

## **COSTS ASSESSMENT - UNIFORM LAW - GUIDELINES - ASSESSMENT PROCEDURES**

### **UNIFORM LAW – COSTS ASSESSMENT PROCESS**

Assessment of costs is conducted pursuant to the provisions of the *Legal Profession Uniform Law Application Act 2014* ["LPULA 2014"] and *Legal Profession Uniform Law Application Regulation 2015* ["LPULR 2015"]. You are referred to:

- Ordered costs: Sections 63 to 81 LPULA 2014 and Clauses 32, 33 and 35 to 43 LPULR 2015
- Uniform Costs: Sections 194 to 205 LPUL and Clauses 32 to 34, 36 to 43 LPULR 2015

### **APPLICATION FOR ASSESSMENT OF ORDERED COSTS (FORMERLY PARTY/PARTY COSTS)**

1. Before proceeding to assessment an effort should be made to settle the costs; this will have an impact on who will pay the costs of the assessment. Further, before lodging an Application for Assessment a Costs Applicant must certify that there is no reasonable prospect of settlement of the matter [Clause 32(3) LPULR 2015].
2. Applications for Assessment are available to be downloaded on the Supreme Court website under Practice & Procedure / Costs Assessment / Costs Assessment forms & fees.
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 order(s) 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) [Section 68(2)(c) LPULA 2014]. 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. [Clause 35 LPULR 2015]
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 an 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](mailto: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 triplicate) 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 [Clause

33 LPULR 2015]. 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. A Costs Applicant may respond to the objections raised and can provide this Response document to the Costs Assessor or when lodging the Application for Assessment.
10. The Manager, Costs Assessment will notify the parties of the appointment of a Costs Assessor [Clause 39(3) LPULR 2015].
11. 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.
12. 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 [Clause 42 LPULR 2015]. If a non-liable party makes the payment then this will be noted in the certificates in order for that party to seek recovery from the liable party.

#### **Entry of Judgment**

13. 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. [Section 70(5) LPULAA 2014 and Section 71(3) LPULAA 2014.
14. See also the [Register a Certificate of Costs](#) page on the Supreme Court website under Practice & Procedure / Costs Assessment / Register a Certificate of Costs.

#### **PANEL REVIEW** [Sections 82 - 88 of the LPULA 2014 and Clauses 44 to 55 of the LPULR 2015]

If your client 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. [Section 83(1) LPULA 2014]. A filing fee of \$275.00 is payable [Clause 45 LPULR 2015]. 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. [Clause 53 LPULR 2015]

#### **APPEALS** [Sections 89 - 91 of the LPULA 2014]

LPULA 2015, s89 - An appeal may be filed against a decision of the review panel to the District Court or Supreme Court in accordance with the rules of the court.

The court has all of the functions of the review panel. An appeal is to be by way of a rehearing, fresh evidence or evidence in addition to or in substitution for the evidence before the review panel or costs assessor may, with the leave of the court, be given on an appeal.

#### **COSTS DISPUTE** [Section 197 *Legal Profession Uniform Law (NSW)* ["LPUL"]]

In the event of a dispute in relation to legal costs a party may seek the assistance of the NSW Commissioner. Legal costs that are or have been the subject of a costs dispute may not be the subject of a costs assessment unless the NSW Commissioner is unable to resolve the costs dispute and has notified the parties of their entitlement to apply for a costs assessment or arranges for a costs assessment.

**APPLICATION FOR ASSESSMENT OF UNIFORM COSTS - WHERE LAW PRACTICE FILES THE APPLICATION (FORMERLY LAW PRACTICE/CLIENT COSTS)**

**NB: An Application for Assessment of costs by a Law Practice must be made within 12 months of the last invoice. [s198(3) LPUL]**

