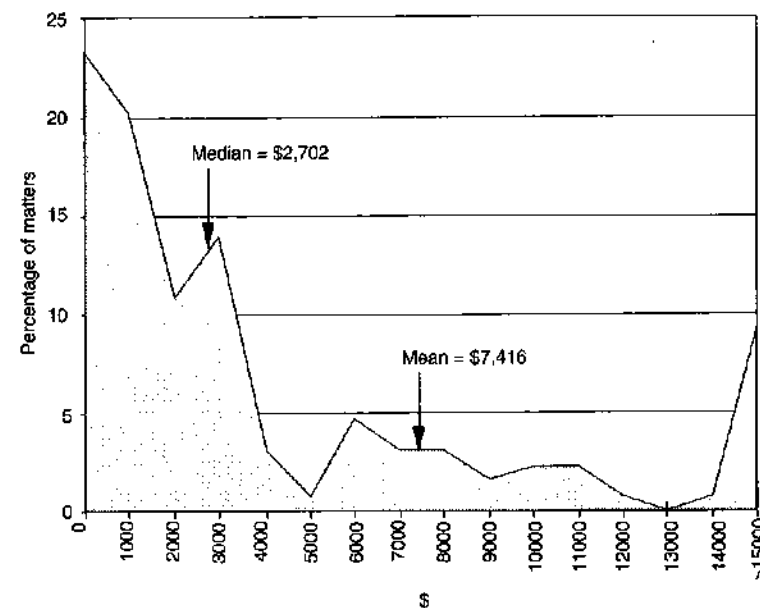
Table B.3.3 provides a detailed breakdown of the actual disbursements incurred by plaintiffs and defendants.

Counsel was used in 94 of the 129 *plaintiff* matters in which details of disbursements were provided. Fees for Counsel ranged from \$120 to \$55,710 per matter, and the median amount per matter, where Counsel was used, was \$2,188. *Defendants* used Counsel in 49 out of 115 matters, and fees in those cases ranged from \$330 to \$49,195, the median fee being \$1,850.

Disbursements for expert witnesses were made in 33 out of 129 *plaintiff* matters and the costs per matter ranged from \$139 to \$117,694. The median, where expert witnesses were used, was \$1,415. In *defendant* matters, 48 out of 115 matters incurred disbursements for expert witnesses, these ranged from \$160 to \$3,340 per matter. The median for expert witnesses in defendant matters was \$750.

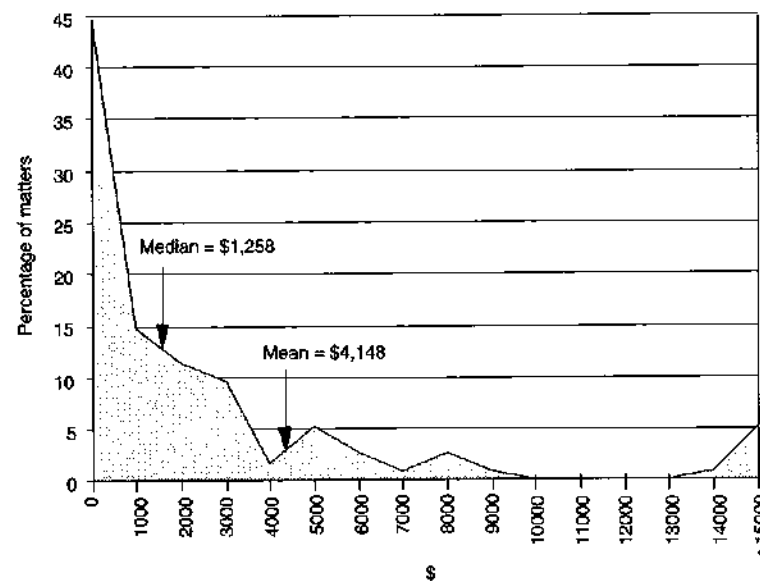
Disbursements for expenses other than for Counsel or expert witnesses were incurred in all but two of the matters. The median for these other disbursements was \$1,090 in plaintiff matters, \$582 in defendant matters.

Figure B.3. Plaintiffs' disbursements in New South Wales



Source: CJRC survey. Based on 129 matters in which information on disbursements was provided by the plaintiff.

Figure B.4. Defendants' disbursements in New South Wales



Source: CJRC survey. Based on 115 matters in which information on disbursements was provided by the defendant.

Table B.3.2. Disbursements in New South Wales

Plaintiff	n	Median \$	Mean \$	Coefficient of variation %
District Court:				
Personal injury	72	2,025	2,853	92
Other	22	1,300	2,760	172
Total	94	1,855	2,831	114
Supreme Court:				
Personal injury	25	10,044	15,205	94
Other	10	3,928	31,047	177
Total	35	9,302	19,731	160
All cases	129	2,702	7,416	245

Defendant	n	Median \$	Mean \$	Coefficient of variation %
District Court:				
Personal injury	43	900	1,643	111
Other	18	607	1,406	130
Total	61	732	1,574	115
Supreme Court:				
Personal injury	39	2,100	3,171	153
Other	15	7,882	17,161	125
Total	54	2,180	7,058	189
All cases	115	1,258	4,149	231

Source: CJRC survey. Based on 258 matters in which information on the calculation of solicitors' fees was provided.

Table B.3.3. Details of disbursements in New South Wales

Plaintiff	Number of matters where relevant	Median \$	Mean \$
Fees for counsel:			
Relevant in 94 out of 129 matters (73%)			
Costs per matter ranged from \$120 to \$55,710			
Costs per matter where relevant	94	2,188	4,997
Disbursements for expert witnesses:			
Relevant in 33 out of 129 matters (26%)			
Costs per matter ranged from \$139 to \$117,694			
Costs per matter where relevant	33	1,415	5,684
Disbursements (other out of pocket expenses):			
Relevant in 127 out of 129 matters (98%)			
Costs per matter ranged from \$36 to \$34,062			
Costs per matter where relevant	127	1,090	2,376
Defendant	Number of matters where relevant	Median \$	Mean \$
Fees for counsel:			
Relevant in 49 out of 115 matters (43%)			
Costs per matter ranged from \$330 to \$49,195			
Costs per matter where relevant	49	1,850	6,697
Disbursements for expert witnesses:			
Relevant in 48 out of 115 matters (42%)			
Costs per matter ranged from \$160 to \$3,340			
Costs per matter where relevant	48	750	1,027
Disbursements (other out of pocket expenses):			
Relevant in 115 out of 115 matters (100%)			
Costs per matter ranged from \$2 to \$21,338			
Costs per matter where relevant	115	582	1,245

Source: CJRC survey. Based on 244 matters in which information on disbursements was provided.

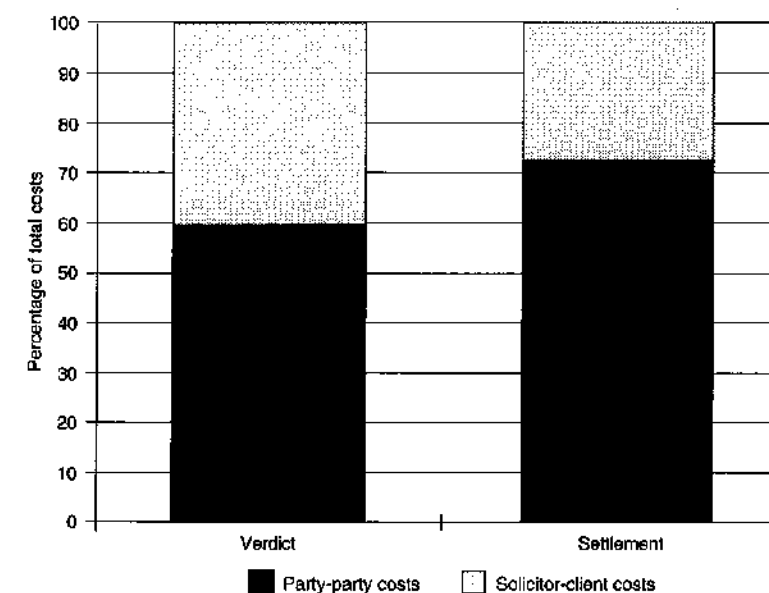
3.3 Party-Party Costs and Solicitor-Client Costs

The litigant's total legal costs are the fees and disbursements charged by the solicitor (as outlined in 3.1 and 3.2). The successful litigant is partially indemnified for costs calculated on a court scale, and these are known as party-party costs. Party-party costs are invariably lower than the total costs because the court will not allow all the costs incurred by the successful party to be recovered.¹⁰ The difference between the total costs and the costs which the successful party can recover according to the court scale are known as the solicitor-client costs. These solicitor-client costs are those that the successful party is left to bear.

Details of party-party costs were provided in 70 of the matters in this survey; 22 of these matters had gone to verdict and 48 had reached settlements. Amounts for party-party costs are not usually specified when matters settle as agreements are reached which are "inclusive of costs".

Based on the ratio between the two costs values on a per matter basis, party-party costs were a median of 65% of total costs. In the matters which had gone to verdict, party-party costs were a median of 59% of total costs; they were a median of 72% of total costs when matters settled.

Figure B.5. Party-party costs and solicitor-client costs in New South Wales



Source: CJRC survey. Based on 70 matters in which information on party-party costs and solicitor-client costs were provided.

It can be seen that successful clients had to bear a median of 35% of the total legal costs in all matters, 41% of total costs for matters reaching verdict and 28% of total costs for matters reaching settlement.

3.4 Firm Input and Cost per Hour

The number of hours input by firms ranged from 2 hours to 517 hours. The median amount of time spent by a firm on behalf of a plaintiff was 39 hours, the median on behalf of a defendant was 37 hours.

An estimate of the hourly rate charged for the work of the firm was calculated by dividing the firm's fees by the number of hours worked by the firm. The median charge per hour for all matters was \$184. The median charged to defendants was \$209 per hour, the median charged to plaintiffs was \$155 per hour.

Fees in Supreme Court matters were a median of \$215 per hour; in the District Court they were a median of \$164 per hour.

3.5 The Relationship Between Legal Costs and the Stage of Disposal, and the Duration of Matters

Two recent studies in the County Court, Victoria, and the District Court, Queensland, found that the stage of disposal was a statistically significant determinant of firm costs and disbursements.¹¹ In the CJRC data, a similar trend emerges: matters which settle before the day of hearing incur lower solicitors' fees and disbursements than those which settle on or after the day of hearing, or go to verdict.

In matters which settled before the day of hearing the median solicitors' fee charged to *plaintiffs* was \$4,950. The median charge where matters settled on or after the day of hearing was \$7,500, and where matters went to a verdict it was \$6,500 (Table B.3.4).

Defendants' fees were also lower when matters settled before the day of hearing, as were the disbursements of both plaintiffs and defendants.

**Table B.3.4. Solicitors' fees and disbursements by stage of disposal
In New South Wales**

Plaintiff					Coefficient of variation
Stage of disposal	n	Median \$	Mean \$		%
Solicitors' fees:					
Settled before day of hearing	77	4,950	6,778		93
Settled on or after day of hearing	31	7,500	21,665		172
Verdict	30	6,500	9,149		88
Disbursements:					
Settled before day of hearing	76	1,495	3,370		176
Settled on or after day of hearing	26	4,098	19,543		184
Verdict	27	4,259	7,131		121

Defendant					Coefficient of variation
Stage of disposal	n	Median \$	Mean \$		%
Solicitors' fees:					
Settled before day of hearing	82	6,265	9,432		131
Settled on or after day of hearing	23	9,025	16,264		133
Verdict	14	11,765	15,695		79
Disbursements:					
Settled before day of hearing	79	625	2,708		318
Settled on or after day of hearing	21	3,302	7,484		170
Verdict	14	5,500	7,455		116

Source: CJRC survey. Based on 257 matters in which information was provided on the stage of disposal and solicitors' fees and 243 matters in which information was provided on disbursements and stage of disposal.

In contrast to the relationship between legal costs and the stage of disposal, there was no statistical relationship between the duration of matters in the survey and the legal costs incurred.¹² That is, the mere passing of time ("*delay*") did not appear to have raised either the fees charged by firms or the disbursements incurred.

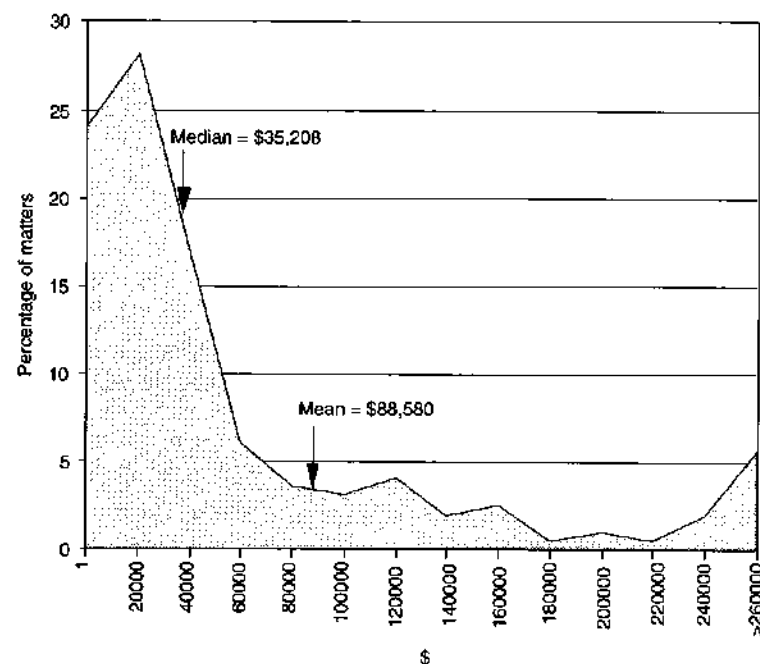
4.0 The Amount Recovered by the Plaintiff

A successful plaintiff may not only obtain compensation for the damage which led to the claim, but may also obtain an amount for costs. This section will consider the *gross amount recovered* by plaintiffs in the matters included in this study.

The gross amount recovered consists of the total amount that the plaintiff obtains from the defendant, including any amount for party-party costs. Where a successful counter-claim may have been lodged against the plaintiff, the value of that counter-claim has been deducted from the total amount which would otherwise have been paid by the defendant.

