Queensland Law Society

Position Paper

Solicitors charging for CDD under AML/CTF

June 2026

Position Paper – Solicitors charging for CDD under AML/CTF

As a general proposition it is accepted in Australia and related jurisdictions that:

- Legal work done for a client can be billed to that client; but
- Work undertaken for a solicitor's benefit rather than the client's[1] and general compliance cannot (without agreement) be passed to a client but must be absorbed in the firm's hourly rate as an overhead.[2]

Issues to address:

- Which category does VOI ("Verification of Identity") and CDD ("Client Due Diligence"[3]) required of lawyers under the AML/CTF regime fall into?
- Is there a difference between CDD and the cost of establishing and running the overall AML program?
- Assuming recovery of CDD costs from a client is possible at all, what components may properly be charged and on what basis?

The issue is more than incidental. The cost of client identity verification, onboarding, and due diligence assessment of the resulting information is significant. In some cases, it is possible that the professional time invested in undertaking CDD may approach, or form a significant proportion of, the cost of the substantive service.

1.1. Conclusion – basic position

Both VOI and broader CDD costs are capable of being charged to the client in appropriate circumstances.

Provided that:

- VOI or AML provider disbursements meet the usual test – ie, that they are genuine payments to third parties, accurately quantified and incurred in discharge of a client retainer; and
- Professional/paralegal work is undertaken on instructions, reasonably necessary to discharge the retainer for a specific client and calculated at the rate appropriate to the work undertaken

such charges can be passed to the client. A dual purpose[4] for the CDD work is not a precondition to recovery.

A general "AML Compliance Fee" that attempted to amortise overall AML program expenses (not just the CDD work done for that particular client) includes overhead costs only chargeable to clients after specific agreement and appropriate disclosure.

---

1 *Cook v Pasminco Ltd (no 2)* (2000) 107 FCR 44.

2 Legal Services Commission (Qld), 'Legal costs, outlays and disbursements, and billing: Charging for outlays and disbursements', *Legal Services Commission* (Web Page, Accessed 17 March 2026) <https://www.lsc.qld.gov.au/for-the-profession/policies-and-guidelines/legal-costs-outlays-and-disbursements-and-billing>.

3 See AUSTRAC, 'Conduct customer due diligence', *Your obligations* (Web Page, 31 March 2026) <https://www.austrac.gov.au/industry-and-business/obligations-and-guidance/your-obligations#conduct-customer-due-diligence> and discussion at paragraph 0 for more information about what CDD entails.

4 Such as the need to undertake VOI for a property transaction later in the workflow.

1.2. Jurisdictional comparison:

Analogous jurisdictions permit solicitors to recover AML CDD expenses, inclusive of both outlays and reasonable costs of interpreting searches:

Jurisdiction	Outlay	Professional Fee
England & Wales[5]	Yes	Yes
Canada[6]	Yes	Yes
New Zealand[7]	Yes	Yes

Australia shares a common law heritage and similar perspective on solicitor's fiduciary obligations with each of these countries. There is also a broad commonality between billing and costs rules. The consistent position across these jurisdictions that CDD investigations can be billed to a client is therefore persuasive.

The professional associations of other common law jurisdictions with AML regimes, such as Northern Ireland, Scotland, Singapore and Hong Kong do not have a clear public position on charging for CDD, however there does not appear to be a single instance of prohibition since the reversal of the SRA's 2016 position in the UK in 2020.

2. Analysis

2.1. A reminder about terminology:

Overhead is the cost of maintaining a practice. The general expectation, absent contrary disclosure and agreement,[8] is that overhead is subsumed within the professional fee. The client should not be billed separately for it.

Disbursements are payments made to third parties on the client's behalf. The solicitor acts as a conduit: the service or product is supplied to the client, and the solicitor's payment to the third party is recoverable at cost and clearly identified. Examples include court filing fees and search fees. The defining characteristic is that the money leaves the firm and goes to an arm's-length provider.

Professional fees (profit costs) represent the solicitor's charge for their own work or that of paralegals. This includes time-based charges, fixed fees, and any separately identified fee where it reflects work undertaken for the client. Work outsourced to third parties (such as counsel) is billed as a disbursement but for some comparison purposes the Law Practice should identify that work is outsourced which might be done in-house by other firms.

While the distinction between the three is generally fairly well understood, there is not a great deal of superior court analysis of the precise characteristics delineating each.

---

5 Law Society of England & Wales, 'Can I charge for due diligence checks?' *Topics and Resources* (Web Page, 25 November 2021, Accessed 17 March 2026) <https://www.lawsociety.org.uk/contact-or-visit-us/helplines/practice-advice-service/q-and-as/can-i-charge-for-due-diligence-checks> noting the revised *Solicitors Regulation Authority* position.