- *A client may seek an extension of time as per section 198(4) LPUL if the designated tribunal determines, after having regard to the delay and the reasons for the delay, that it is just and fair for the application for assessment to be dealt with after the 12-month period.*
1. The completed application is lodged electronically (by emailing a scanned copy of your application and any supporting attachments to [sc.emailfiling@justice.nsw.gov.au](mailto:sc.emailfiling@justice.nsw.gov.au)) or in person at the Supreme Court Registry or by post; GPO Box 3 Sydney NSW 2001 or DX 829 SYDNEY.
  2. 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. The filing fee is the greater of \$100 or 1% of the total costs in the application for assessment (rounded up to whole dollars).
  3. The Manager, Costs Assessment will provide a copy of the Application to the person who was given the Bill of Costs advising them to lodge objections with the Court within 21 days of issue of the notice. [Clause 34(2)(a) LPULR 2015].
  4. Objections will then be sent to the law practice advising that any Response to the Objection should be lodged with the Court within 21 days after the Costs Applicant receives the notice. [Clause 34(2)(b) LPULR 2015]
  5. A copy of any Response lodged is to be sent by the Manager, Costs Assessment to the party who lodged the Objection [Clause 34(2)(c) LPULR 2015]
  6. As soon as practicable after any Response to the Objection is lodged the Application is to be referred by the Manager, Costs Assessment to a Costs Assessor for assessment, or if no Objection is lodged the Application is to be referred to a Costs Assessor as soon as practicable after 21 days. [Clause 34(2)(d) LPUL]. Any Response lodged out of time is to be sent by the Manager, Costs Assessment to the Costs Assessor [Clause 34(2)(e) LPUL]
  7. The Costs Assessor will determine which party is liable for the costs of a costs assessment. Unless it is held to be not fair and reasonable, the costs of a costs assessment are payable by a law practice if the law practice has failed to disclose or costs have been reduced by 15% or more on assessment [Section 204 LPUL].
  8. If the costs of the costs assessment are payable by a party to the assessment, the Costs Assessor will forward a copy of the costs assessment certificates to the Manager, Costs Assessment and advise the parties that the Certificate has been forwarded and is available on payment of the costs [Rule 42 LPULR 2015]. The Manager, Costs Assessment will send an invoice advising the amount of costs to be paid before release of the costs assessment certificates. Either party can pay the costs of the assessment to secure the release of the Certificates.
  9. Entry of Judgment and application for review are as set out above for an assessment of Ordered costs.

**APPLICATION FOR ASSESSMENT OF UNIFORM COSTS - WHERE CLIENT FILES THE APPLICATION  
(FORMERLY CLIENT/LAW PRACTICE COSTS)**

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. [Section 198(3) LPUL]
2. A client can make an application to the Manager, Costs Assessment for an Application to be dealt with out of time. [Section 198(4) LPUL]. However, subsection 4 does not apply to an application made out of time by a third-party payer who would be a commercial or government client. [Section 198(5) LPUL]
3. The completed application is lodged electronically (by emailing a scanned copy of your application and any supporting attachments to [sc.emailfiling@justice.nsw.gov.au](mailto:sc.emailfiling@justice.nsw.gov.au)), or in person at the Supreme Court Registry or by post; GPO Box 3 Sydney NSW 2001 or DX 829 SYDNEY.
4. 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. The filing fee is the greater of \$100 or 1% of the total costs in the application for assessment (rounded up to whole dollars).
5. The Manager, Costs Assessment will provide a copy of the Application to the Law Practice advising them to lodge a Response with the Court within 21 days of issue of the notice. [Clause 34(1)(a) LPULR 2015].
6. A copy of any Response lodged is to be sent by the Manager, Costs Assessment to the Applicant [Clause 34(1)(b) LPULR 2015]
7. As soon as practicable after any Response is lodged the Application is to be referred by the Manager, Costs Assessment to a Costs Assessor for assessment, or if no Response is lodged the Application is to be referred to a Costs Assessor as soon as practicable after 21 days. [Clause 34(1)(c) LPULR 2015]. Any Response lodged out of time is to be sent by the Manager, Costs Assessment to the Costs Assessor [Clause 34(1)(d) LPULR 2015]
8. If the costs of the costs assessment are payable by a party to the assessment, the Costs Assessor will forward a copy of the costs assessment certificates to the Manager, Costs Assessment and advise the parties that the Certificate has been forwarded and is available on payment of the costs [Rule 42 LPULR 2015]. The Manager, Costs Assessment will send an invoice advising the amount of costs to be paid before release of the costs assessment certificates. Either party can pay the costs of the assessment to secure the release of the Certificates.
9. Entry of Judgment and application for review are as set out above for an assessment of Ordered costs.

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