Information which allowed the calculation of the gross amount recovered by the plaintiff was provided in 213 matters. In 12 of these 213 matters the plaintiff recovered nothing from the defendant, and in 5 matters the plaintiff had to make a payment to the defendant such that the *gross amount recovered* by the plaintiff was actually a negative amount. The distribution of the gross amount recovered in the remaining 196 matters is illustrated in Figure B.6.

Figure B.6. Gross amount recovered by the plaintiff in New South Wales



Source: CJRC survey. Based on 196 matters in which information appropriate to the calculation of the gross amount recovered by the plaintiff was provided, and in which the plaintiff recovered a positive amount.

Table B.4.1 deals with the 196 matters in which the plaintiff was successful in obtaining a positive gross amount. In personal injury litigation, the median gross amount recovered in the District Court was \$27,500, in the Supreme Court it was \$107,500. In "other" litigation, plaintiffs recovered a median of \$26,280 and \$163,502 in the District Court and the Supreme Court respectively.

Taking all the 196 matters together, the median gross amount recovered by plaintiffs was \$35,208.

Table B.4.1. Gross amount recovered by the plaintiff in New South Wales

Type of matter	Number of matters with data	Median \$	Mean \$	Coefficient of variation %
District Court:				
Personal injury	109	27,500	37,954	88
Other	26	26,280	28,061	80
Total	135	27,500	36,049	88
Supreme Court:				
Personal injury	44	107,500	155,723	120
Other	17	163,502	331,966	110
Total	61	120,000	204,839	126
All cases	196	35,208	88,580	187

Source: CJRC survey. Based on 196 matters in which the plaintiff was successful in recovering a positive amount.

5.0 Solicitors' Fees and Disbursements Compared with the Gross Amount Recovered by Plaintiffs

In the preceding sections, details of the legal costs incurred by plaintiffs and defendants have been provided, as have details of the *gross amount recovered* by plaintiffs.¹³ In this section, the costs incurred by plaintiffs and defendants are compared with the amounts which were either recovered by plaintiffs or, conversely, paid out by defendants. This information is based on only the 183 matters in which a positive gross amount was recovered by the plaintiff, and in which details of both solicitors' fees and disbursements were provided. There were 108 plaintiff matters and 75 defendant matters in this total of 183.

5.1 Costs Compared with the Gross Amount Recovered

Table B.5.1 breaks down the gross amount recovered by the plaintiff into five categories. District Court and Supreme Court matters are considered separately. It can be seen that the median legal costs (solicitors' fees and disbursements) of both plaintiffs and defendants generally increased with the amounts recovered by plaintiffs.¹⁴

In the *Supreme Court*, plaintiffs' legal costs rose from a median of \$5,083 when the amount recovered by the plaintiff was less than \$20,000, to \$59,624 when the amount recovered was greater than \$200,000. Defendants' legal costs rose from a median of \$8,752 when the gross amount recovered by the plaintiff was between \$40,000 and \$99,999, to \$32,484 when the plaintiff recovered more than \$200,000.

In the *District Court*, plaintiffs' legal costs rose from a median of \$4,151 when the amount recovered by the plaintiff was less than \$20,000, to \$20,300 when the amount recovered was between \$100,000 and \$199,999. Defendants' legal costs rose from a median of \$3,010 when the gross amount recovered by the plaintiff was less than \$20,000 to \$11,614 when the plaintiff recovered between \$40,000 and \$99,999.

The coefficient of variation indicates that there was more variability between charges in the Supreme Court than in the District Court. This is to be expected as, at the time of this study, the District Court had a limited jurisdiction to hear claims concerning amounts to \$100,000, and the Supreme Court had an unlimited upper jurisdiction.

Table B.5.1. Legal costs (solicitors' fees and disbursements) by the gross amount recovered by the plaintiff in New South Wales

Plaintiff					Coefficient of variation
Gross amount recovered by the plaintiff	n	Median \$	Mean \$		%
District Court:					
< \$20,000	27	4,151	5,072		56
\$20,000 to \$39,999	29	7,862	7,745		39
\$40,000 to \$99,999	21	10,270	11,472		52
\$100,000 to \$199,999	5	20,300	16,901		45
> \$200,000	1	*	*		*
Total	83	7,469	8,566		65
Supreme Court:					
< \$20,000	4	5,083	5,383		39
\$20,000 to \$39,999	0	*	*		*
\$40,000 to \$99,999	3	19,237	14,482		63
\$100,000 to \$199,999	9	21,711	28,958		66
> \$200,000	9	59,624	98,072		109
Total	25	22,815	48,330		153
All cases	108	8,907	17,771		220

Defendant					Coefficient of variation
Gross amount recovered by the plaintiff	n	Median \$	Mean \$		%
District Court:					
< \$20,000	11	3,010	5,512		80
\$20,000 to \$39,999	19	7,801	7,640		56
\$40,000 to \$99,999	10	11,614	12,450		50
\$100,000 to \$199,999	1	*	*		*
> \$200,000	0	*	*		*
Total	41	8,091	8,445		65
Supreme Court:					
< \$20,000	2	*	*		*
\$20,000 to \$39,999	1	*	*		*
\$40,000 to \$99,999	15	8,752	10,193		77
\$100,000 to \$199,999	8	22,190	22,747		67
> \$200,000	8	32,484	62,072		97
Total	34	13,229	25,903		140
All cases	75	8,957	16,359		159

Source: CJRC survey. Based on 183 matters in which the plaintiff received a positive amount and details of solicitors' fees and disbursements were provided.

* Where the number of matters in a category is less than 3, medians are not reported.

5.2 Costs as a Percentage of the Gross Amount Recovered

Table B.5.2 presents similar information to Table B.5.1, but instead of the median dollar amounts incurred by plaintiffs and defendants, this table presents legal costs as a percentage of the gross amount recovered. The median percentage in each of the categories is illustrated.

As in Table B.5.1, it is important to note that the median provides only a measure of the mid-point in each category, and within each category there may be a broad range of values.

In the *District Court*, plaintiffs' legal costs were a median of 27% of the gross amount recovered by the plaintiff; defendants' legal costs were a median of 28% of the gross amount recovered by the plaintiff.

In the *Supreme Court*, plaintiffs' legal costs were a median of 20% of the gross amount recovered by the plaintiff; defendants' legal costs were a median of 14% of the gross amount recovered by the plaintiff.

For plaintiffs and defendants, legal costs as a percentage of the gross amount recovered by the plaintiff, tended to decrease as the amount recovered increased.

Table B.5.2. Legal costs (solicitors' fees and disbursements) as a percentage of the gross amount recovered by the plaintiff in New South Wales

Plaintiff		Median %	Mean %	Coefficient of variation %
Gross amount recovered by the plaintiff	n			
District Court:				
< \$20,000	27	37	41	57
\$20,000 to \$39,999	29	30	30	41
\$40,000 to \$99,999	21	17	19	45
\$100,000 to \$199,999	5	14	13	48
> \$200,000	1	*	*	*
Total	83	27	30	61
Supreme Court:				
< \$20,000	4	59	59	29
\$20,000 to \$39,999	0	*	*	*
\$40,000 to \$99,999	3	24	22	53
\$100,000 to \$199,999	9	16	20	55
> \$200,000	9	12	17	53
Total	25	20	25	73
All cases	108	26	29	64
Defendant		Median %	Mean %	Coefficient of variation %
Gross amount recovered by the plaintiff	n			
District Court:				
< \$20,000	11	71	59	59
\$20,000 to \$39,999	19	28	28	51
\$40,000 to \$99,999	10	23	24	67
\$100,000 to \$199,999	1	*	*	*
> \$200,000	0	*	*	*
Total	41	28	35	75
Supreme Court:				
< \$20,000	2	*	*	*
\$20,000 to \$39,999	1	*	*	*
\$40,000 to \$99,999	15	15	17	65
\$100,000 to \$199,999	8	15	16	60
> \$200,000	8	11	12	70
Total	34	14	40	327
All cases	75	22	38	240

Source: CJRC survey. Based on 183 matters in which the plaintiff received a positive amount and details of solicitors' fees and disbursements were provided.

*Where the number of matters in a category is less than 3, percentages are not reported.

6.0 Plaintiffs' and Defendants' Legal Costs in the Same Matter

An interesting component of the CJRC's study of costs was the collection of information on the legal costs of both defendants and plaintiffs in the same matter. Law firms were asked to send a data collection form to the opposing party in each of the matters in the survey, providing that firm and another were the only two firms involved on behalf of all the parties in the matter. The opposing party was then asked to return the completed form to the CJRC. Twenty two completed forms were received. Table B.6.1, shows the relevant information for the 19 matters where information was complete and in which the gross amount the plaintiff recovered was positive.

Plaintiffs' *solicitors' fees* were more than those of the defendant in 15 of the 19 matters for which information was provided. The total amount charged to plaintiffs in solicitors' fees was \$267,940, and the median fee was \$6,826. The total amount charged to defendants in solicitors' fees was \$157,711, approximately two thirds of that charged to plaintiffs; the median was \$5,000.

Plaintiffs' *disbursements* were also generally higher than those of defendants. Only in three of the 19 matters were the defendants' disbursements higher. The total amount expended by defendants on disbursements was \$59,629 compared with \$86,570 expended by plaintiffs, approximately two thirds as much.

Plaintiffs' solicitors' fees, however, were not significantly higher than defendants' fees in this sample.¹⁵ Similarly, plaintiffs' disbursements were not significantly higher than defendants' disbursements.¹⁶

Table B.6.1. Plaintiffs and defendants in New South Wales: solicitors' fees and disbursements in the same matter

Type of claim	Gross amount recovered \$	Solicitor fees		Disbursements	
		Plaintiff \$	Defendant \$	Plaintiff \$	Defendant \$
Motor vehicle injury:	10,000	2,550	3,750	325	320
	24,239	7,000	1,200	3,448	4,500
	20,000	5,177	4,500	969	222
	10,000	8,500	5,500	3,000	1,735
	100,000	7,950	5,392	3,250	557
	923,000	14,500	14,375	5,500	292
	72,700	6,000	3,901	2,322	607
	67,046	6,000	3,850	3,000	912
Debt:	30,000	3,100	2,000	230	100
	250,000	23,670	5,000	3,355	2,500
	3,128	3,980	2,500	398	103
Economic loss (commercial):	40,000	6,826	13,900	860	1,946
	163,502	10,500	5,900	4,500	103
	175,000	41,580	23,000	18,503	8,519
Employment Injury:	590,497	99,220	39,650	8,469	32,977
	50,000	4,200	3,510	3,253	93
Injury, other:	55,000	12,456	6,000	19,665	2,728
	22,500	3,000	3,600	2,039	900
Medical negligence:	15,000	1,731	10,183	3,484	515
Sum		267,940	157,711	86,570	59,629
Median		6,826	5,000	3,250	607

Source: CJRC survey. Based on 19 matters in which information was provided on the costs and disbursements incurred by the opposing party and where the plaintiff recovered a positive amount.

- 2 Four firms provided information on both District Court and Supreme Court matters. For the purpose of this report, these firms are treated to as two separate firms: one providing information on matters in the District Court, one providing information on matters in the Supreme Court.
- 3 Williams, PL, et al, 1992, *The Cost of Civil Litigation Before Intermediate Courts in Australia*, AIJA, Victoria.
- 4 The median provides a measure of the mid-point in a frequency distribution, the point at which half the measurements fall above, and half below. In this report, the median is considered to be a more appropriate measure of duration than the mean, or arithmetic average. This is because the distributions reported are often skewed, and the mean is pulled in the direction of the more extreme scores.

Measures of duration are based on the median number of days divided by 30.4 to estimate months.
- 5 See Table B.1.1 for details of firm sizes.
- 6 Senate Standing Committee on Legal and Constitutional Affairs, 1991, "Cost of Legal Services and Litigation", Discussion Paper No 2, *Lawyers' Fees*, Commonwealth of Australia.
- 7 "Taxation" involves the court's taxing officer determining whether each item of cost on a bill should be allowed as being fair, reasonable and necessary, and whether it was charged at the proper rate, having regard to the relevant scale.
- 8 In this section the median rather than the mean is used as the measure of the "typical" value in the specified categories. This is because the mean is strongly affected by the presence of extreme values. The mean is also included in tabulations to allow comparisons with other studies and to provide a fuller description of the data.

The median provides a measure of the midpoint in a frequency distribution, the point at which half the measurements fall above, and half below. The arithmetic mean is the sum of all the measurements made divided by the number of measurements made.
- 9 The coefficient of variation provides a measure of the dispersion of the amounts within a specified category. The coefficient of variation is the standard deviation divided by the mean, converted to a percentage. The larger the number the greater the dispersion of the amounts.
- 10 Cairns, BC, 1985, *Australian Civil Procedure*, Law Book Company Limited, Sydney, p.481. Cairns states that party-party costs are designed to indemnify the winner only for costs that were "strictly necessary to obtain justice", whereas solicitor-client costs are assessed on the basis of "whether costs were reasonably incurred".
- 11 Williams, *op. cit.*
- 12 Duration by solicitors' fees, correlation coefficient = -0.06 , $r^2 = 0.00$, $p > 0.05$.

Duration by disbursements, correlation coefficient = -0.06 , $r^2 = 0.00$, $p > 0.05$.
- 13 For definition of the *gross amount recovered* see Section B.4.0.
- 14 Gross amount recovered by the plaintiff, by the legal costs of the plaintiff: correlation coefficient = 0.90 , $r^2 = 0.81$, $p < 0.01$.

Gross amount recovered by the plaintiff, by the legal costs of the defendant: correlation coefficient = 0.69 , $r^2 = 0.47$, $p < 0.01$.
- 15 T-test for paired samples on solicitors' fees: $t_{18} = 1.73$, $p > 0.05$.
- 16 T-test for paired samples on disbursements: $t_{18} = 0.81$, $p > 0.05$.

PART C

Victorian Results

1.0 The Respondents

1.1 Characteristics of the Participating Firms

As in New South Wales, one hundred firms were invited to participate in the Victorian study and provide information on 20 matters each. The firms were also asked to send questionnaires to the firm representing the opposing party for further information in each of the matters. Twenty-one firms provided information on 242 matters, with information from the opposing firm provided in 62 of these matters.¹⁷

As shown in Table C.1.1, ten of the 21 firms provided information on Supreme Court matters, 11 firms provided information on County Court matters. Thirteen of the firms were classified as large (more than 15 principals and employed solicitors), seven as medium (6–15 principals and employed solicitors) and one as small (1–5 principals and employed solicitors).