6 The stated position of the Law Society of British Columbia is clearest, addressing both time spent and disbursement: 'Can I bill my client for verifying the client's identity?', *Client ID & Verification - FAQs*. (Web Page, n.d.) <https://www.lawsociety.bc.ca/for-lawyers/practice-resources/client-id-verification/client-id-verification-faqs/>. See also Law Society of Ontario: 'Virtual verification with authentication method', *Lawyer | Law Society of Ontario*. (Web Page, n.d.) <https://lso.ca/lawyers/practice-supports-and-resources/topics/the-lawyer-client-relationship/identification-and-verification/virtual-verification-of-client-identity#4-can-i-pass-on-the-cost-of-using-authentication-technology-to-the-client-as-a-disbursement-for-ver-8>.

7 New Zealand Law Society | Te Kāhui Ture O Aotearoa, 'AML/CFT Charging clients for compliance', *Professional practice*. (Web Page, 1 November 2023) <https://www.lawsociety.org.nz/professional-practice/practice-briefings/amlcft-charging-clients-for-compliance/>.

8 For the potential importance of this caveat see discussion at Chapter 4 – Freedom of Contract.

Client Due Diligence (CDD) is a matter and context specific assessment of a matter's money laundering / terrorism finance (ML/TF) risk undertaken when a firm commences delivery of a "designated service" as defined in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).

Initial/simple CDD requires a legal practice to collect and verify information about the identity of the customer/client (VOI) and to assess the ML/TF risks associated with that person[9] in the context of the specific proposed transaction.[10] This extends beyond clients to the beneficial owners of entity customers. In addition to identity, the Law Practice must determine whether the client or beneficial owner is a politically exposed person (PEP) or a sanctioned individual.

The level of CDD applied is calibrated to risk: simple CDD may be appropriate for objectively low-risk customers and transactions, while enhanced CDD is required where the ML/TF risk is assessed as higher.[11]

Both initial and especially enhanced CDD may require nuanced judgment and legal knowledge in addition to undertaking searches.

2.2. What are the characteristics of an overhead?

In *Modtech Engineering Pty Ltd v GPT Management Holdings Ltd (No.2)*[12] Justice Gordon considered a number of items charged as disbursements (such as purchases of textbooks, a wi-fi modem for court use, mobile phone monthly charges and catering[13]) and revisited the rationale for the distinction between overheads and chargeable fees & outlays:

> "First, it should be recognised that a lawyer's hourly rate includes a component for the fixed overheads of the firm. Those overheads will ordinarily include, inter alia, the costs associated with utilities bills, internal printing and photocopying, information technology systems and employee wages. **In the absence of any specific agreement to the contrary**, it is inappropriate for lawyers to seek to "double-dip" by charging clients for those overhead costs as disbursements. Secondly, costs of an unusual sum or nature are not allowed as between solicitor and client unless they have been authorised by the client after full disclosure, including the fact that they might not be allowed as between party and party: see, by way of example, Re Blyth and Fanshawe (1882) 10 QBD 207 at 210 and 212 and Dal Pont GE, Law of Costs (3rd ed, LexisNexis Butterworths, 2013) at [5.26]-[5.32]."

(**Emphasis** added)

Costs which do not advance a client's instructions, background expenses of keeping the business operational are overheads and not chargeable to a client without specific agreement or (in some cases)[14] at all.

The UK's Solicitors Regulation Authority initially concluded that CDD expenses (both search fees and time spent considering them) fell within this category when opining on the chargeability of CDD work in 2016.[15] Although no detailed rationale was given at the time the underlying basis appears to have been that undertaking CDD was a regulatory burden resting on the solicitor and was not work undertaken for the client.

---

9 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth). See also AUSTRAC, 'Assigning Customer Risk Ratings (Reform)' (Reforms Guidance, 2025).

10 AUSTRAC, 'Beneficial Owners' (Core Guidance). A beneficial owner is an individual who ultimately owns or controls an entity such as a company, trust or partnership. See also AML/CTF Rules, Ch 1, Pt 12 (politically exposed persons).

11 Department of Home Affairs, 'Changes to Customer Due Diligence' (2025). Triggers requiring enhanced CDD vary, and can include the geographical origin of the client, the transaction funding and the complexity of the transaction.

12 [2013] FCA 1163 *('Modtech')* [90] and [128]; The same position was reached in Canada, and for largely the same reasons: *Prehara v Royer*, 2007 BCSC 912.

13 *Modtech* [126].

14 Examples include: preparing an itemized bill: *Legal Profession Act 2007* ('LPA') s 332(6); client file storage costs: ASCR 16 – although even ASCR 16 permits a firm to charge with agreement; or the cost of drawing an itemized bill: LPA s 332(6) or *Legal Profession Uniform Law* (LPUL) s 191.

15 Solicitors Regulation Authority (SRA), *Anti Money Laundering Report* (Report, May 2016) 22.

The SRA's broad policy statement that CDD costs could not be passed on[16] not only articulated a general principle but also seemed to rest on criticism of recovery in specific cases, such as firms undertaking universal CDD in all client onboarding even where the legislation did not require it.

