

COSTS ASSESSMENT - LPA 2004 - GUIDELINES - REGISTRY PROCEDURES

Transitional provisions

- A. The Costs Assessment process under *Legal Profession Act 2004* continues to apply to:
1. Practitioner, client and third-party costs assessments - where client first instructed the Law Practice BEFORE 1 July 2015 (see Legal Profession Uniform Law (NSW) No 16a 2014 - Schedule 4 Clause 18)
 2. Party/Party Costs assessments (quantifying costs pursuant to an order of court or tribunal) - where proceedings to which the costs relate commenced BEFORE 1 July 2015 (see Legal Profession Uniform Law Application Regulation 2015 - Regulation 59)
- See "**Guidelines - Legal Profession Act 2004**"
- B. The Costs Assessment process under *Legal Profession Uniform Law (NSW)* will only apply to:
1. Uniform costs (previously client and practitioner costs) - where client FIRST INSTRUCTED the law practice on or AFTER 1 July 2015 (see Legal Profession Uniform Law (NSW) No 16a - Schedule 4 Clause 18)
 2. Ordered Costs (previously party/party costs) - where the proceeding to which the costs relate COMMENCED on or AFTER 1 July 2015 (see Legal Profession Uniform Law Application Regulation 2015 - Reg 59)
- See "**Guidelines - Uniform Law**" (see alternative guidelines)

COSTS ASSESSMENT PROCESS UNDER LEGAL PROFESSION ACT 2004

Assessment of costs is conducted pursuant to the provisions of the *Legal Profession Act 2004* ["LPA 2004"] and Legal Profession Act Regulations 2005 ["LPR 2005"]. You are referred to Sections 350 to 372 of the LPA 2004 and Clauses 121 to 136 of the LPR 2005.

PARTY/PARTY APPLICATION FOR ASSESSMENT

1. Before proceeding to assessment, a Costs Applicant should make an effort to settle the costs; this will have an impact on who will pay the costs of the assessment.
2. Applications for Assessment are available to be downloaded on the Supreme Court website under Practice & Procedure / Costs Assessment / Costs Assessment forms & fees. Please check the transitional provisions above to determine which version of the Application documents should be used.
3. In order to prepare the Application for Assessment, a Costs Applicant will need to:
 - 3.1 complete paragraphs 1, 6 and 7 of the Application for Assessment
 - 3.2 obtain a copy of the Court Order(s) relating to costs;
 - 3.3 Prepare an Index to the Application; and
 - 3.4 Annex the itemisation of costs, disbursements, counsel's fees and costs orders as per the Index.
4. Once the Application for Assessment is prepared it needs to be served on the opposing party (including all annexed documents). Service on the solicitor acting in the proceedings to which the costs relate is not considered adequate service unless they have instructions to accept service.
5. The Costs Respondent has a period of 21 days (or such other time as is agreed between the parties) to provide a Statement of Objections.

6. Lodgement takes place either at the expiration of the 21 days from the date of service of the application for assessment, where objections have not been received or on the receipt of objections. Before lodging the Application for Assessment, a Costs Applicant must complete paragraphs 2, 3 and 4 and certify the Certificate and Authority. This includes certifying that the matter cannot be resolved by mediation.
7. The Costs Applicant can lodge the completed Application for Assessment electronically by emailing a scanned copy of your application and any supporting attachments to sc.emailfiling@justice.nsw.gov.au. If your document is very large, you may need to split it across multiple emails. If you need to do this, please clearly indicate this in the subject line, for example, "Case number 2020/123456, Sample Applicant v Sample Respondent, PART 1 OF 2". If this is not feasible, you can lodge the documents in person at the Supreme Court Registry or by post; GPO Box 3 Sydney NSW 2001 or DX 829 SYDNEY.
8. A filing fee is payable to the Supreme Court of NSW on lodgement of your application and is the greater of \$100 or 1% of the total costs in the application for assessment (rounded up to whole dollars), or if an objection has been received, the fee is based on the amount in dispute [CI 124 LPR 2005]. After lodging your application and supporting attachments, an invoice (for the filing fee) will be raised and sent by the Supreme Court which must be paid within 7 days.
9. The Manager, Costs Assessment will notify the parties of the appointment of a Costs Assessor.
10. The Costs Assessor will notify the parties of any further information or documents required. If Objections and a Response were not prepared when the Application for Assessment was lodged then these documents can be provided directly to the Costs Assessor.
11. The Costs Assessor will notify the parties of the completion of the assessment and the Manager, Costs Assessment will advise the amount of costs (fee of the Costs Assessor) to be paid before release of the costs assessment certificates. The Costs Assessor will have determined which party is liable for these costs and an invoice will be sent by the Manager, Costs Assessment. Either party can pay the costs of the assessment to secure the release of the Certificates.