In the County Court, details of five matters (3%) came from the one small firm, 53 (34%) from medium firms and 99 (63%) from large firms. In the Supreme Court, 13 (15%) matters came from medium firms, and 72 (85%) from large firms. The greater proportion of matters were provided by large firms, particularly in the Supreme Court, as a result of the sampling process outlined, whereby firms were selected that had a major role in either the County Court or the Supreme Court (see A.2.0).

Table C.1.1. Source of the matters in the survey in Victoria: size of firms and number of matters provided

County Court:		Supreme Court:	
Size of firm*	No. of matters provided	Size of firm*	No. of matters provided
Small:	5	Medium:	5
Medium:	13		7
	20		1
	13	Large:	5
	7		2
Large:	20		7
	20		20
	13		6
	20		17
	20		15
	6		
Total matters	157	Total matters	85

Source: VLRC survey.

*Small firm: 1-5 principals or employees with practising certificates.

Medium firm: 6-15 principals or employees with practising certificates.

Large firm: more than 15 principals or employees with practising certificates.

1.2 Characteristics of the Matters

1.2.1 Type, Party, Court

Of the 242 matters in the sample, 169 (70%) involved personal injury claims and 73 (30%) involved "other" types of claims (including economic loss, debt and defamation). Sixty-five percent of matters were heard in the County Court and 35% in the Supreme Court. Forty-five percent were plaintiff matters and 55% defendant matters, and these were evenly distributed over the two courts and the types of claims (Tables C.1.2 and C.1.3).

Table C.1.2. Type of matter in Victoria

Type of Matter	County Court		Supreme Court	
	n	%	n	%
Personal Injury	137	87	32	38
Other	20	13	53	62
All cases	157	100	85	100

Source: VLRC survey.

Table C.1.3. Party represented by type of matter in Victoria

Type of Matter	Plaintiff		Defendant	
	n	%	n	%
County Court:				
Personal injury	52	84	85	89
Other	10	16	10	11
Total	62	100	95	100
Supreme Court:				
Personal injury	22	48	10	26
Other	24	52	29	74
Total	46	100	39	100
All cases	108	100	134	100

Source: VLRC survey.

1.2.2 Stage of Disposal

The majority of matters settled before going to verdict: 95% of matters settled in the County Court, and 86% in the Supreme Court (Table C.1.4). Most matters settled before the day of hearing.

Table C.1.4. Stage of disposal in Victoria

Stage of disposal	County Court		Supreme Court	
	n	%	n	%
Settled before day of hearing	110	74	47	57
Settled on or after day of hearing	32	21	24	29
Verdict	7	5	11	14
All cases	149	100	82	100

Source: VLRC survey. Based on 231 matters in which information on the stage of disposal was provided.

1.2.3 Date of Completion and Duration of Matters

Matters were generally disposed of in 1990, 1991 and 1992, with only 12 matters (5%) disposed of prior to 1990. Of these, one was disposed of in 1987, one in 1988 and ten in 1989.

The median duration of matters from commencement of proceedings to disposal was 19 months in the County Court and 23 months in the Supreme Court.¹⁸ Personal injury matters took longer than "other" matters in both courts (Table C.1.5).

Table C.1.5. Duration: commencement of proceedings to disposal in Victoria

Type of matter	Number of matters with data	Median months
County Court:		
Personal injury	131	20
Other	19	11
Total	150	19
Supreme Court:		
Personal injury	31	40
Other	49	14
Total	80	23
All cases	230	20

Source: VLRC survey. Based on 230 matters in which information was provided on both the date of commencement and the date of disposal.

2.0 Fee Charging Arrangements

2.1 Fee Arrangement Agreed at an Early Stage

Fee arrangements were agreed at an early stage of the proceedings in 144 matters (60%). Fee arrangements were more likely to be agreed at an early stage for plaintiffs (81%) than defendants (43%) and were more common for Supreme Court matters (74%) than County Court matters (52%). There was no difference between the types of claim, however.

In medium and large firms, the fee arrangement was agreed at an early stage in 62% and 60% of matters, respectively. The fee arrangement was not agreed at an early stage by the one small firm participating in the study.

2.2 Interim Accounts

Interim accounts for professional fees were issued in 40% of matters. Plaintiffs were less likely to receive interim accounts. Matters in the County Court were associated with fewer interim accounts, as were personal injury matters. Where interim accounts for professional fees were issued, generally, interim accounts for disbursements were also issued.

2.3 Calculation of Fees

Firms were asked to indicate which one of the following best described the way the firms' professional fees were calculated:

- mainly by calculation of time spent;
- mainly by court scale;
- a reasonable amount having regard to the result;
- mainly by a subjective assessment of the value of the work done; or
- by some "other" method.

The questionnaire had sought the single answer which best described the situation, and in 223 matters, respondents nominated one of these methods. In the remaining matters, firms responded by nominating more than one of the suggested methods.

The most prevalent method of fee calculation in Victoria was mainly *on the basis of a court scale* (68.8%), followed by mainly *on the basis of time spent* (13.9%). A further 5.5% of matters were calculated *on the basis of time spent* in conjunction with some other method, and 0.4% *mainly by court scale* and some other method. In 8% of matters the fee was regarded as *a reasonable amount having regard to the result*, and

in 3% of matters the fee was based on *a subjective assessment of the value of the work done*. There was no fee payable in 0.4% of matters (Table C.2.1).

Table C.2.1. Calculation of solicitors' fees in Victoria

Method of fee calculation	n	%
Mainly by calculation of time spent	33	13.9
Mainly by calculation of time spent and:		
Court scale	8	3.4
A reasonable amount having regard to the result	4	1.7
Client's ability to pay	1	0.4
Mainly by court scale	163	68.8
Mainly by court scale and:		
Subjective assessment of the value of the work done	1	0.4
A reasonable amount having regard to the result	19	8.0
Mainly by a subjective assessment of the value of the work done	7	3.0
No fee payable	1	0.4
Total	237	100.0

Source: VLRC survey. Based on 237 matters in which information was provided on the method of fee calculation.

2.4 Speculative Arrangements

A speculative fee arrangement is one in which the solicitor agrees that a fee is payable only if the litigant is successful in a case. This means that no fee will be paid if the case is lost. The existence of such an arrangement was noted in 42 of the 242 matters (17%). Details of a further three speculative arrangements were provided in the 62 matters in which information was received from the opposing party.

The 42 matters were from four different firms, two large and two medium. Of the 18 County Court matters, 12 involved employment injuries, five involved motor vehicle injuries, and one a debt claim. Twenty four were Supreme Court matters, of which 17 were employment injuries, two were motor vehicle injuries, one a medical negligence injury, and four were "other" types of claims.

The three matters in which information was received from the opposing party were received from two different firms. All were claims for employment injuries in the County Court.

All of the 45 speculative arrangements were from firms representing the plaintiff, and all except three of the cases were won. One of these three plaintiffs was charged disbursements, but not solicitors' fees, while the other two were charged solicitors' fees, apparently contrary to the arrangement.

3.0 Solicitors' Fees and Disbursements

3.1 Solicitors' Fees

Solicitors' fees are those fees billed by the solicitor to the client for services. They do not include payment for any out of pocket expenses incurred by the solicitor (these are disbursements and will be discussed in Section 3.2). Costs awarded to the litigant are not taken into account here.

In 215 of the 242 matters, information was provided on solicitors' fees, and of these 86 were plaintiff matters and 129 defendant matters. Figures C.1 and C.2 illustrate the distribution of the fees paid by plaintiffs and defendants respectively.

Plaintiffs' fees ranged from \$0 to \$60,000, with the median fee paid being \$4,719. Only in two matters did plaintiffs pay more than \$30,000. For personal injury claims, the median fees were \$3,800 in the County Court and \$12,960 in the Supreme Court. For "other" claims the medians were \$5,340 in the County Court and \$8,500 in the Supreme Court (Table C.3.1).

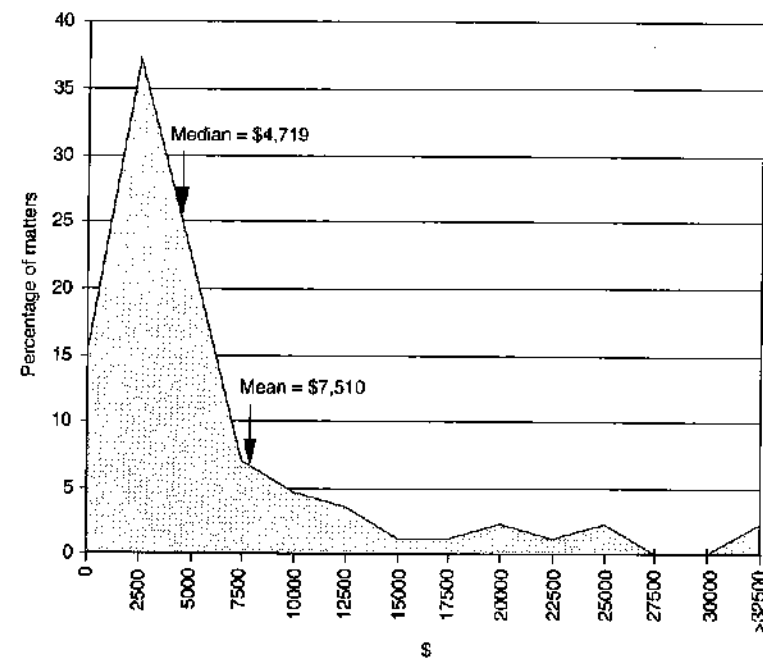
Defendants' fees ranged from \$1,190 to \$119,872, with the median fee being \$4,166. Seven defendants paid over \$30,000 in solicitors' fees. In personal injury litigation, the median fees paid were \$3,270 in the County Court and \$9,638 in the Supreme Court. In "other" types of litigation the medians were \$3,975 and \$12,357 for the County Court and Supreme Court, respectively.

From Table C.3.1 it can be seen that the coefficient of variation is generally lower in personal injury matters than "other" matters. This indicates that solicitors' fees for "other" matters are more variable than solicitors' fees for personal injury matters. This is with the exception of plaintiffs in the County Court, where the solicitors' fees are more variable for personal injury matters. The fees charged for County Court matters were less variable than those charged in the Supreme Court.

Comparisons between types of matters should be treated cautiously, as the matters in each category may be quite varied. The number of matters in some categories is very small, particularly for plaintiffs with personal injury matters in the Supreme Court. The median provides only a measure of the central figure in each category.

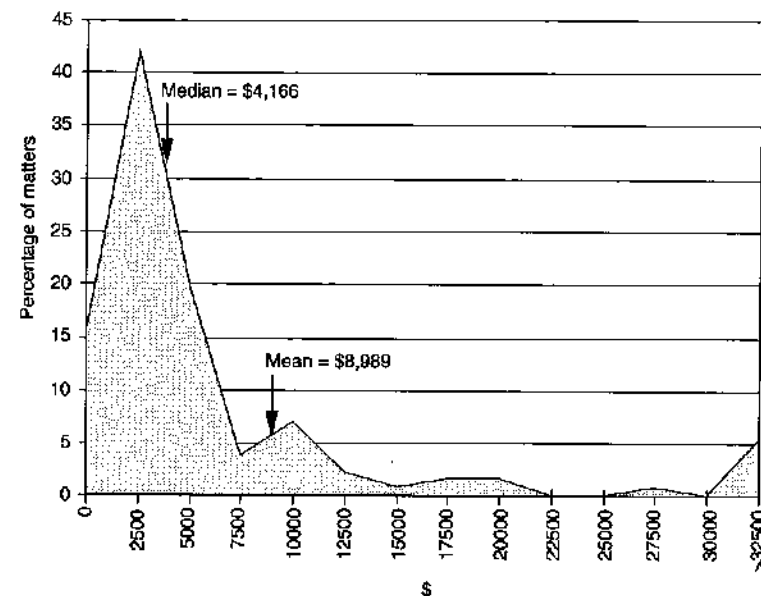
Plaintiffs' and defendants' fees do not relate to the same sets of matters. Section C.6.0 provides a comparison of the fees and disbursements charged to plaintiffs and defendants in the same matter. These were the 62 matters in which details of costs were available for both parties.

Figure C.1. Plaintiffs' solicitors' fees in Victoria



Source: VLRC survey. Based on 86 matters in which information on solicitors' fees was provided by the plaintiff.

Figure C.2. Defendants' solicitors' fees in Victoria



Source: VLRC survey. Based on 129 matters in which information on solicitors' fees was provided by the defendant.

Table C.3.1. Solicitors' fees in Victoria

Plaintiff	n	Median \$	Mean \$	Coefficient of variation %
County Court:				
Personal injury	49	3,800	4,611	82
Other	10	5,340	5,178	74
Total	59	4,049	4,707	80
Supreme Court:				
Personal injury	3	12,960	24,534	90
Other	24	8,500	12,271	102
Total	27	9,750	13,634	101
All cases	86	4,719	7,510	123

Defendant	n	Median \$	Mean \$	Coefficient of variation %
County Court:				
Personal injury	82	3,270	3,777	47
Other	10	3,975	4,754	61
Total	92	3,292	3,684	50
Supreme Court:				
Personal injury	10	9,638	10,876	64
Other	27	12,357	25,688	122
Total	37	11,300	21,685	128
All cases	129	4,166	8,989	188

Source: VLRC survey. Based on 215 matters in which information on solicitors' fees was provided.

3.2 Disbursements

Disbursements are those charges billed to a client for expenses incurred by the solicitor, over the course of a case, such as fees for Counsel, expert witnesses, medical reports and for court filing. Information on disbursements was provided in 211 matters, 84 plaintiff matters and 127 defendant matters. Figures C.3 and C.4 illustrate the disbursements incurred by plaintiffs and defendants.

The disbursements paid by *plaintiffs* ranged from \$310 to \$50,000, the median being \$2,348. Disbursements were higher in the Supreme Court and in personal injury claims (Table C.3.2).

For *defendants*, the median charged for disbursements was \$949. Disbursements ranged from \$0 to \$227,366, and were higher in the Supreme Court.