Over time the SRA concluded that it made an error and reversed its view,[17] relinquishing its position as the only regulator in the English-speaking world which insisted that CDD costs could not be charged to clients as a matter of general principle.

2.3. Examples – overhead vs chargeable

The list of expenses & charges treated as overheads varies slightly from common law jurisdiction to jurisdiction and can alter with time and usage. A common unifying feature is that overheads are generally fixed: expenses and work that the law practice would have incurred whether or not a *particular* client asked them to act. While not the only consideration, this provides a useful starting point.

Examples[18] include: library costs,[19] rent,[20] utilities, workers' compensation insurance and IT expenses.

Applying this to work rather than payments, work done as general administration – say, sorting out a leave roster - or that does not further a specific client's matter and cannot be apportioned to a specific transaction is treated as overhead.[21] Attempts to pro-rate general administrative staff wages[22] and bill them to clients have generally been unsuccessful.

Regulatory costs may fall into this category as well. Examples include professional indemnity insurance premiums, practicing certificate fees, trust account audit costs and preparation time, CPD. Again, the common thread is that these are costs of being permitted to practise law, not costs of servicing a particular client.

---

16 Although, somewhat oddly, the SRA stated that where the cost was higher than usual client consent to pass the cost on could be obtained. It is argued that this position was internally inconsistent; the cost is either chargeable or it is not. The fact that it would be unusually high in some cases does not alter the basic point.

17 Initially in response to questions challenging this position at the 2020 SRA-COLP compliance conference then later in various publications: SRA, 'Compliance with the regulations and preventing money laundering Q&A', *Resources: Money Laundering* (Web Page, 28 January 2026) <https://www.sra.org.uk/solicitors/resources/money-laundering/aml-questions-answers/>:
FAQ: "Can I pass the costs of conducting customer due diligence under the money laundering regulations on to my client":
A: "The costs of customer due diligence (eg identification and verification or source of funds checks) can vary depending on the type of client and level of money-laundering risk they pose. You can pass the costs of customer due diligence on to your clients, however the cost will need to be clearly stated in the firm's terms and conditions. It is important that clients are informed of and understand the cost in advance as this will enable them to instruct an alternative firm if they are not agreeable to the cost."

18 Largely drawn from Canadian (esp. British Columbian) cases. The issue has been repeatedly considered judicially in that jurisdiction as costs assessment is done directly done by the Court on appeal from the costs Registrar, and costs are limited to scale "Tariff" plus "necessary and proper disbursements" in PI matters.

19 *Dine v Biomet* 2016 ONSC 857 (see footnote 6); a group action certification case.

20 *Han v 9938 Investments Ltd* 1995 CanLII 2030 (BC CA) [7].

21 Historically, only work requiring "legal knowledge" was billable under the costs scales, with all administrative work treated as overhead. In modern times a costs agreement may provide for recovery of administrative work but not at a rate appropriate to a solicitor: *Queensland Law Society v Roche* [2002] SCT 88; See also *Equuscorp Pty Ltd v Wilmoth Field Warne (No. 4)* [2006] VSC 28 ('*Equuscorp*') per Byrne J at [57]. [Note, there were multiple *Equuscorp v WFW* matters, appeals and cross applications so care is required with citations]. It is important not to conflate costs which can be properly charged to a client with costs that could be recovered from a third party under a costs order. Costs recovery does require that the work being indemnified are for "legal work": see *Bell Lawyers Pty Ltd v Pentelow* (2019) 269 CLR 333 at 344 [22], 347-348 [33].

22 A paralegal's case research: *Attorney General of Canada v British Columbia Ferry Corporation* (1981) 134 D.L.R. (3d) 29, however contrast the same work being done externally by a consultant research service: *McRae v Johnston & Co.* 2001 BCSC 946 (CanLII) at [7]; *Lameman v Alberta* 2011 ABQB 396 (CanLII) at [4].

Even some costs which the law practice would not have incurred but for the client's matter cannot be passed on. There are a number of reasons a cost might be treated as non-chargeable. Sometimes the specific reason is not clearly stated when a charge is disallowed, being subsumed under the general category of "overhead" without close analysis of why that might be so. Identifiable reasons include:

- Cost that was not necessary,[23] or should not have been necessary (self-education in routine legal work[24], or fixing the solicitor's errors for example), or that can be done more cheaply another way.[25]
- Cost of work undertaken for a solicitor's benefit, such as a solicitor seeking advice on their rights to a lien,[26] or entering into a Costs Agreement / giving Disclosure[27] that allows the law practice to charge more than scale costs.[28]
- Cost that for historical reasons was generally regarded as non-chargeable, particularly on a scale or party-party basis (this varies; in Canada, travel costs and parking to attend court are not treated as disbursements[29] whereas in Australia they would be)[30].

