

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”**

APPLICATIONS FOR ASSESSMENT

Applications for Assessment are available to be downloaded on the Supreme Court website under Costs Assessments: [click link](#)

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. An Application for Assessment is prepared and served on the opposing party. [Section 68(2)(c) LPULA 2014]
2. The filing fee is payable to the Supreme Court of NSW and is the greater of \$100 or 1% of the total costs in the application for assessment (rounded up to whole dollars) [Clause 33 LPULR 2015]
3. 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. [Clause 32(3) LPULR 2015]
4. We have completed paragraphs 1, 6 and 7 of the Application for Assessment. You will need to obtain a copy of the Court Order(s) relating to costs and annex the itemisation of the costs, disbursements and counsel's fees provided along with a copy of the Court Order(s), as per the Index which follows the Application. These documents must then be given to the Costs Respondent. (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 Respondent has a period of 21 days (or such other time as is agreed between the parties) to provide a Statement of Objections.
6. Before lodging an application for assessment, paragraphs 2, 3 and 4 and the Certificate and Authority must be certified. This includes certifying that the matter cannot be resolved by mediation. 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. An applicant may respond to the objections raised.
7. Three copies each of the completed application, any objection and any response must be lodged at the Supreme Court Registry or by post; GPO Box 3 Sydney NSW 2001 or DX 829 SYDNEY
8. The Manager, Costs Assessment will notify the parties of the appointment of a Costs Assessor. [Clause 39 (1)(e) LPULR 2015]
9. The Costs Assessor will notify the parties of the completion of the assessment and the Manager, Costs Assessment will advise the amount of costs 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]

Entry of Judgment

10. File the Certificates of Determination in a court of competent jurisdiction and they are taken to be a judgment and any enforcement action can be taken. [Section 71(3) LPULA 2014 and see *Hall Chadwick v Doyle* [2006] NSWSC 1195. In relation to the costs of the assessment - see *Kassem & Secatore as joint liquidators of Pan Pacific Age Care Services Pty Ltd (in liq) & Anor v Koutavas* [2012] NSWSC 236.
11. See also the guide to registering a certificate of costs, which can also be found on the Supreme Court website under Costs Assessments

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(2) 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.

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)

1. A law practice may not lodge an application for assessment until 30 days after the service of a bill of costs on the client. [Section 194 LPUL]
2. Three copies of the completed application are lodged at the Supreme Court Registry or by post; GPO Box 3 Sydney NSW 2001 or DX 829 SYDNEY and the filing fee paid.
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) LPUL].
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) LPUL]
5. A copy of any Response lodged is to be sent by the Manager, Costs Assessment to the Applicant [Clause 34(2)(c)]
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(1)(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]. 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. The Manager, Costs Assessment will send an invoice advising the amount of costs to be paid before release of the costs assessment certificates. [Rule 42 LPULR] Either party can pay the costs of the assessment to secure the release of the Certificates.
8. 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)**

9. 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]
10. A client can make an application to the Supreme Court that the Application for Assessment be dealt with out of time. [Section 198(4) LPUL]. However see circumstances where subsection 4 does not apply to an application made out of time by a third-party payer who is not a commercial or government client. [Section 198(5) LPUL]
11. Three copies of the completed application are lodged at the Supreme Court Registry or by post; GPO Box 3 Sydney NSW 2001 or DX 829 SYDNEY and the filing fee paid.
12. 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) LPUL].
13. A copy of any Response lodged is to be sent by the Manager, Costs Assessment to the Applicant [Clause 34(1)(b)]
14. 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) LPUL]. Any Response lodged out of time is to be sent by the Manager, Costs Assessment to the Costs Assessor [Clause 34(1)(d) LPUL]
15. 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. The Manager, Costs Assessment will send an invoice advising the amount of costs to be paid before release of the costs assessment certificates. [Rule 42 LPULR] Either party can pay the costs of the assessment to secure the release of the Certificates.
16. Entry of Judgment and application for review are as set out above for an assessment of Ordered costs.