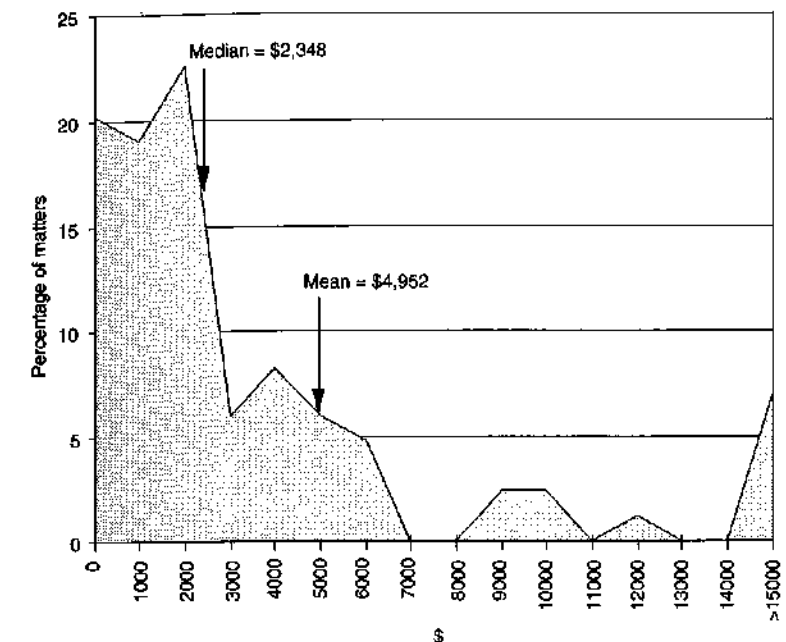
The median for defendants' disbursements was lower than the median for plaintiffs. This was the case in both courts and for both types of claims. However, these comparisons should be treated with caution, as information for defendants and plaintiffs does not relate to the same matter. A more valid comparison is made in Section C.6.0 where details are provided of fees and disbursements charged to plaintiffs and defendants in the same matter.

Details on the breakdown of disbursements into counsel fees, expert witnesses, and other fees are presented in Table C.3.3.

Of the 84 *plaintiff* matters, counsel fees were incurred in 76 matters, and ranged from \$75 to \$30,000, with a median fee of \$1,133. Fees for expert witnesses were incurred in 50 matters, and ranged from \$150 to \$20,000, with a median fee of \$845. "Other" out of pocket expenses were incurred in 67 matters and ranged from \$11 to \$22,157, with a median of \$504.

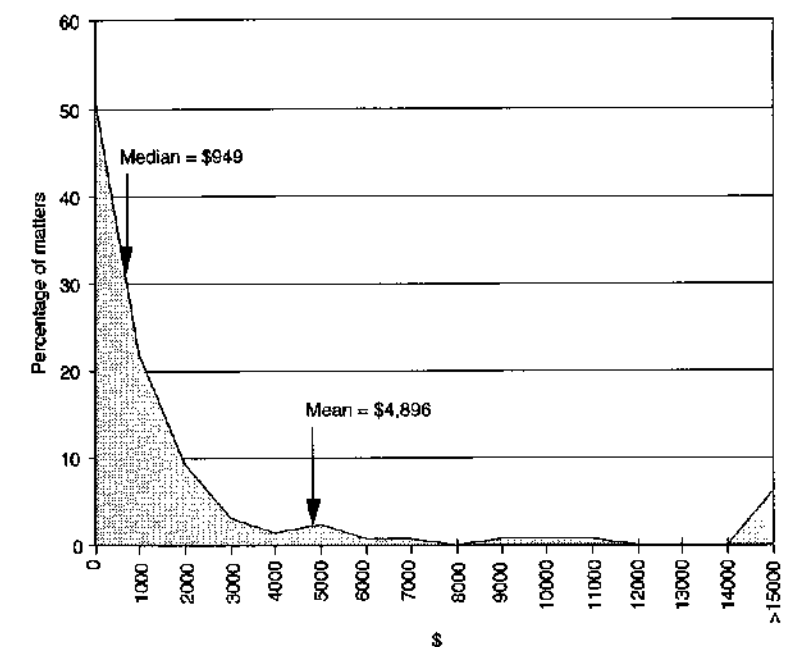
Of the 127 *defendant* matters, counsel fees were incurred in 80 matters, and ranged from \$122 to \$206,031, with a median fee of \$1,118. Fees for expert witnesses were billed in 65 matters, and ranged from \$90 to \$8,605, with a median fee of \$339. "Other" out of pocket expenses were incurred in 102 matters and ranged from \$10 to \$21,335, with a median of \$364.

Figure C.3. Plaintiffs' disbursements in Victoria



Source: VLRC survey. Based on 84 matters in which information on disbursements was provided by the plaintiff.

Figure C.4. Defendants' disbursements in Victoria



Source: VLRC survey. Based on 127 matters in which information on disbursements was provided by the defendant.

Table C.3.2. Disbursements in Victoria

Plaintiff	n	Median \$	Mean \$	Coefficient of variation %
County Court:				
Personal injury	49	2,113	3,104	127
Other	9	2,045	2,486	78
Total	58	2,079	3,008	123
Supreme Court:				
Personal injury	3	6,040	20,032	130
Other	23	3,510	7,888	131
Total	26	4,029	9,289	138
All cases	84	2,348	4,952	166

Defendant	n	Median \$	Mean \$	Coefficient of variation %
County Court:				
Personal injury	82	538	851	101
Other	9	742	829	60
Total	91	610	849	98
Supreme Court:				
Personal injury	10	4,858	7,276	90
Other	26	3,130	18,148	251
Total	36	3,678	15,128	257
All cases	127	949	4,896	439

Source: VLRC survey. Based on 211 matters in which information on disbursements was provided.

Table C.3.3. Details of disbursements in Victoria

Plaintiff	Number of matters where relevant	Median \$	Mean \$
Fees for counsel:			
Relevant in 76 out of 84 matters (90%)			
Costs per matter ranged from \$75 to \$30,000			
Costs per matter where relevant	76	1,133	2,878
Disbursements for expert witnesses:			
Relevant in 50 out of 84 matters (60%)			
Costs per matter ranged from \$150 to \$20,000			
Costs per matter where relevant	50	845	1,672
Disbursements (other out of pocket expenses):			
Relevant in 67 out of 84 matters (80%)			
Costs per matter ranged from \$11 to \$22,157			
Costs per matter where relevant	67	504	1,345

Defendant	Number of matters where relevant	Median \$	Mean \$
Fees for counsel:			
Relevant in 80 out of 127 matters (63%)			
Costs per matter ranged from \$122 to \$206,031			
Costs per matter where relevant	80	1,118	6,520
Disbursements for expert witnesses:			
Relevant in 65 out of 127 matters (51%)			
Costs per matter ranged from \$90 to \$8,605			
Costs per matter where relevant	65	339	654
Disbursements (other out of pocket expenses):			
Relevant in 102 out of 127 matters (80%)			
Costs per matter ranged from \$10 to \$21,335			
Costs per matter where relevant	102	364	935

Source: VLRC survey. Based on 211 matters in which information was provided on disbursements.

3.3 Party-Party Costs and Solicitor-Client Costs

The litigant's total legal costs are the fees and disbursements charged by the solicitor (as outlined in 3.1 and 3.2). The successful litigant is partially indemnified for costs calculated on a court scale, and these are known as party-party costs. Party-party costs are invariably lower than total legal costs because the court will not allow all the costs incurred by the successful party to be recovered.¹⁹ The difference between total legal costs and the costs which the successful party can recover according to the court scale are known as solicitor-client costs. These solicitor-client costs are those that the successful party is left to bear.

Figure C.5. Party-party costs and solicitor-client costs in Victoria



Source: VLRC survey. Based on 73 matters in which information on party-party costs and solicitor-client costs were provided.

Information on party-party and solicitor-client costs were provided in 73 matters. Ten of these matters had gone to verdict and 63 matters had reached settlements. Party-party costs are usually not specified when matters settle, as the agreements reached are usually "inclusive of costs".

Party-party costs were calculated as a percentage of total legal costs (solicitors' fees and disbursements), and were found to be equivalent to 69% of total legal costs, based on the median percentage. For matters which had gone to verdict, party-party costs were a median of 67% of total legal costs, and for matters which had reached settlement, they were a median of 69% of total legal costs.

It can be seen that successful clients had to bear a median of 31% of total legal costs overall, a median of 33% of total costs for matters reaching verdict and a median of 31% for matters reaching settlement.

3.4 Firm Input and Cost per Hour

The number of hours that a firm spent on a matter ranged from three to 612. The median number of hours spent on plaintiff matters was 33 and on defendant matters the median was 24 hours.

The hourly rate charged for the work of the firm was calculated by dividing the firm's fees by the number of hours the firm spent on the matter. The hourly rates ranged from \$0 to \$657 per hour. The median rate was \$170 per hour. For plaintiffs, the median rate was \$145 per hour and for defendants it was \$174 per hour. In the County Court the median hourly rate was \$161 and in the Supreme Court it was \$193.

3.5 The Relationship Between Legal Costs and the Stage of Disposal, and the Duration of Matters

Legal costs, both firm fees and disbursements, were found to be lower for matters disposed of at an earlier stage. For *plaintiffs* the median fees were \$4,050 for matters settling before the day of hearing, \$7,065 for matters settling on or after the day of hearing, and \$10,650 for matters reaching verdict. For *defendants* the corresponding figures were \$3690, \$6565 and \$11,819 (Table C.3.4).

There was no statistically significant relationship between the duration of the matter and firm fees or disbursements.²⁰ That is, the mere passing of time ("delay") does not appear to raise either the fees charged by firms or the disbursements incurred.

These patterns are consistent both with the New South Wales trends and with the findings of Williams et al (1992), mentioned earlier, that the stage of the proceedings at which a case was disposed of had a strong influence on costs.²¹ In contrast to this relationship, the passing of time per se had little effect on costs.

Table C.3.4. Solicitors' fees and disbursements by stage of disposal in Victoria

Plaintiff				
Stage of disposal	n	Median \$	Mean \$	Coefficient of variation %
Solicitors' fees:				
Settled before day of hearing	55	4,050	5,202	84
Settled on or after day of hearing	19	7,065	13,077	121
Verdict	9	10,650	11,336	77
Disbursements:				
Settled before day of hearing	53	1,968	2,584	104
Settled on or after day of hearing	19	4,924	9,930	136
Verdict	9	5,861	9,651	111
Defendant				
Stage of disposal	n	Median \$	Mean \$	Coefficient of variation %
Solicitors' fees:				
Settled before day of hearing	90	3,690	7,674	202
Settled on or after day of hearing	27	6,565	12,329	178
Verdict	6	11,819	12,902	85
Disbursements:				
Settled before day of hearing	88	626	2,158	369
Settled on or after day of hearing	28	2,205	12,592	338
Verdict	5	3,860	7,103	114

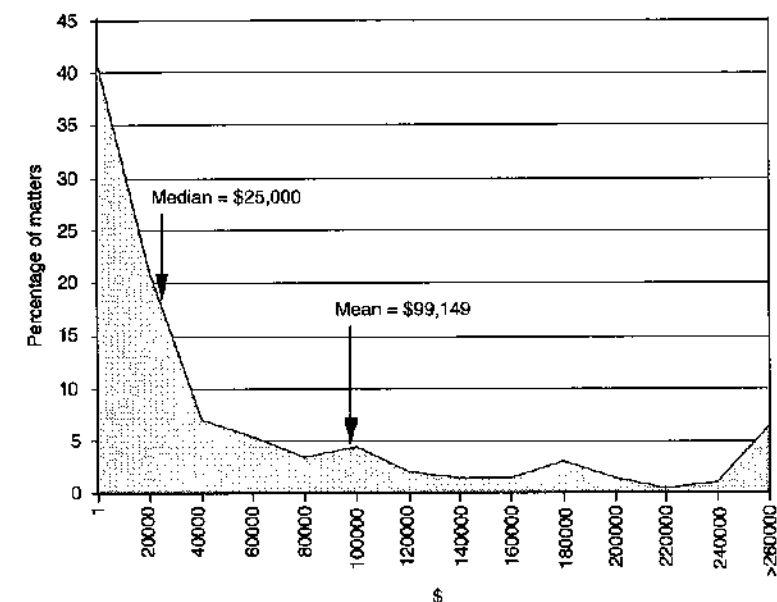
Source: VLRC survey. Based on 206 matters in which information was provided on both solicitors' fees and stage of disposal and 202 matters in which information was provided on both disbursements and stage of disposal.

4.0 The Amount Recovered by the Plaintiff

In 214 matters information was provided that enabled the calculation of the *gross amount recovered* by the plaintiff. That is, the amount recovered from the defendant including party-party costs (discussed in Section C.3.3), less any amount payable by the plaintiff to the defendant for successful counter-claims. In four of the 214 matters, the plaintiff recovered nothing from the defendant and in 11 matters the plaintiff actually had to make payments to the defendant that were in excess of what they received. In this section only the 199 matters in which the plaintiff received payments (the *gross amount recovered* was positive) will be considered.

A breakdown of the gross amount recovered by plaintiffs is shown in Table C.4.1. In matters relating to personal injury, the median gross amount recovered was \$16,006 in the County Court and \$111,588 in the Supreme Court. While in "other" matters, the median amount was \$23,244 in the County Court, higher than that for personal injury matters. In the Supreme Court, the median amount plaintiffs recovered for "other" litigation was \$111,118, slightly lower than that for personal injury matters. Overall the median amount recovered by the plaintiff was \$25,000.

Figure C.6. Gross amount recovered by the plaintiff in Victoria



Source: VLRC survey. Based on 199 matters in which information appropriate to the calculation of the gross amount recovered by the plaintiff was provided, and in which the plaintiff recovered a positive amount.

Table C.4.1. Gross amount recovered by the plaintiff in Victoria

Type of matter	Number of matters with data	Median \$	Mean \$	Coefficient of variation %
County Court:				
Personal injury	122	16,006	31,964	153
Other	16	23,244	27,708	78
Total	138	16,402	31,471	147
Supreme Court:				
Personal injury	28	111,588	183,906	108
Other	33	111,118	310,254	221
Total	61	111,118	252,258	207
All cases	199	25,000	98,729	310

Source: VLRC survey. Based on 199 matters in which the plaintiff was successful in recovering a positive amount.

5.0 Solicitors' Fees and Disbursements Compared with the Gross Amount Recovered by Plaintiffs

In 188 of the 199 matters where the plaintiff recovered a positive amount, details were provided about both the solicitor's fees and disbursements. Ninety of these were plaintiff matters and 98 defendant matters.