3. Applying those principles to CDD costs

3.1. Generally

A law practice that is a reporting entity must establish an AML program and system. A law practice becomes a reporting entity by performing one or more "designated services". The time involved in establishing the program is onerous and the cost is significant. Despite this, as none of that general expenditure is related to a client's *specific* matter or transaction it would not ordinarily be chargeable to the client. In a similar vein, an industry levy would probably not be chargeable even if the firm sought to pro-rate the amount.[31]

---

23 See *Uniform Civil Procedure Rules 1999* (Qld) ('UCPR') r 702: standard basis costs are "all costs necessary or proper".

24 *Perry and Another v Lord Chancellor* The Times 26 May 1994 (basic research disallowed as a general proposition, research into unusual, infrequent or unexpected points may be allowable case by case).

25 Disallowance on this basis is something of a catch-all and better regarded as a discretionary decision on the basis that the cost was not "necessary or proper" – the basic precondition of recovery – (See also LPA s 341 – 'fair and reasonable") rather than assisting to determine whether an item is overhead or not. Again as a Canadian example costs of filing paper copies of documents were once generally recoverable even where electronic lodgement was available *Gill v Widjaja* 2011 BCSC 1822 at [31]: That is no longer so due to the fact that electronic filing is now routine and saves the cost of town agents.

26 In *White v Bini* [2003] FCA 669, Finkelstein J ruled that costs incurred by a solicitor obtaining legal advice on his own behalf regarding his right to retain a client's file were for the solicitor's own protection and benefit, not client work. In *In Re Long* [1929] VLR 318 Lowe J held that when seeking taxation of its bill as a precondition to enforcing it against the client, the solicitor is no longer acting 'as solicitor' for the client but as an adverse party for their own financial benefit (this was a lien case, the court determined as the solicitor was not entitled to costs of the taxation until so ordered they could not assert a lien with an allowance for such note). Applying this logic there would be no impediment to a solicitor acting in a costs assessment to recover fees (even its own fees) from a third party if the client would otherwise be liable for them (refer to n 25).

27 *Cook v Pasminco (no. 2)* (2000) 107 FCR 44 (op cit).

28 It is worth noting that while the general observation that work may be for "the solicitor's benefit" is often made, there are only limited examples of disallowance on this basis, and those cases are very clearly work that advantaged the firm rather than the client.

29 *Parent v Lohia* 2012 BCSC 1677 at [60].

30 GE Dal Pont, *Law of Costs* (LexisNexis Butterworths, 3rd ed, 2013) [17.43].

31 Note, however the observations below concerning freedom of contract. It is important to note that in many disallowance cases the Judges have expressly reserved their ruling to instances where there was not specific agreement. It is important not take a specific ruling and apply it generally.

3.2. The AML/CTF legislative context

A foundational principle of the Tranche 2 reforms is that the AML/CTF regime does not create obligations on 'solicitors' as a class.[32] It creates such obligations for a defined subset of professional advisors. CDD obligations only arise in a specific matter if a "designated service" is supplied. By definition, the designated service is provided to a specific client.[33]

The firm is not a reporting entity because it *might* provide such a service, is a law practice or holds itself out as available to perform certain classes of work. It is a reporting entity because it has and will continue to provide AML designated services as from 1 July 2026. Even then, no obligation to undertake CDD for a new client crystalizes unless that client has requested assistance with a designated service.

For work to be a designated service, generally a "transaction"[34] or positive activity on a client file is required as a trigger, and the work done by the solicitor must be "sufficiently linked" to the outcome of the transaction to be said to move it forward in a substantial way.[35]

The CDD is tied inextricably to the work: anybody doing that work must undertake CDD and the transaction cannot move forward until it is done.

If a firm performs one designated service it must establish an AML program, but has no obligation to undertake further CDD until another client seeks assistance with another designated service.

In the context of allocating where the CDD cost should fall this has two important implications:

- If a firm conducts precautionary CDD for all client onboarding (whether or not a designated service is being provided or is likely) CDD may not be "necessary" and therefore not chargeable for that reason.[36]
- where a designated service is provided, the cost of undertaking CDD is markedly different to the usual expenses treated as overheads. It is work done on a particular file, for a particular client to advance a particular transaction. That transaction is undertaken on the instructions of the client and for the benefit of the client. It is not a regulatory obligation that rests on the firm independently of such a transaction.

While the regulatory regime is the proximate cause of CDD being mandatory,[37] the client's instructions are the proximate cause of CDD being performed in this instance, for this client, at this cost. In short: no retainer, no CDD obligation.

The scope of work in undertaking CDD is matter-specific and client-specific in a way that genuine overhead (PI insurance, practising certificates, CPD) is not. Variable, matter-specific work has not traditionally been treated as non-recoverable overhead.