Entry of Judgment

12. The Certificates of Determination should be filed in a court of competent jurisdiction and they are taken to be a judgment and any enforcement action can be taken (refer to s369(7) LPA 2004).
13. See also the directions on how to "Register a certificate of costs" which can also be found on the Supreme Court website under Practice & Procedure / Costs Assessment.

PANEL REVIEW

If one of the parties is dissatisfied with the outcome of the costs assessment, then an application for review of costs assessment can be filed. This application must be filed within 30 days of the date on which the determination of the Costs Assessor and statement of reasons is forwarded by the Manager, Costs Assessment (s373 LPA 2004). Importantly, the Respondent to the review must be notified, at least 7 days before filing the Application for Review, of the intention to file it (Section 373(5) LPA 2004). A filing fee of \$275.00 is payable. It should be noted that if the application fails to improve the position of the Review Applicant by 15% then the Review Applicant will be liable for the fees of the panel for reviewing the application (Section 379 LPA 2004).

APPEAL TO DISTRICT COURT

LPA 2004 Section 384 - may appeal on a question of law to the court in accordance with the rules of the court.

LPA 2004 Section 385 - may seek leave of the Court to appeal against the determination of a costs assessor.

LAW PRACTICE/CLIENT APPLICATION FOR ASSESSMENT - WHERE LAW PRACTICE FILES THE APPLICATION

1. A completed Application for Assessment can be lodged electronically by emailing a scanned copy of your application and any supporting attachments to sc.emailfiling@justice.nsw.gov.au. If your document is very large, you may need to split it across multiple emails. If you need to do this, please clearly indicate this in the subject line, for example, "Case number 2020/123456, Sample Applicant v Sample Respondent, PART 1 OF 2". If this is not feasible, you can lodge the documents in person at the Supreme Court Registry or by post; GPO Box 3 Sydney NSW 2001 or DX 829 SYDNEY.
2. A filing fee is payable to the Supreme Court of NSW on lodgement of your application and is the greater of \$100 or 1% of the total costs in the application for assessment (rounded up to whole dollars), or if an objection has been received, the fee is based on the amount in dispute [CI 124 LPR 2005]. After lodging your application and supporting attachments, an invoice (for the filing fee) will be raised and sent by the Supreme Court which must be paid within 7 days.
3. The Manager, Costs Assessment will forward a notice attaching a copy of the Application for Assessment and invoices to the Costs Respondent/client advising them to lodge objections with the Court within 21 days of issue of the notice.
4. Objections will then be sent by the Court to the law practice advising that any response should be lodged with the Court within 21 days of issue of the notice.
5. At the expiry of this time, all documents are sent to the Costs Assessor by the court and the parties are advised of the Costs Assessor's details. Any late responses will be sent to the Assessor.
6. The Costs Assessor will notify the parties of the completion of the assessment and the Manager, Costs Assessment will advise the amount of costs (fee of the Costs Assessor) to be paid before release of the costs assessment certificates. The Costs Assessor will determine which party is liable for these costs and an invoice will be sent by the Manager, Costs Assessment. Either party can pay the costs of the assessment to secure the release of the Certificates.
7. Entry of Judgment and Application for Review are as set out for a Party/Party assessment.

CLIENT/LAW PRACTICE APPLICATION FOR ASSESSMENT - WHERE CLIENT FILES THE APPLICATION

1. An application by a client (or third-party payer) must be made within 12 months after:
 - (a) the bill was given or the request for payment was made to the client or third-party payer, or
 - (b) the costs were paid if neither a bill was given nor a request was made (s350 LPA 2004).
2. A client can make an application to the Supreme Court that the Application for Assessment be dealt with out of time. Such an application cannot be made if the client is considered to be a sophisticated client (see s302 LPA 2004: Definitions and s350 (5) LPA 2004).
3. A completed Application for Assessment can be lodged electronically by emailing a scanned copy of your application and any supporting attachments to sc.emailfiling@justice.nsw.gov.au, or you can lodge the documents in person at the Supreme Court Registry or by post; GPO Box 3 Sydney NSW 2001 or DX 829 SYDNEY. After lodging your application and supporting attachments, an invoice (for the filing fee) will be raised and sent by the Supreme Court which must be paid within 7 days.
4. The Manager, Costs Assessment will notify the Law Practice of the application and that a response must be made within 21 days. The Manager, Costs Assessment cannot extend time and will refer the Application to a Costs Assessor, along with any response. Any late responses should be sent to the Costs Assessor.
5. The Costs Assessor will notify the parties of the completion of the assessment and the Manager, Costs Assessment will advise the amount of costs (fee of the Costs Assessor) to be paid before release of the costs assessment certificates. The Costs Assessor will determine which party is liable for these costs and an invoice will be sent by from the Manager, Costs Assessment. Either party can pay the costs of the assessment to secure the release of the Certificates.
6. Entry of Judgment and application for review are as set out for a Party/Party assessment.

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