5.1 Costs Compared with the Gross Amount Recovered

As the gross amount recovered by the plaintiff increased, it would generally appear that the total costs for both the plaintiff and the defendant also increased.²²

Table C.5.1 shows the median and mean fees for five different categories of gross amount recovered by the *plaintiff* in both the County Court and the Supreme Court. For plaintiffs in the County Court, the median total legal costs were \$5,536 when the amount recovered was less than \$20,000, and increased to \$15,000 when the amount recovered was between \$100,000 and \$199,999. The same trend is found in the Supreme Court where the median legal costs were \$9,579 for amounts less than \$20,000 and \$35,500 for amounts over \$200,000.

Table C.5.1. Legal costs (solicitors' fees and disbursements) by the gross amount recovered by the plaintiff in Victoria

Plaintiff			Median \$	Mean \$	Coefficient of variation %
Gross amount recovered by the plaintiff	n				
County Court:					
< \$20,000	27		5,536	5,520	46
\$20,000 to \$39,999	13		6,612	7,217	65
\$40,000 to \$99,999	8		7,415	8,314	69
\$100,000 to \$199,999	4		15,000	19,150	70
> \$200,000	2		*	*	*
Total	54		6,114	7,778	85
Supreme Court:					
< \$20,000	0		*	*	*
\$20,000 to \$39,999	4		9,579	10,793	51
\$40,000 to \$99,999	11		11,553	12,089	48
\$100,000 to \$199,999	14		17,138	21,886	68
> \$200,000	7		35,500	45,149	86
Total	36		15,375	22,183	101
All cases	90		7,630	13,540	123

Defendant			Median \$	Mean \$	Coefficient of variation %
Gross amount recovered by the plaintiff	n				
County Court:					
< \$20,000	48		3,765	4,142	50
\$20,000 to \$39,999	19		5,124	5,543	44
\$40,000 to \$99,999	6		6,624	6,948	49
\$100,000 to \$199,999	2		*	*	*
> \$200,000	0		*	*	*
Total	75		4,186	4,825	51
Supreme Court:					
< \$20,000	3		10,600	11,835	47
\$20,000 to \$39,999	1		*	*	*
\$40,000 to \$99,999	7		11,601	13,436	66
\$100,000 to \$199,999	4		15,824	31,371	108
> \$200,000	8		20,225	51,387	116
Total	23		15,155	29,308	138
All cases	98		5,148	10,571	208

Source: VLRC survey. Based on 188 matters in which the plaintiff recovered a positive amount and details were provided on both fees and disbursements.

* Where the number of matters in a category is less than 3, medians are not reported.

Defendants' legal costs showed a similar pattern to that of plaintiffs. Defendants' median legal costs in the County Court were \$3,765 when the amount recovered was less than \$20,000, and \$6,624 for amounts between \$40,000 and \$99,999. In the Supreme Court, median legal costs ranged from \$10,600 for amounts less than \$20,000 to \$20,225 for amounts over \$200,000.

Both the amounts recovered and legal costs were higher in the Supreme Court. In 15 of the 36 plaintiff matters and 11 of the 23 defendant matters in the Supreme Court, the plaintiff recovered an amount less than \$100,000.

Two plaintiffs paid out more in firm fees and disbursements than the gross amount they recovered from the defendant.

The coefficient of variation was higher in the Supreme Court than in the County Court, indicating there was more variability in the charges in the Supreme Court. This is to be expected as the County Court, up until 1990, had a limited jurisdiction to hear claims concerning amounts to \$100,000, and the Supreme Court has an unlimited upper jurisdiction. While most of the matters in this study were completed in 1990 or after, most had commenced prior to 1990.

5.2 Costs as a Percentage of the Gross Amount Recovered

In Table C.5.2, legal costs are presented as a percentage of the gross amount recovered by the plaintiff. The median percentage in each category is illustrated.

In the County Court, *plaintiffs'* legal costs were a median of 32% of the gross amount recovered. *Defendants'* median costs were 30% of the gross amount recovered by the plaintiff.

In the Supreme Court, the percentages were relatively lower. *Plaintiffs'* legal costs were a median of 15% of the amount recovered by the plaintiff; *defendants'* legal costs were a median of 14%.

Overall, it can be seen that as the gross amount recovered by the plaintiff increased, legal costs as a percentage of this amount tended to decrease.

Table C.5.2. Legal costs (solicitors' fees and disbursements) as a percentage of the gross amount recovered by the plaintiff in Victoria

Plaintiff				
Gross amount recovered by the plaintiff	n	Median %	Mean %	Coefficient of variation %
County Court:				
< \$20,000	27	45	51	49
\$20,000 to \$39,999	13	25	30	81
\$40,000 to \$99,999	8	14	14	51
\$100,000 to \$199,999	4	9	11	50
> \$200,000	2	*	*	*
Total	54	32	36	75
Supreme Court:				
< \$20,000	0	*	*	*
\$20,000 to \$39,999	4	32	33	33
\$40,000 to \$99,999	11	18	18	53
\$100,000 to \$199,999	14	15	16	63
> \$200,000	7	11	10	46
Total	36	15	17	62
All cases	90	23	28	83
Defendant				
Gross amount recovered by the plaintiff	n	Median %	Mean %	Coefficient of variation %
County Court:				
< \$20,000	48	41	72	133
\$20,000 to \$39,999	19	21	20	44
\$40,000 to \$99,999	6	10	13	64
\$100,000 to \$199,999	2	*	*	*
> \$200,000	0	*	*	*
Total	75	30	53	155
Supreme Court:				
< \$20,000	3	140	131	46
\$20,000 to \$39,999	1	*	*	*
\$40,000 to \$99,999	7	20	21	68
\$100,000 to \$199,999	4	13	22	101
> \$200,000	8	6	8	125
Total	23	14	31	145
All cases	98	27	48	157

Source: VLRC survey. Based on 188 matters in which the plaintiff received a positive amount and details of solicitors' fees and disbursements were provided.

*Where the number of matters in a category is less than 3, percentages are not reported.

6.0 Plaintiffs' and Defendants' Legal Costs in the Same Matter

In previous sections, information relating to plaintiffs and defendants has come from different matters. This section provides the opportunity for comparisons of costs between plaintiffs and defendants in the same matter. It may be recalled that in 62 matters information was returned from the opposing firm. This information was not always complete, however. Details may have been provided on fees but not disbursements, for example.

Table C.6.1 shows the solicitors' fees and disbursements for plaintiffs and defendants in the 41 matters in which complete information was provided and where the gross amount recovered by the plaintiff was positive.

In 26 of the 41 matters, plaintiffs' solicitors' fees were greater than those of defendants. The total amount charged to plaintiffs in solicitors' fees was \$168,808, and the median fee was \$3,290. Defendants paid a total of \$148,355 in solicitors' fees, with the median \$3,140. Plaintiffs' solicitors' fees, however, were not significantly higher than defendants' fees.²³

Plaintiffs paid higher disbursements than defendants in 34 matters. The total amount of disbursements charged to plaintiffs was \$74,310. The median disbursements paid, \$1,499, was almost double the median for defendants of \$774. Defendants were charged \$38,491 in total for disbursements. In contrast to the findings for solicitors' fees, plaintiffs did pay significantly more in disbursements than defendants in this sample.²⁴

Table C.6.1. Plaintiffs and defendants in Victoria: solicitors' fees and disbursements in the same matter

Type of claim	Gross amount recovered \$	Solicitors' fees		Disbursements	
		Plaintiff \$	Defendant \$	Plaintiff \$	Defendant \$
Employment injury:	10,000	3,617	2,850	1,449	0
	17,500	5,000	2,670	933	801
	23,822	4,450	1,640	941	610
	18,292	3,290	3,330	2,246	1,489
	7,550	2,550	10,586	4,541	2,017
	25,049	4,049	4,063	2,563	679
	11,500	2,636	2,500	2,863	359
	8,895	2,895	2,594	3,599	926
	33,539	6,039	5,990	4,873	1,582
	22,583	3,400	2,090	640	243
	8,811	0	4,812	240	1,104
	6,350	2,350	3,390	1,403	1,600
	43,750	7,900	5,688	4,272	3,860
	18,050	1,200	5,958	0	2,831
	51,961	11,200	10,500	1,597	1,500
	25,734	6,483	4,740	3,251	1,040
	55,007	7,600	3,140	907	412
	38,182	6,750	5,940	3,432	1,376
	8,536	3,754	2,525	2,443	1,310
	25,000	2,820	3,250	1,975	97
Motor vehicle injury:	2,000	1,300	2,350	709	774
	40,000	7,150	3,275	2,000	638
	5,547	2,600	1,800	1,134	24
	8,000	2,570	1,500	370	427
	5,521	1,400	1,400	437	47
	11,525	3,200	2,320	1,500	900
	3,200	1,366	2,415	764	335
	20,000	2,500	1,742	1,009	15
	12,163	3,700	3,200	934	406
	13,000	3,250	1,873	418	351
	36,187	6,636	2,813	1,151	300
	16,000	3,676	2,175	2,777	731
	3,730	968	1,190	770	0
Medical negligence:					
Personal injury-other:	17,500	2,442	3,500	703	1,257
	13,816	6,166	3,695	2,045	1,477
	4,000	2,641	3,170	1,499	933
Debt:	23,988	6,110	590	3,106	0
Economic loss (commercial):	27,000	1,700	7,420	2,559	844
Defamation:	16,000	13,600	6,600	3,025	4,000
	1,000	1,450	2,520	1,187	930
Property damage:	73,500	6,200	4,550	2,045	266
Sum		168,808	148,355	74,310	38,491
Median		3,290	3,140	1,499	774

Source: VLRC survey. Based on 41 matters in which information was provided on the costs and disbursements incurred by the opposing party and where the plaintiff recovered a positive amount.

- 17 One firm provided information on both County Court and Supreme Court matters. For the purpose of this report, this firm will be treated as two separate firms: one providing information on matters in the County Court and one providing information on Supreme Court matters.
- 18 The median provides a measure of the mid-point in a frequency distribution, the point at which half the measurements fall above, and half below. The median duration is reported here rather than the arithmetic average, as it is considered to give a better indication of the typical value. The mean is strongly affected by the presence of extreme values.
- The median duration was calculated by dividing the median number of days by 30.4 to estimate months.
- 19 Cairns, *op. cit.* Cairns states that party-party costs are designed to indemnify the winner only for costs that were "strictly necessary to obtain justice", whereas solicitor-client costs are assessed on the basis of "whether costs were reasonably incurred".
- 20 Duration by solicitor's fees, correlation coefficient = -0.03 , $r^2 = 0.00$, $p > 0.05$.
Duration by disbursements, correlation coefficient = -0.02 , $r^2 = 0.00$, $p > 0.05$.
- 21 Williams, *op. cit.*
- 22 Gross amount recovered by the plaintiff, by the legal costs of the plaintiff: correlation coefficient = 0.84 , $r^2 = 0.71$, $p < 0.01$.
Gross amount recovered by the plaintiff, by the legal costs of the defendant: correlation coefficient = 0.67 , $r^2 = 0.46$, $p < 0.01$.
- 23 T-test for paired samples on solicitors' fees: $t_{40} = 1.15$, $p > 0.05$.
- 24 T-test for paired samples on disbursements: $t_{40} = 4.68$, $p < 0.01$.

PART D

A Comparison Between New South Wales and Victoria

This part looks at the similarities and differences between the charging practices that were identified in the New South Wales and Victorian samples. Where appropriate, statistical tests of the significance of these similarities and differences have been undertaken. A "statistically significant" result indicates that the observed difference between the samples is real and not due to sampling variation. There is a great deal of variation in the samples in this study and so, while the differences may appear large, they are not necessarily statistically significant.

1.0 Characteristics of the Matters: New South Wales and Victoria

Table D.1.1 shows a comparison of the characteristics of the matters sampled in New South Wales and the matters sampled in Victoria. There were slightly fewer completed forms returned in the Victorian study, 242, than in New South Wales, 259. The majority of matters came from large firms in both states.

The matters from each state tended to be very similar. Most were personal injury cases heard in either the New South Wales District Court or the Victorian County Court, most matters settled prior to verdict, and were finalised between 1990 and 1992. In both states, approximately half of the matters were received from firms which represented the plaintiff.

One difference that did arise between the sampled matters from each state was in relation to duration. The duration of the sampled matters in Victoria was significantly different from the duration of the sampled matters in New South Wales.²⁵ The median duration in Victoria was approximately half the median duration in New South Wales. The median for New South Wales District Court matters was 43 months, and for Victorian County Court matters, 19 months. In the New South Wales Supreme Court the median was 38 months and in the Victorian Supreme Court, 23 months.

The sampled matters from each state also differed significantly with respect to the stage at which matters were disposed of.²⁶ In New South Wales a larger proportion of the sampled matters received a verdict, 17%, compared with Victoria, 8%.

Table D.1.1. Characteristics of the matters: New South Wales and Victoria

	New South Wales		Victoria	
	n	%	n	%
Number of matters:	259		242	
Type of matter:				
Personal injury	192	74	169	70
Other	67	26	73	30
Court:				
District/County	168	65	157	65
Supreme	91	35	85	35
Party:				
Plaintiff	138	53	108	45
Defendant	121	47	134	55
Stage of disposal:				
Settled before day of hearing	158	62	157	68
Settled on or after day of hearing	54	21	56	24
Verdict	44	17	18	8
Date of completion:				
1990-1992	246	97	221	95
< 1990	7	3	12	5
Median duration (months):				
District/County Court	43		19	
Supreme Court	38		23	
Total	43		20	

Source: VLRC and CJRC surveys.

2.0 Fee Charging Arrangements

Solicitors were asked whether the basis on which their fees would be charged was agreed at an early stage of the proceedings. There was no significant difference between the states.²⁷ In Victoria there were 60% of matters where the fee was agreed at an early stage of the proceedings, which compares with 62% in New South Wales.

In New South Wales an interim account for professional fees was issued in 45% of the sampled matters. In Victoria, 40% of the sampled matters received an interim account for professional fees.