---

[32] AUSTRAC, 'Your Obligations' (Web Page, 31 March 2026) <https://www.austrac.gov.au/industry-and-business/obligations-and-guidance/your-obligations>.

[33] Carol Prasad, 'Understanding designated services: when legal services trigger Tranche 2 AML/CTF obligations' (25 February 2026) *Law Society Journal,* <https://lsj.com.au/articles/understanding-designated-services-when-legal-services-trigger-tranche-2-aml-ctf-obligations/>

[34] Common regulated services include: **Item 2** – Assisting a person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, to sell, buy or otherwise transfer a body corporate or legal arrangement (*ie*: a trust/partnership); **Item 3** – Receiving, holding, controlling or managing a person's property to help in the planning or execution of a transaction; **Item 6** – Assisting in the planning or execution of property transactions; cf: *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) s 6(5B), Table 6

[35] AUSTRAC, 'Assisting or otherwise acting for a person when providing the professional services covered by items 1-4 and 6', *Professional Designated Services* (Web Page, 31 March 2026) <https://www.austrac.gov.au/new-austrac/designated-services-newly-regulated-entities/professional-designated-services>.

[36] Whether costs are "necessary" is examined prospectively. If ADR is attempted but fails that does not retrospectively make preparation costs un-necessary. Conversely, a settlement doesn't mean that work in preparation for trial should not have been done, although discretion and judgment is required.

[37] Absent such work being required for other reasons, which will commonly be the case.

What can be charged?

3.3. Disbursements

All five common-law jurisdictions used for comparison agree on the basic definition of a disbursement or outlay.[38] This definition identifies what – in the absence of specific agreement – could be recovered by the firm as an outlay.

In Australia a useful starting point is Byrne J's formulation in *Equuscorp Pty Ltd v Wilmoth Field Warne (a firm) (No. 4)*,[39] adopting the traditional definition from UK costs jurisprudence.[40]

To be properly chargeable as a disbursement, payments must be:

- A genuine cost paid or due to a third party;[41]
- Capable of being accurately quantified and apportioned to a particular matter;[42] and
- Incurred for the purpose of supplying legal services in relation to that matter.[43]

Criteria 1: Cost paid or due to a third party

To be a disbursement there must be a payment, either previously made or an obligation incurred to a provider on account.[44]

Criteria 2: capable of being accurately quantified and apportioned

The law practice will need to be able to track AML outlays applicable to that particular matter.

As stated above, some AML activity is an overhead and / or undertaken to discharge the solicitor's general compliance obligation rather than to further a specific client's legal work. Examples include:

- establishing an AML program;
- modifying AUSTRAC templates or Program Starter Kit if used;
- training staff.

---

[38] In New Zealand, LCRO 176/2022 SP v AQ (15 August 2023) confirmed that an "expense" or 'disbursement' relates to costs required to be paid to a third party. The bill under consideration included charges for "AMC/CTF client due diligence checks" in the "expense" section but no third party payment had been made and the complaint was upheld accordingly. In the UK, s 67 of the *Solicitors Act* 1974 defines disbursements as "costs payable in discharge of a liability properly incurred on behalf of the party to be charged." In Canada, the CRA's Policy Statement P-209R distinguishes disbursements 'incurred as agent' for the client from those not so incurred, and the *CBA Billing Practices Guidance* confirms disbursements should not generate profit. (Note: this primarily relates to GST/VAT treatment). In the US, American Bar Association Formal Opinion 93-379 holds that clients should expect disbursements to represent actual payments to third parties.

[39] In that case a costs agreement was set aside under s 102 of the *Legal Practice Act 1996* (Vic) (contingency fee prohibition). The situation was unusual as, due to the way the costs agreement was constructed, it was the client's disbursements under consideration rather than the solicitor's.

[40] In *Re Remnant* (1849) 50 ER 949 per Lord Langdale MR (see also QLS Costs Guide at page 22 which also adopts this definition). For further discussion see *Herbert v HH Law* [2019] EWCA Civ 527 relating to whether a disbursement was "usual" or sanctioned by custom.

[41] *Cachia v Hanes & Anor* (1994) 179 CLR 403 per Mason CJ, Brennan, Deane, Dawson and McHugh JJ at [15], [25] (considering "disbursements" claimable by a self represented litigant). See also *Birketu P/l v Atanaskovic & Ors* [2025] HCA 2, considering the indemnity principle for party/party costs recovery and the requirement that a payment had been made, rather than just an expense incurred.

[42] *Equuscorp* (n 21).

[43] *Re Remnant* (1849) 11 Beav. 603, 613; 50 ER 949, 954, per Lord Langdale (cf n 40)

[44] Note: There is unsettled authority whether a disbursement must have been paid or merely incurred if using the common law definition. For the avoidance of doubt, disbursements should be contractually defined to include costs incurred but not yet payable (See *Equuscorp* (n 21) [56]) and if for any reason the amount ultimately paid to the provider was less any balance would be held on trust for the client.