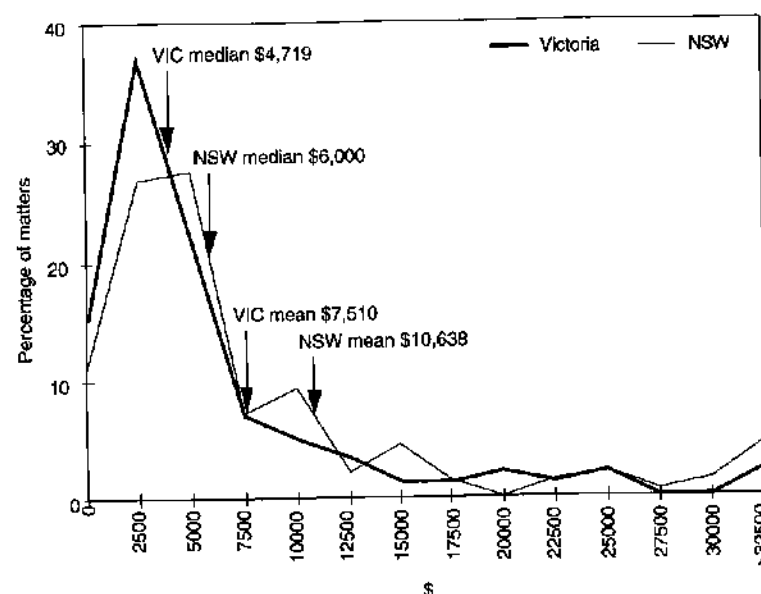
Firms were asked to indicate which one of the following best described the way the firms' professional fees were calculated:

- mainly by calculation of the time spent;
- mainly by court scale;
- a reasonable amount having regard to the result;
- mainly by a subjective assessment of the value of the work done; or
- by some "other" method.

The method of fee calculation was found to be significantly different between Victoria and New South Wales.²⁸ While the majority of fees in Victoria were calculated mainly *on the basis of a court scale* (69%), New South Wales firms calculated their fees mainly *on the basis of time spent* (64%). In New South Wales only 4% of matters were calculated mainly *on the basis of a court scale*. For more detail on the way the firms calculated their fees in each state refer to Tables B.2.1 and C.2.1

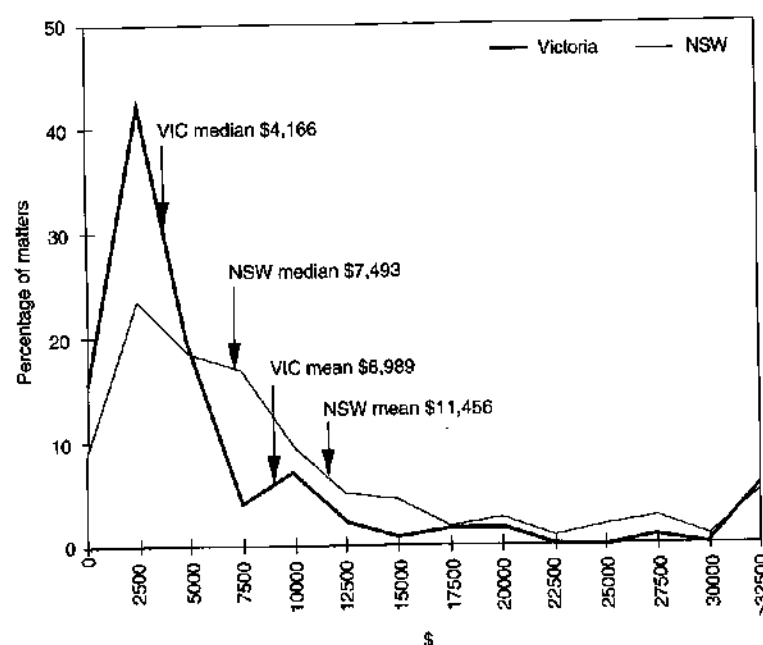
A fee arrangement is speculative if the solicitor agrees that a fee is payable only if the client succeeds in the case. This type of arrangement was found more often in the Victorian sample. Seventeen percent of matters in Victoria had such an arrangement, compared with only 3% of matters in New South Wales.

Figure D.1. Plaintiffs' solicitors' fees in New South Wales and Victoria



Source: CJRC and VLRC surveys. Based on 86 matters in Victoria and 138 matters in New South Wales in which information on solicitor's fees was provided by the plaintiff.

Figure D.2. Defendants' solicitors' fees in New South Wales and Victoria



Source: CJRC and VLRC surveys. Based on 129 matters in Victoria and 120 matters in New South Wales in which information on solicitor's fees was provided by the defendant.

3.0 Solicitors' Fees and Disbursements

3.1 Solicitors' Fees

The median *plaintiffs'* solicitors' fee in Victoria (\$4,719) was lower than the median *plaintiffs'* solicitors' fee in New South Wales (\$6,000). The difference in solicitors' fees in the sampled matters in New South Wales and Victoria was not statistically significant.²⁹ Similarly, there was no statistically significant difference between *defendants'* solicitors' fees.³⁰ The median solicitors' fee in Victoria (\$4,166) was less than the median solicitors' fee in New South Wales (\$7,493).

The shapes of the distribution of fees, overall, shown in Figures D.1 and D.2, were quite similar. In the Victorian sample there was a higher proportion of matters with fees in the \$0 to \$5,000 range, whereas in New South Wales the fees tended to be less "concentrated". Tables B.3.1 and C.3.1 show the breakdown in fees in each state in more detail.

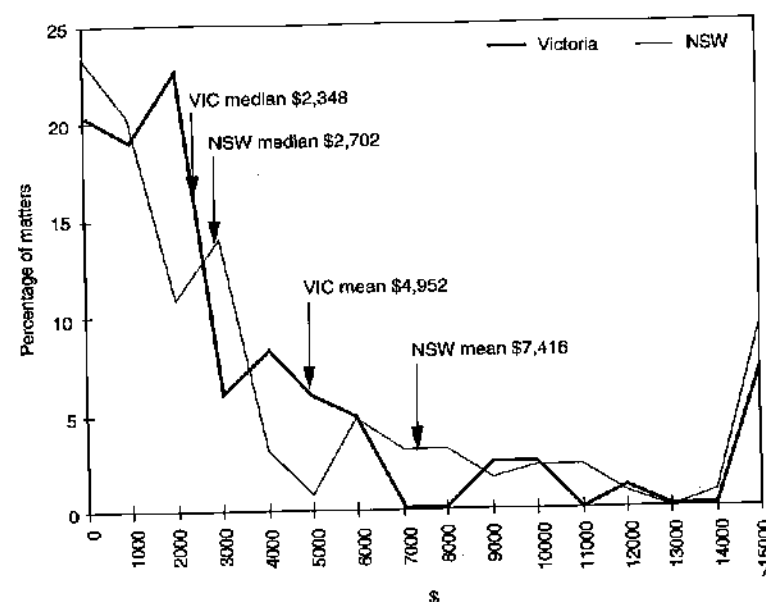
3.2 Disbursements

Figures D.3 and D.4 show that the shape of the distribution of disbursements incurred by the sampled plaintiffs and defendants are quite similar. Although there was a slight trend for both Victorian plaintiffs and defendants to incur lower disbursements, there was no significant difference between the disbursements incurred by either plaintiffs or defendants in the New South Wales and Victorian samples.³¹ The medians for *plaintiffs* were \$2,348 in Victoria and \$2,702 in New South Wales and for *defendants* \$949 in Victoria and \$1,258 in New South Wales.

Further details of the disbursements charged in New South Wales and Victoria are outlined in Tables B.3.2, B.3.3, C.3.2 and C.3.3.

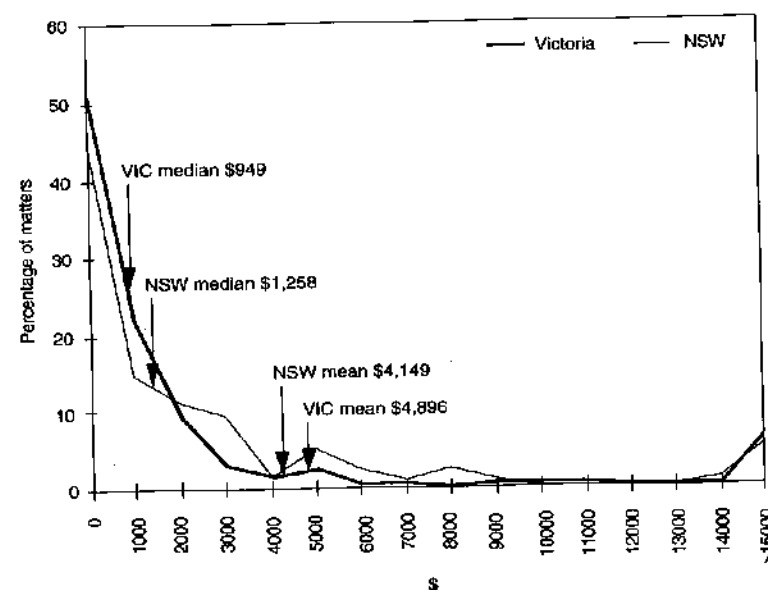
Counsel and expert witness fees were more frequently incurred in the Victorian sample than in the New South Wales sample, but other out of pocket expenses were incurred less often. Median fees for counsel, expert witnesses and other expenses were lower in the Victorian sample.

Figure D.3. Disbursements Incurred by plaintiffs in New South Wales and Victoria



Source: CJRC and VLRC surveys. Based on 84 matters in Victoria and 129 matters in New South Wales in which information on disbursements was provided by the plaintiff.

Figure D.4. Disbursements incurred by defendants in New South Wales and Victoria



Source: CJRC and VLRC surveys. Based on 127 matters in Victoria and 115 matters in New South Wales in which information on disbursements was provided by the defendant.

3.3 Party-Party Costs and Solicitor-Client Costs

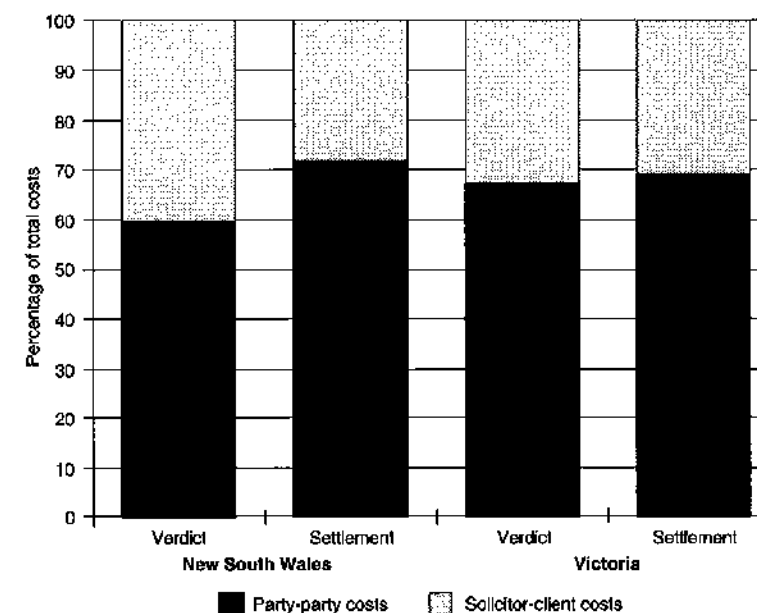
Party-party costs partially indemnify the winner of a case for costs calculated on a court scale. Solicitor-client costs are the fees and disbursements not recovered from the other party as party-party costs and are payable by the client. That is, they are the difference between the total legal costs and the costs which the winner can recover according to the court scale.

Party-party costs are invariably lower than the total costs because the court will not allow all the costs incurred by the successful party to be recovered. In his book "Civil Procedure", Cairns states that party-party costs are designed to indemnify the winner only for costs that were "strictly necessary to obtain justice", whereas solicitor-client costs are assessed on the basis of "whether costs were reasonably incurred".³²

In Victoria party-party costs were equivalent to a median of 69% of total costs. In New South Wales party-party costs were equivalent to a median of 65% of total costs. There was no statistically significant difference in the percentages between the states.³³

In matters which had gone to a *verdict*, party-party costs were equivalent to a median of 65% of total costs in Victoria, 59% in New South Wales (Figure D.5). When matters *settled*, party-party costs were equivalent to a median of 69% in Victoria, 72% in New South Wales.

Figure D.5. Party-party costs and solicitor-client costs in New South Wales and Victoria



Source: CJRC and VLRC surveys. Based on 73 matters in Victoria and 70 matters in New South Wales in which information on party-party costs and solicitor-client costs were provided.

3.4 Firm Input and Cost per Hour

The number of hours input by firms per matter tended to be lower in the Victorian sample than in the New South Wales sample. This difference was statistically significant for defendant matters,³⁴ but not for plaintiff matters.³⁵ The median number of hours spent on *plaintiff* matters in Victoria was 33 hours, and in New South Wales it was 39 hours. For *defendant* matters the median number of hours was 24 hours in Victoria and 37 hours in New South Wales.

Hourly costs also tended to be lower in the Victorian sample, although this difference was not statistically significant.³⁶ The median charge per hour for *plaintiffs* was \$145 in the Victorian sample and \$155 in the New South Wales sample. For *defendants* the median charge per hour was \$174 in Victoria and \$209 in New South Wales.

The median charge per hour in the Victorian County Court was \$161 and in the New South Wales District Court it was \$164; in the Victorian Supreme Court the median charge per hour was \$193, it was \$215 in the New South Wales Supreme Court.

3.5 The Relationship Between Legal Costs and the Stage of Disposal, and the Duration of Matters

In both states, matters which settled before the day of the hearing incurred lower solicitors' fees and disbursements than those which settled on or after the day of hearing, or reached a verdict.

While this was a consistent pattern in both states, there was a significant difference between the states in terms of the proportion of matters which actually proceeded to a verdict (17% in the New South Wales sample; 8% in the Victorian sample). The higher proportion of verdicts in the New South Wales sample could therefore be a significant determinant of the higher legal costs observed in this state.