Even if such services were re-packaged and charged by a third-party provider on an amortized "per matter" basis such overheads could not (absent specific agreement and a detailed process to establish informed consent) be passed on.

Criteria 3: Incurred for the purpose of supplying legal services in relation to that matter

This requirement ties back to the distinction between CDD for a specific transaction vs general AML program overheads. The rationale is that CDD for a specific transaction is much more closely aligned to legal work for a specific client. If CDD is done routinely on all onboarding, rather than just designated services, the nexus between the CDD activity and the legal services is weakened.

3.4. Where CDD (or VOI) is required for multiple purposes

AML is not the only reason a solicitor may need to verify the identity of clients and their authority to instruct on behalf of entities or deal with an asset. In conveyancing matters the obligation is explicitly contained in Lexon's risk pack[45] and ARNECC's VOI guidance.[46] VOI is the foundation of the solicitor's client authorization and is an essential precondition to dealing in an electronic workspace.

As a matter of general professional obligation, prior to commencing work on a matter a prudent solicitor must be reasonably satisfied that their client:

(1) has been clearly identified;

(2) is who they say they are;[47] and

(3) is invested with ability to give the instructions that the solicitor will be acting on.[48]

Agency is the foundation of a solicitor's authority to act for a client in dealings with third parties, and a practitioner warrants such authority either expressly or ostensibly each time we communicate with a third party. The level of enquiry is risk-based and is heightened where asset transactions are involved.

There may therefore be cases in which it would be appropriate to undertake verification of identity and authority even where the underlying transaction is not a designated service. There will also be cases where it is not clear at the outset whether a designated service will be supplied or not. In either of those situations a firm would be entitled to recover CDD or VOI costs reasonably and necessarily incurred to discharge their prudential duties.

Having multiple reasons to undertake VOI and CDD-like activity may strengthen rather than weaken the argument that it is done as part of the retainer not as a result of regulatory burden on the solicitor alone. Front-loading the activity as client onboarding when it would be required in any event later does not mean that a firm is undertaking universal and unwarranted CDD.

---

[45] Content generally restricted to Lexon Insureds. An outline may be found here: *Lexon Insurance Pte Ltd,* 'Checklist: Verification of Identity AND Right to Deal or Entitlement to Sign' <https://www.linkedin.com/posts/lexon-insurance-pte-ltd_lawpractice-riskmanagement-digitallicence-activity-7132542850151415810-QI_i/>. It is important to note that Lexon does not create obligations binding on the law practice. Its risk guidance articulates prudent practice arising from the need to avoid past mistakes.

[46] Australian Registrars National Electronic Conveyancing Council (ARNECC), 'Verification of Identity', *Model Participation Rules Guidance Note* (Guidance Note #2, April 2021) <https://www.arnecc.gov.au/wp-content/uploads/2021/08/mpr-guidance-note-2-verification-of-identity.pdf>. In broad terms some form of VOI is mandatory in every e-conveyancing transaction. Specific types of VOI is mandated to achieve safe harbour.

[47] *Ford v Financial Services Authority* [2012] 1 All ER 1238 at [39].

[48] Where the client purports to instruct on behalf of a group, entity or for a third party no presumption of regularity applies and the solicitor should take active steps to ensure that such authority is valid. (See *Zimmerman v Wales* [2002] NSWSC 447 (Solicitor appointed at a meeting without quorum of directors); *Cranes R Us v Busselton Mini Crane Hire* [2012] WADC 24 (solicitor appointed by single director purportedly under s 198D of the *Corporations Act 2001* (Cth) but that delegation had not been made); *Rushbrooke UK Ltd v 4 Designs Concept Ltd* [2022] EWHC 1687 (solicitor did not check that the director instructing him on behalf of a company had authority to do so. In addition to costs order the Judge criticised the solicitor's professionalism and found a breach of the SRA principles).

3.5. Professional fees

To pass on professional fees for CDD work undertaken also requires a nexus between the client transaction and ability to apportion the work done to that file specifically.

If billing on an hourly basis time spent will need to be tracked in the ordinary way.

As with any other professional work, the rate charged at should be appropriate to the service performed. If analysis requiring legal skill is needed a solicitor's rate is appropriate. For more administrative tasks a paralegal's rate is more reasonable.[49]

3.6. Fixed fees

When billing on a fixed fee basis transparency is the key issue. Misrepresenting charges for work (whether outsourced or done in house) as disbursements is not acceptable.