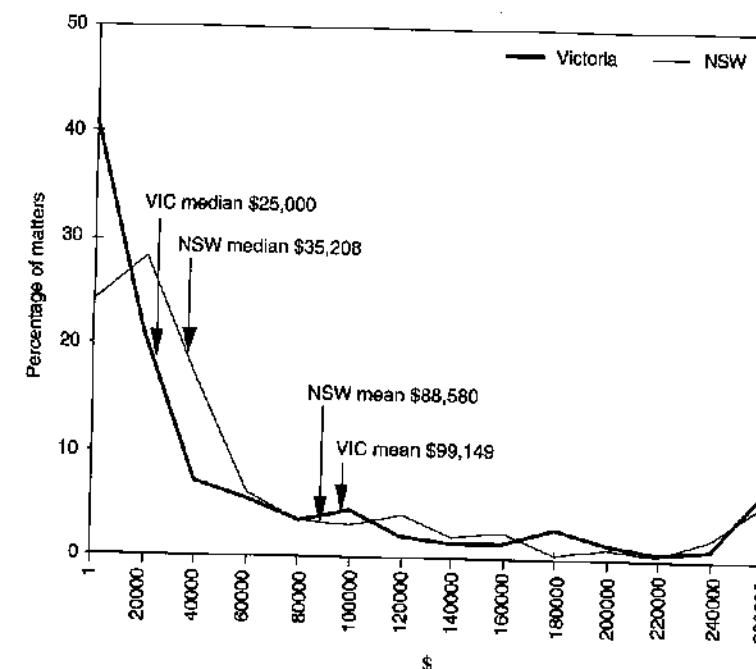
It has already been mentioned that the states differed significantly with respect to the median duration of matters in each sample. The median duration for New South Wales was approximately double that observed for Victoria. This difference is not likely to have a strong effect on the comparison of legal costs between the states as no significant relationship was observed to exist between the duration of matters and costs incurred. That is, the mere passing of time ("delay") did not appear to have raised the fees charged by firms or the disbursements incurred in either state. This finding is consistent with that of Williams et al (1992).

4.0 The Amount Recovered by the Plaintiff

There was no significant difference in the gross amount recovered by the plaintiff in the New South Wales and Victorian samples.³⁷ The median amount recovered in the Victorian sample, \$25,000, was less than the median in New South Wales, \$35,208. The mean amount recovered, however, was higher in Victoria, \$99,149 than in New South Wales, \$88,580, indicating that more Victorian plaintiffs received very high payments in this sample (see Figure D.6).

More detail about the amount recovered by the plaintiff in each state is provided in Table B.5.2 for New South Wales and Table C.5.2 for Victoria.

Figure D.6. Gross amount recovered by the plaintiff in New South Wales and Victoria



Source: CJRC and VLRC surveys. Based on 199 matters in Victoria and 196 matters in New South Wales in which information appropriate to the calculation of the gross amount recovered by the plaintiff was provided, and in which the plaintiff recovered a positive amount.

5.0 Solicitors' Fees and Disbursements Compared with the Gross Amount Recovered by Plaintiffs

In the preceding sections it was shown that there was no statistically significant differences in fees based on the samples from each state, but that there was a consistent trend for Victorian litigants to pay lower fees than New South Wales litigants. There was also a trend for Victorian litigants in this study to recover lower amounts. From Tables B.5.1 and C.5.1, which show the median legal costs for different categories of amounts recovered, it can be seen that costs tend to increase as the amount recovered by the plaintiff increases, in both states. In general, the median costs for Victoria were lower than New South Wales when the amount recovered was higher, but median costs were higher when the amount recovered was lower, that is, less than \$20,000.

Tables B.5.2 and C.5.2 show total legal costs as a percentage of the gross amount recovered by the plaintiff. There is a tendency, as has been mentioned, for the Victorian litigants in the sample to pay less and recover less, so the percentages are of particular interest. For *plaintiffs* the median percentage in Victoria, 23%, was lower than in New South Wales, 26%. For *defendants* the median percentage in Victoria, 27%, was higher than in New South Wales, 22%. There was, however, no statistically significant differences in the percentages between the sampled matters in each state.³⁸

In the District Court/County Court, *plaintiffs'* legal costs were a median of 32% of the gross amount recovered by the plaintiff in Victoria and 27% in New South Wales. *Defendants'* legal costs were a median of 30% of the gross amount recovered by the plaintiff in Victoria and 28% in New South Wales.

In the Supreme Court, *plaintiffs'* legal costs were a median of 15% of the gross amount recovered by the plaintiff in Victoria and 20% in New South Wales. *Defendants'* legal costs were a median of 14% of the gross amount recovered by the plaintiff in Victoria and also 14% in New South Wales.

6.0 Conclusion

This study was conducted to provide some much needed empirical data to assist in the current debate over the costs of justice, and to provide a baseline against which the impact of any future reforms may be measured. Parallel research programs were undertaken in New South Wales and Victoria. This provided the opportunity to describe the charging practices of legal firms in each state, as well as the costs of litigation incurred by plaintiffs and defendants. It also enabled a comparison to be made between the two states. This report has examined the following issues:

- the types of fee arrangements which currently exist between lawyers and their clients;
- how solicitors calculate their fees;

- the amounts charged to litigants in fees and disbursements;
- how party-party costs compare with solicitor-client costs;
- the hours input by firms in conducting civil matters;
- the relationship between the stage of disposal and legal costs;
- the relationship between the duration of cases and legal costs;
- amounts recovered by plaintiffs;
- a comparison of legal costs and amounts recovered; and
- a comparison of the legal costs incurred by opposing sides in the same matter.

The similarities and differences that emerged from this study between the New South Wales and Victorian samples are focused on here. Some similarities were as follows:

- costs were lower for matters that reached settlement than costs for matters that went to verdict;
- costs were not related to the duration of matters;
- costs increased as the amount recovered by the plaintiff increased, although the costs were proportionately higher where the amount recovered was smaller;
- costs formed a similar proportion of the amount recovered by the plaintiff; and
- party-party costs formed a similar proportion of the total cost.

Some interesting differences that emerged between the New South Wales and Victorian samples were in relation to the duration of matters, the number of matters proceeding to verdict, the methods used to calculate fees, and the amounts charged and recovered:

- the time taken to completion of a matter was significantly longer in the New South Wales sample than in the Victorian sample;
 - a greater proportion of matters proceeded to verdict in the New South Wales sample than in the Victorian sample; and
 - most firms in the New South Wales sample based their fees on time spent, whereas most firms in the Victorian sample used court scales to determine fees.
- while the differences between legal costs in New South Wales and Victoria were not statistically significant, there was a consistent trend for both legal costs and the amount recovered by the plaintiff to be higher in New South Wales.

These findings have provided insight into the charging practices of legal firms in New South Wales and Victoria. Many important questions are raised, for example, why are court delays generally longer in New South Wales? Why do a higher proportion proceed to a verdict? Why is there a trend for legal costs to be higher in New South Wales? Questions such as these are too important to be left unanswered and on a wider scope, the problem of providing affordable justice to the community remains. Further empirical research in the area of the costs of civil litigation and charging practices is clearly necessary.

25 T-test for independent samples on duration: $t_{455} = 7.34$, $p < 0.01$.

A t-test compares the means of two populations on the basis of the selected samples. In this report the median has been considered a better measure of central tendency than the mean, as the mean is strongly affected by extreme values. The t-test however is quite "robust" and is considered appropriate based on the size of the samples used.

26 Chi-square test (stage of disposal by state): $X^2_2 = 9.68$, $p < 0.01$.

A chi-square test is a test of the independence of two qualitative variables in the population. A statistically significant result indicates there is a relationship between the variables.

27 Chi-square test (fee agreement by state): $X^2_1 = 0.40$, $p > 0.05$.

28 Chi-square test (method of fee calculation by state): $X^2_4 = 248.61$, $p < 0.01$.

29 T-test for independent samples on plaintiffs' solicitors' fees: $t_{222} = 1.40$, $p > 0.05$.

30 T-test for independent samples on defendants' solicitors' fees: $t_{247} = 1.23$, $p > 0.05$.

31 T-test for independent samples on plaintiffs' disbursements: $t_{211} = 1.17$, $p > 0.05$.

T-test for independent samples on defendants' disbursements: $t_{240} = 0.34$, $p > 0.05$.

32 Cairns, *op. cit.*

33 T-test for independent samples on party-party costs as a percentage of total costs: $t_{141} = 1.09$, $p > 0.05$.

34 T-test for independent samples on the number of hours input for defendant matters: $t_{210} = 2.30$, $p < 0.5$.

35 T-test for independent samples on the number of hours input for plaintiff matters: $t_{144} = 1.07$, $p > 0.05$.

36 T-test for independent samples on hourly costs for plaintiff matters: $t_{144} = 0.78$, $p > 0.05$.

T-test for independent samples on hourly costs for defendant matters: $t_{204} = 0.27$, $p > 0.05$.

37 T-test for independent samples on gross amount recovered by the plaintiff: $t_{393} = 0.42$, $p > 0.05$.

38 T-test for independent samples on plaintiffs' legal costs as a percentage of the gross amount recovered by the plaintiff: $t_{197} = 0.17$, $p > 0.05$.

T-test for independent samples on defendants' legal costs as a percentage of the gross amount recovered by the plaintiff: $t_{171} = 0.80$, $p > 0.05$.

APPENDIX

New South Wales Questionnaires

Questionnaire One: Information About the Firm

Questionnaire Two: Information About a Case

Questionnaire Three: Information About the Opposing Party's Costs

Victorian Questionnaires

Questionnaire One: Information About the Firm

Questionnaire Two: Information About a Case

Questionnaire Three: Information About the Opposing Party's Costs

FIRM CODE **FORM 1 - INFORMATION ABOUT THE FIRM****Instructions:**

1. Please complete one copy of this form by filling in all sections.
2. Your answers should relate to your firm's New South Wales practice only.

1. What was the approximate percentage of the firm's 1990-91 revenue which was derived from civil litigation (excluding family law litigation)?

Circle the ONE number which applies:

- Less than one-third 1
Between one-third and two-thirds 2
More than two-thirds 3

2. How many principals and employees in the firm hold a practising certificate?

3. How many law clerks/paralegals are employed by the firm?

4. Does your firm keep records of the actual time spent by its lawyers and law clerks/paralegals working on particular client matters?

Circle the ONE number which applies:

- Yes 1
No 2

Thank you for completing this form.

1
1
1 D

Instructions:

1. Please complete a copy of this form for each of 20 cases
2. The 20 cases should be those most recently completed and final billed by your firm which meet the following criteria:
 - a) the proceeding was commenced in the District Court
 - b) the firm represented a plaintiff or defendant from the initial instructions to the conclusion of the matter (ie your client did not come to you after changing solicitors during the proceeding)
 - c) the principal claim was for money
 - d) a defence to the statement of claim was filed
 - e) the proceeding was not transferred from one court to another
 - f) the matter was not the subject of an arbitration
3. If there was an appeal from a verdict, the information provided should relate only to the proceedings at first instance.

1. Firm file or reference number:

(Do NOT provide information which might identify your client but please provide information which might enable you to identify the file again)

2. Party represented by the firm:

Circle the ONE number which applies:

Plaintiff 1

Defendant 2

3. Date court proceedings commenced: ____ / ____ / 19 ____

4. District Court list:

Circle the ONE number which applies:

No special list 1

Building and engineering list 2

Commercial list 3

Other: (specify below) 4

5. Which one of the following best describes the type of claim?

Circle the ONE number which applies:

- Personal injury, employment 1
 Personal injury, medical negligence 2
 Personal injury, motor vehicle 3
 Personal injury, product liability 4
 Personal injury, other 5
 Debt 6
 Economic loss, consumer transaction 7
 Economic loss, commercial transaction .. 8
 Other: (specify below) 9

6. (a) Was the basis on which your fee would be charged agreed at an early stage of the proceedings?

Circle the ONE number which applies:

- Yes..... 1
 No (go straight to Question 7) .. 2

(b) If yes, was your fee to be payable:

Circle the ONE number which applies:

- In any event 1
 Only if your client succeeded 2

7. (a) Were any interim accounts for professional fees rendered before a final account?

Circle the ONE number which applies:

- Yes 1
 No 2

(b) Were any interim accounts for disbursements (or out-of-pocket expenses) rendered before a final account?

Circle the ONE number which applies:

- Yes 1
 No 2

8. (a) Was there more than one plaintiff or defendant? Yes..... 1
 No (go straight to Question 9)... 2

(b) If yes, was there more than one firm of solicitors representing the plaintiffs or defendants? Yes 1
 No 2

9. Were there any third party proceedings? Yes 1
 No 2

10. Did the case go to verdict? Yes 1
 No (go straight to Question 12) .. 2

11. IF THE CASE WENT TO VERDICT:

(a) Date of verdict: ____ / ____ / 19 ____

(b) Was the case heard before a judge alone or a judge and jury?

Circle the ONE number which applies:

- Judge alone 1
 Judge and jury ... 2

(c) (i) Did the plaintiff succeed on any claims? Circle the ONE number which applies:
 Yes 1
 No (go straight to Question 11(d)).. 2

(ii) If yes, what was the amount awarded?

Do not include costs and do not off-set any counter claim \$ _____

(d) (i) Did the defendant succeed on any counter claim?

Yes..... 1

No (go straight to question 11(e)).. 2

(ii) If yes, what was the amount awarded?

Do not include costs and do not off-set any counter claim

\$ _____

(e) What amount of party-party costs was payable to the plaintiff by the defendant?

Do not deduct or off-set any amount of party-party costs payable to the defendant by the plaintiff. Circle 1 if nil.

\$ _____

Nil 1

(f) What amount of party-party costs was payable to the defendant by the plaintiff?

Do not deduct or off-set any amount of party-party costs payable to the defendant by the plaintiff. Circle 1 if nil.

\$ _____

Nil 1

(Now go to Question 13)

12. IF THE CASE WAS SETTLED:

(a) At what stage did it settle?

Circle the ONE number which applies:

Before trial date was fixed .. 1

After trial date fixed
but before the trial date 2

On or after the trial date 3

(b) What date was the settlement agreed? ____ / ____ / 19 ____

(c) What was the amount of the settlement? \$ _____

(d) Was the amount in 12(c) payable to:

Circle the ONE number which applies:

Plaintiff 1

Defendant.. 2

(e) (i) Was the amount in 12(c) inclusive of costs? Yes 1

No (go straight to Question 12(f)). 2

(ii) If yes, what was the specified amount for costs? \$ _____

If amount unknown circle 1

Unknown ... 1

(f) (i) Was an amount for costs payable in addition to the amount in 12(c)?

Yes 1

No (go straight to question 13).. 2

(ii) If yes, what was this amount? \$ _____

If amount unknown circle 1

Unknown ... 1

13. ANSWER FOR ALL MATTERS

Please provide a breakdown of the hours of work done by your firm in this matter by completing the table below as accurately as possible, use estimates if necessary.

The table asks you to consider three separate stages of the cases, as follows:

Stage I Initial instructions, advice, and other preparatory work up to the commencement of proceedings, including initial pleadings if any

Stage II From the commencement of proceedings (not including initial pleadings) to the matter being set down for trial

Stage III From set down to completion, including preparation for and conduct of trial, attendance at pre-trial if any, and finalisation of the case

Note: Professional hours spent on interlocutory appeals, applications, and other court attendances should be attributed to the most relevant stage of the case.

	Partners	Employee solicitors	Law clerks/ paralegals
Hours in Stage I	(a)	(a)	(a)
Hours in Stage II	(a)	(a)	(a)
Hours in Stage III	(a)	(a)	(a)
Total hours	(a)	(a)	(a)

14. Professional fees

- (a) Total amount of your firm's professional fees billed to client:

Include the fees of your agents, but not disbursements. Do not include counsel's fees \$ _____

- (b) Which one of the following
- best
- describes the way this fee was calculated?

Circle the ONE number which applies:

Mainly by calculation of the time spent 1

Mainly by court scale 2

A reasonable amount having regard to the result 3

Mainly by a subjective assessment of the value of the work done 4

Other: (specify below) 5

15. Disbursements and out-of-pocket expenses

- (a) Total amount of disbursements charged to the client:

Include counsel's fees and disbursements billed to you by your agents \$ _____

- (b) Please provide a breakdown of counsel's fees and expert witness fees charged to your client by completing the table as accurately as possible.

The table involves the three stages as used above, namely:

Stage I Initial instructions, advice, and other preparatory work up to the commencement of proceedings, including initial pleadings if any

Stage II From the commencement of proceedings (not including initial pleadings) to the matter being set down for trial

Stage III From set down to completion, including preparation for and conduct of trial, attendance at pre-trial if any, and finalisation of the case

Note: Disbursements in relation to interlocutory appeals, applications and other court attendances should be attributed to the most relevant stage of the case.

	Counsel	Expert witnesses
Dollars in Stage I	(a)	(a)
Dollars in Stage II	(b)	(b)
Dollars in Stage III	(c)	(c)
Total dollars	(d)	(d)

16. If your firm and another were the only two firms involved on behalf of all of the parties in this matter, please help us by following the instructions attached to Form 3.

Will you be sending Form 3 to the opposing firm in this matter? Yes..... 1

No 2

Thank you for completing this form.

FIRM CODE |_|_|_|_|

FORM 3 - INFORMATION ABOUT THE OPPOSING PARTY'S COSTS**Instructions****To the firm which completed Form 2:**

If your firm and another were the only two firms involved on behalf of all of the parties in this matter:

1. Write in the firm file or reference number from Question 1 of Form 2:

2. Please then send this form to the other firm, together with the CJRC's letter addressed to the other firm, the return envelope and a covering letter from you which includes both your reference and their reference. (Would you please use a text along the lines provided in the CJRC letter delivered with these forms.)

Thank you for your assistance.

To the other firm:

Please complete Questions 1-5 of this form and return it to the Civil Justice Research Centre in the stamped addressed envelope provided. As explained in our letter, these procedures have been adopted to ensure that your client's privacy is completely protected.

Thank you for your assistance.

1. Your firm name: _____

2. Party represented by your firm:

Circle the ONE number which applies:

Plaintiff 1

Defendant 2

3. (a) Was the basis on which your fee would be charged agreed with the client at an early stage of the proceedings?

Circle the ONE number which applies:

Yes 1

(b) If yes to 3 (a), was your fee to be payable:

Circle the ONE number which applies:

In any case 1

Only if your client
succeeded 2

4. Professional fees

(Include the fees of your agents, but not their disbursements. Do not include counsel's fees)

(a) Total amount of your firm's professional fees billed to the client: \$ _____

(b) Which one of the following best describes the way this fee was calculated?

Circle the ONE number which applies:

Mainly by calculation of the time spent 1

Mainly by court scale 2

A reasonable amount having
regard to the result 3

Mainly by a subjective assessment of
the value of the work done 4

Other: (specify) _____ 5

5. Disbursements and out-of-pocket expenses

(Include counsel's fees and disbursements billed to you by your agents)

Total amount of disbursements charged to the client: \$ _____

Many thanks for your assistance.

FIRM CODE | | | |

FORM 1 — INFORMATION ABOUT THE FIRM

Instructions:

1. Please complete one copy of this form by filling in all sections.
2. Your answers should relate to your firm's Victorian practice only.

1. Approximate percentage of firm's 1990-91 revenue derived from civil litigation (excluding family law litigation).
 - ☐ less than one-third
 - ☐ between one-third and two-thirds
 - ☐ more than two-thirds
2. Number of principals and employees in the firm who hold a practising certificate: _____
3. Number of articled clerks employed by the firm: _____
4. Number of law clerks/paralegals employed by the firm: _____
5. Does your firm keep records of the actual time spent by its lawyers and law clerks/paralegals working on particular client matters?
 - ☐ Yes
 - ☐ No

Thank you for completing this form.

(County Court Form)

FIRM CODE | | | |

FORM 2 — INFORMATION ABOUT A CASE

Instructions

Please include 20 cases in this study, and complete one copy of this form for each case.

The 20 cases should be those most recently completed and final billed by your firm. They must also meet the following criteria:

- a) the proceeding was commenced in the County Court.
- b) the firm represented a plaintiff or defendant, from the initial instructions to the conclusion of the matter (ie your client did not come to you after changing solicitors during the proceeding).
- c) the principal claim was for money.
- d) a defence to the statement of claim was filed.
- e) the proceeding was not transferred from one court to another.
- f) the matter was not the subject of an arbitration.

If there was an appeal from a verdict, the information provided should relate only to the proceedings at first instance.

Note: There are 7 pages in this form.

1. Firm file or reference number _____
(Do not provide information which might identify your client but please provide information which will enable you to identify the file again, if necessary.)
2. Party represented by the firm
☐ Plaintiff ☐ Defendant
3. (a) Date court proceedings commenced:
(day/month/year) _____
(b) Court list (eg 'Miscellaneous Causes'): _____

4. Which one of the following best describes the type of claim? (tick ONE ONLY)

- ☐ personal injury — employment
- ☐ personal injury — medical negligence
- ☐ personal injury — motor vehicle
- ☐ personal injury — product liability
- ☐ personal injury — other
- ☐ debt
- ☐ economic loss — consumer transaction
- ☐ economic loss — commercial transaction
- ☐ other: (specify) _____

5. (a) Was the basis on which your fee would be charged agreed with the client at an early stage of the proceedings?

☐ Yes ☐ No

(b) If yes, was your fee to be payable:

☐ in any event ☐ only if your client succeeded

6. (a) Were any interim accounts for professional fees rendered before a final account?

☐ Yes ☐ No

(b) Were any interim accounts for disbursements (or out-of-pocket expenses) rendered before a final account?

☐ Yes ☐ No

7. (a) If there was more than one plaintiff or defendant, was there more than one firm of solicitors representing the plaintiffs or defendants?

☐ Yes ☐ No ☐ N/A

(b) Were there third party proceedings?

☐ Yes ☐ No

8. Did the case go to verdict?

Yes ☐

Date of verdict: _____
(day/mth/year)

No ☐

(If no, go to Q 10)

9. IF THE CASE WENT TO VERDICT.

(a) Was it before a judge alone or a judge and jury?

☐ Judge alone ☐ Jury

(b) Did the plaintiff succeed on any claims?

☐ Yes What was the amount awarded (not including costs and without off-setting any counterclaim)?

\$ _____

☐ No

(c) Did the defendant succeed on any counterclaim?

☐ Yes What was the amount awarded (not including costs and without off-setting the plaintiff's claim)?

\$ _____

☐ No

Complete **BOTH** parts (d) and (e) by providing the amount of the costs awarded **without offsetting** other costs awards.

- (d) What amount of party-party costs was payable to the plaintiff by the defendant?

\$ _____ OR tick box if nil ☐

- (e) What amount of party-party costs was payable to the defendant by the plaintiff?

\$ _____ OR tick box if nil ☐

Go to Q. 12

10. IF THE CASE WAS SETTLED.

- (a) At what stage did it settle?

- ☐ before a trial date was fixed
☐ after a trial date was fixed but before the trial date
☐ on or after the trial date

- (b) What date was the settlement agreed? (day/month/year) _____

11. (a) What was the amount of the settlement? \$ _____

- (b) Was this amount payable to (tick one box)

- ☐ plaintiff
☐ defendant

- (c) Was the amount in (a) inclusive of costs?

- ☐ Yes If a specified amount for costs was included, what was this amount?

\$ _____

- ☐ No

- (d) Was an amount for costs payable in addition to the amount in (a)?

- ☐ Yes What was this amount? \$ _____

- ☐ No

12. Please provide a breakdown of the hours of work done by your firm in this matter by completing Table A OR Table B, as appropriate, as accurately as possible (use estimates if necessary).

TABLE A: ALL LISTS EXCEPT BUILDING CASES LIST

Stage I - Initial instructions, advice, commencement of proceedings including initial pleadings.

Stage II - Close of pleadings to Certificate of Readiness/Interlocutory steps closed notice.

Stage III - Preparation for and conduct of trial, including attendance at pre-trial.

Note: Professional hours spent on interlocutory appeals, applications and other court attendances should be attributed to the most relevant stage of the case.

	Partners	Employee Solicitors/ Articled Clerks	Law Clerks/ Paralegals
HOURS in STAGE I			
HOURS in STAGE II			
HOURS in STAGE III			
TOTAL			

TABLE B: BUILDING CASES LIST ONLY

Stage I - Initial instruction, advice and other preparatory work up to the commencement of proceedings.

Stage II - After commencement up to the matter being set down for trial.

Stage III - Preparation for and conduct of trial, including preparation of witness statements and court books, if any.

Note: Professional hours spent on interlocutory appeals, applications and other court attendances should be attributed to the most relevant stage of the case.

	Partners	Employee Solicitors/ Articled Clerks	Law Clerks/ Paralegals
HOURS in STAGE I			
HOURS in STAGE II			
HOURS in STAGE III			
TOTAL			

13. Professional Fees (Do not include counsel's fees. Include the fees, but not disbursements, of your agents.)

(a) Total amount of your firm's professional fees billed to client \$ _____

(b) Which of the following best describes the way this fee was calculated (tick one only)

- ☐ mainly by calculation of the time spent
- ☐ mainly by court scale
- ☐ a reasonable amount having regard to the result
- ☐ mainly by a subjective assessment of the value of the work done
- ☐ other: (specify) _____

14. Disbursements and out-of-pocket expenses (include counsel's fees and disbursements billed to you by your agents).

(a) Total amount of disbursements charged to the client \$ _____

(b) Please provide a breakdown of counsel's fees and expert witness fees charged to your client by completing Table C OR Table D as accurately as possible. Table D is on the next page.

TABLE C: ALL LISTS EXCEPT BUILDING CASES LIST

Stage I - Initial instructions, advice, commencement of proceedings including initial pleadings.

Stage II - Close of pleadings to Certificate of Readiness/Interlocutory steps closed notice.

Stage III - Preparation for and conduct of trial, including attendance at pre-trial.

Note: Disbursements in relation to interlocutory appeals, applications and other court attendances should be attributed to the most relevant stage of the case.

	Counsel	Expert Witnesses
DOLLARS in STAGE I		
DOLLARS in STAGE II		
DOLLARS in STAGE III		
TOTAL		

TABLE D: BUILDING CASES LIST ONLY

Stage I - Initial instructions, advice and other preparatory work up to the commencement of proceedings.

Stage II - After commencement up to the matter being set down for trial.

Stage III - Preparation for and conduct of trial, including preparation of witness statements and court books, if any.

Note: Disbursements in relation to interlocutory appeals, applications and other court attendances should be attributed to the most relevant stage of the case.

	Counsel	Expert Witnesses
DOLLARS in STAGE I		
DOLLARS in STAGE II		
DOLLARS in STAGE III		
TOTAL		

15. If your firm and another were the only two firms involved on behalf of all of the parties in this matter, please help us by following the instructions attached to Form 3.

Will you be sending Form 3 to the opposing firm in this matter?

☐ Yes

☐ No

Thank you for completing this form.

FIRM CODE | _ | _ | _ |

FORM 3 — INFORMATION ABOUT THE OPPOSING PARTY'S COSTS

Instructions

To the firm which completed Form 2.

If your firm and another were the only two firms involved on behalf of all of the parties in this matter,

1. Copy the firm file or reference number from question 1 of Form 2: _____
2. Please send this form to the other firm, together with the Commission's letter addressed to the other firm, the return envelope and a covering letter from you identifying the matter for the other firm.

Thank you for your assistance.

To the other firm

Please complete Questions 1-5 of this form and return it to the Law Reform Commission in the stamped addressed envelope provided.

1. Firm name: _____
2. Party represented by the firm
☐ Plaintiff ☐ Defendant
3. (a) Was the basis on which your fee would be charged agreed with the client at an early stage of the proceedings?
☐ Yes ☐ No

(b) If yes, was your fee to be payable:
☐ in any event ☐ only if your client succeeded

4. Professional Fees (include the fees of your agents, if applicable but do not include counsel's fees)

(a) Total amount of your firm's professional fees billed to client

\$ _____

(b) Which of the following best describes the way this fee was calculated (tick one only)☐ mainly by calculation of the time spent☐ mainly by court scale☐ with reasonable amount having regard to the result☐ mainly by a subjective assessment of the value of the work done☐ other: (specify) _____5. Disbursements and out-of-pocket expenses (include counsel's fees in this section).

Total amount of disbursements charged to the client \$ _____

Thank you for completing this form.

REFERENCES

Williams, PL, Williams, RA, Goldsmith, AJ and Browne, P, 1992, *The Cost of Civil Litigation before Intermediate Courts in Australia*, AIJA, Victoria.

Senate Standing Committee on Legal and Constitutional Affairs, 1991, "Cost of Legal Services and Litigation", Discussion paper No. 2, *Lawyers' Fees*, Commonwealth of Australia.

Cairns, BC, 1985, *Australian Civil Procedure*, Law Book Company Limited, Sydney.