If billing on a fixed fee basis, AML related work is part of the agreed fee and cannot be passed on unless the costs agreement specifically provides for this.[50] The degree of disclosure required to ensure that the agreement is informed depends on a number of factors, such as the sum involved, and whether it emerges as usual practice for initial CDD to be absorbed as part of the standard fee for specific types of matter.[51]

If billing on a "fixed fee plus outlays" basis, search fees and similar paid to AML providers can be passed on as a disbursement. Work done internally by the firm to interpret these is not a disbursement and cannot be added to the fixed fee cost absent specific agreement.[52] A line item for "AML Compliance" combining hybridized search fees and professional costs for reading them is not an outlay.[53]

A hybrid charge from an AML provider that is part search costs and part interpretation and report preparation is still chargeable as a disbursement, but where the amount is significant, the firm should ensure the client knows that the outlay component of the bill may be higher than other firms.

Professional work to be done must be included in the advertised fixed fee rate not passed off as a disbursement. While it may be proper to bill outsourced professional work in the disbursements section of a bill, a firm which advertises a fixed fee must alert clients to the fact that they have outsourced some of the work that other firms perform in-house. That makes comparison of the fees more transparent.

---

49 *Council of the Queensland Law Society Inc v Roche* [2004] 2 Qd R 574.

50 For example, if the fixed fee covers initial CDD but not enhanced CDD.

51 *Re Morris Fletcher & Cross' Bill Of Costs* [1997] 2 Qd R 228 per Fryberg J at 243.

52 For example, the fixed fee may potentially cover initial CDD and permit a surcharge if enhanced CDD is required. It would be prudent to contact the client in advance of undertaking the extra work.

53 See LCRO 176/2022 SP v AQ (15 August 2023) as a New Zealand example of this. For other jurisdictions: UK (SRA IB(8.8); SRA 2016), Canada (Alberta Costs Manual distinction), US (ABA Op. 93-379). Refer to footnote 338.

4. Freedom of contract

Subject to the usual constraints of fairness, disclosure and regulatory oversight, solicitors and clients are free to contract as they see fit on the terms of the retainer and remuneration.

Substantial controls in the form of fiduciary expectations,[54] express rules, unfair contract terms legislation and court supervision[55] - are in place to ensure costs remain "fair and reasonable"[56] but generally the client is free to select a charging regime they consider will advance their interests and costs regulation is primarily geared to ensuring that clients have enough information to make an informed choice.[57]

If a client wishes to invest $6500 per hour on Australia's most expensive barrister[58] that is largely a matter for them.

It is worth noting that in many of the cases in which a cost was labelled as an overhead and disallowed the Court was not applying a costs agreement.

For example, in *Equuscorp*[59] the Court was considering charges in circumstances in which the costs agreement was void.[60] In Modtech,[61] Her Honour expressly preserved the conceptual ability for the costs agreement to permit recovery of items that would from traditional usage be treated as overheads. In that instance as the application related to a representative action costs sanction under s.33V[62] of the *Federal Court of Australia Act.* The outcome would bind parties who were not party to the costs agreement or present in court.

Even costs which a solicitor would ordinarily be unable to pass on may, in some circumstances, be the subject of agreement.

Examples include file storage costs and mark-ups on disbursements.[63] There is a certain point at which altering the standard definition of disbursement probably renders it misleading, but in principle, it may be possible that a pro-rated component of general AML compliance (such as program establishment, training & etc) *could* be agreed between the solicitor and client.[64]

Passing on costs within the CDD envelope is – even if (contrary to the reasoning above) not billable to clients on ordinary principles – clearly a matter that could be agreed.

---

54 See n 51 (op cit).

55 See, for example, Fletcher Moulton LJ in *Clare v Joseph* [1907] 2 KB 369 at 376 in which he stated that the Court will always be quicker to set aside agreements benefiting the solicitor than those which benefit the client.

56 In Queensland the statutory considerations relating to this concept are found in s 341 of the *Legal Profession Act*, with the substantive disclosure regime in s.308 and similar designed to ensure informed client consent.

57 GE Dal Pont, *Law of Costs* (LexisNexis Butterworths, 3rd ed, 2013) 57 [3.40] citing Einfeld J in *Stefanou v Fairfield Chase Pty Ltd* [1993] FCA 605, who allowed counsel's cancellation fee despite "serious concerns and reservations about the principle .. that.. a client may agree to pay an otherwise apparently unreasonable fee. Provided the agreement is … at arm's length .. and the fee is not obviously … exorbitant .. I know of no power of the Court to reject it."

58 Michael Pelly, 'Meet the most expensive lawyers in Australia', *Australian Financial Review* (Journal Article, 27 June 2024). <https://www.afr.com/companies/financial-services/meet-the-most-expensive-lawyer-in-australia-20240624-p5joa6 >.

59 See n 21.

60 In relation to some of the judgment series it was interpreting the word "disbursement" in the retainer.

61 See n 12.

62 *Federal Court of Australia Act 1976* (Cth) s 33V (Settlement and discontinuance--representative proceeding).

63 *Australian Solicitors Conduct Rules 2023* r 16; Legal Services Commission (Qld), 'Legal costs, outlays and disbursements, and billing: Charging for outlays and disbursements', *Legal Services Commission* (Web Page, Accessed 17 March 2026) <https://www.lsc.qld.gov.au/for-the-profession/policies-and-guidelines/legal-costs-outlays-and-disbursements-and-billing>.

64 As a highly unusual charge such an unbundled overhead would require commensurately thorough disclosure.

5. Public Policy

If CDD costs were required to be fully absorbed by solicitors, this would not shield clients from them. It will likely force law practices into one of several positions:

1. Higher baseline hourly rates across the practice (cross-subsidising low-risk clients at the expense of high-risk ones);
2. Stop providing designated services, reducing the availability of legal representation, especially in the regions;
3. Reduced willingness to accept higher-risk clients (again reducing access to justice) and making it harder for people of international and CALD origin to obtain legal services;
4. Superficial CDD performance driven by cost pressure (undermining the policy of the AML/CTF regime itself).

ANNEXURE A — GUIDANCE

Charging clients for AML activities: verification of identity and client due diligence

From 1 July 2026, any firm providing designated services must verify their client's identity and undertake further customer due diligence ("CDD") to comply with the new AML/CTF regime.

The professional time and outlays involved can be substantial — potentially approaching a meaningful proportion of the cost of the underlying legal work.

Can those costs can be passed to the client?

The short answer is yes, in appropriate circumstances but the framework matters.

The foundation principles

Overheads — the general costs of running a practice — are absorbed in the firm's hourly rate or fixed fee and cannot be passed on without specific agreement and disclosure.[65] General compliance costs not linked to a specific retainer (such as obtaining a Trust Account audit or your PI insurance premium) fall into this category.

Disbursements are payments to arms-length third parties, accurately quantified and incurred to provide legal services on a specific matter, usually recoverable at cost.

Professional fees (or profit costs) are charges for the firm's own work, whether time-based, fixed, or otherwise structured.

The question is where CDD sits in this framework.

Some AML costs are an overhead, CDD is not

General AML compliance, such as establishing your AML program, staff training and setting up software to manage regulatory obligations is an overhead.

Client due diligence activity is different. It is work done with respect to a *specific* transaction for a *specific* client. Conceptually, outlays and reasonable professional time may be properly billed to the client in appropriate circumstances.

What can be charged?

Disbursements. AML provider search fees, third-party identity verification charges and similar payments are recoverable as outlays where they meet the standard test:

- a genuine cost paid or due to a third party,
- capable of being accurately quantified and apportioned to a particular matter,
- and incurred for the purpose of supplying legal services in that matter.

A hybrid charge from an AML provider — part search, part interpretation and report preparation — may still be billed as a disbursement but consider how it is described to avoid misleading the client.

Professional fees. Reasonable time spent on CDD, whether by a solicitor or a paralegal is recoverable provided it is tracked in the ordinary way and charged at a rate appropriate to the task. Routine collection and verification of identity material is most likely paralegal work. Risk assessment, beneficial-ownership analysis and PEP/sanctions evaluation in more complex matters may justify a solicitor's rate.

Fixed fees. If a firm offers a fixed fee, AML-related work forms part of the agreed fee unless the costs agreement specifically provides otherwise — for instance, by carving out enhanced CDD where higher risk

[65] And as an "unusual charge" the level of disclosure required to create informed consent would be onerous.

emerges. A "fixed fee plus outlays" structure permits recovery of third-party search fees. However, where the amount is significant the client should be told about any outsourced professional fee component. That enables a fair comparison between different firms' costs.

What cannot be charged?

Two traps warrant attention.

- **Universal precautionary CDD.** If a firm conducts CDD on every onboarding regardless of whether a designated service is being supplied, the link between the CDD activity and the legal work for that client is weakened. The work may not be "necessary or proper" for the matter, and may not be recoverable. Sometimes verification of identity obligations arise independently of the AML/CTF, for example in some litigation matters where the solicitor must satisfy themselves that the person instructing has authority to bind an entity.

  Where VOI must be performed for several overlapping reasons, it is not necessary to wait to see whether a designated service is to be provided. Front-loading verification at onboarding does not indicate over-servicing.

- **Hybrid line items.** A bill entry combining search fees with the professional time of reading them, presented as an outlay, misrepresents the nature of the charge. Work done by the firm is not a disbursement. If you propose to charge AML costs on an hourly rate retainer or on top of a fixed fee the time spent and outlays incurred with respect to a specific file must be captured and billed and reflected in the costs agreement.

Is client agreement necessary to pass on these costs?

Ideally agreement should be obtained. We consider that these costs are not materially different to other outlays such as title and company searches, and therefore recoverable applying normal principles but there is limited authority directly on point. Client agreement to pay VOI and CDD costs should remove any residuary uncertainty.

As a practical matter it may be more appropriate not to charge clients for CDD-related professional fees where the firm elects to decline representation due to the risk profile.