

NORTHERN TERRITORY OF AUSTRALIA  
JUSTICE LEGISLATION AMENDMENT ACT (NO. 2) 2007

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Act No. 32 of 2007

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# NORTHERN TERRITORY OF AUSTRALIA

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Act No. 32 of 2007

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An Act to amend various Acts administered by the Minister for Justice and Attorney-General

[Assented to 12 December 2007]  
[Second reading 18 October 2007]

The Legislative Assembly of the Northern Territory enacts as follows:

## **Part 1                      Preliminary Matters**

### **1                      Short title**

This Act may be cited as the *Justice Legislation Amendment Act (No. 2) 2007*.

### **2                      Commencement**

This Act commences on the date fixed by the Administrator by *Gazette* notice.

## **Part 2                      Amendment of *Construction Contracts (Security of Payments) Act***

### **3                      Act amended**

This Part amends the *Construction Contracts (Security of Payments) Act*.

**4 Amendment of section 28 (Applying for adjudication)**

## (1) Section 28(1)

*omit*

28

*substitute*

90

## (2) After section 28(2)

*insert*

- (3) Subsection (1) applies to a dispute even if it arises within the 90 day period immediately preceding the commencement of this subsection.

**5 New section 28A**

After section 28

*insert***28A Withdrawing an application for adjudication**

- (1) If a party has applied for adjudication of a dispute under section 28(1), the party may withdraw the application before an adjudicator has been appointed by giving written notice to:
- (a) the prescribed appointer served with the application under section 28(1)(c)(ii) or (iii); and
  - (b) each other party to the contract.
- (2) If an adjudicator has been appointed, the party may withdraw the application by giving written notice to:
- (a) the adjudicator; and
  - (b) each other party to the contract.
- (3) However, the adjudicator must refuse the withdrawal if:
- (a) a party to the contract objects to the withdrawal; and
  - (b) in the opinion of the adjudicator, the party objecting to the withdrawal has a legitimate interest in obtaining a determination of the application.

**6 Amendment of section 36 (Costs of parties to payment disputes)**

Section 36(1), after "the dispute"

*insert*

(including the costs the parties are liable to pay under section 46)

**7 Amendment of section 39 (Dismissed applications)**

Section 39(1), after "parties"

*insert*

and to the Registrar

**8 Amendment of section 46 (Costs of adjudications)**

(1) Section 46(1)

*omit, substitute*

(1) This section applies if:

(a) an adjudicator is appointed to adjudicate a payment dispute;  
and

(b) one of the following applies:

(i) the party who applied for the adjudication withdraws the application under section 28A;

(ii) the adjudicator dismisses the application for adjudication under section 33(1)(a);

(iii) the adjudicator makes a determination of the dispute under section 33(1)(b).

(1A) The adjudicator is entitled:

(a) to be paid for the adjudicator's work:

(i) at a rate agreed between the adjudicator and the parties that is not more than the maximum rate prescribed by the Regulations; or

(ii) if a rate is not agreed – at the rate published under section 55 for the adjudicator; and

(b) to be reimbursed any expenses reasonably incurred in connection with the work.

(2) Section 46(2), (3) and (12)

*omit (all references)*

subsection (1)

*substitute*

subsection (1A)

## **9 Amendment of Schedule**

(1) Schedule, clause 6(2)(a)

*omit*

10

*substitute*

14

(2) Schedule, clause 6(2)(b)

*omit*

20

*substitute*

28

## **Part 3 Amendment of *Criminal Property Forfeiture Act***

### **10 Act amended**

This Part amends the *Criminal Property Forfeiture Act*.

### **11 Amendment of section 40 (Interim restraining order)**

Section 40(4)

*omit*

only for 72 hours

*substitute*

until the expiration of 3 working days

**12 Amendment of section 51 (Duration of restraining order)**

(1) Section 51(1)

*omit*

, not exceeding 3 months,

(2) Section 51(2)

*omit*

not exceeding 3 months

**Part 4 Amendment of *Legal Profession Act***

**13 Act amended**

This Part amends the *Legal Profession Act*.

**14 Amendment of section 4 (Definitions)**

Section 4

*insert (in alphabetical order)*

**determination**, for Part 3.3, Division 8, Subdivision 5, see section 351.

**15 Amendment of section 323 (Setting aside costs agreements)**

(1) Section 323(10), note

*omit, substitute*

*Note*

*Under section 352, a party to a costs agreement may apply to a reviewer for a review of an order or determination made under this section.*

**16 Amendment of section 326 (Notice of client's rights)**

Section 326(1)(a)(ii)

*omit, substitute*

(ii) the setting aside of a costs agreement under

section 323;

- (iii) if the amount in dispute is less than \$10 000 – mediation under Division 7; and

**17 Amendment of section 344 (Determination of costs assessment)**

After section 344(1)

*insert*

- (1A) A costs assessor must determine an application for a costs assessment relating to legal costs that have been paid without a bill by:
- (a) confirming the amount of the costs paid; or
  - (b) if the assessor is satisfied the disputed costs are unfair or unreasonable – by substituting for the amount of the costs an amount that, in the assessor's opinion, is a fair and reasonable amount.

**18 Amendment of section 345 (Certificate of determination)**

Section 345(7)

*omit*

346

*substitute*

350

**19 Repeal and substitution of section 346**

Section 346

*repeal, substitute*

**346 Determination of costs of costs assessment**

- (1) This section applies if a costs assessor determines under section 344 an application for a costs assessment.
- (2) The assessor must, subject to this section, determine the costs of the costs assessment.
- (3) The assessor may refer to the Supreme Court a question of law relating to the costs of the costs assessment.



- (4) The Court may make the order it considers appropriate concerning the costs of the costs assessment.
- (5) On making a determination under subsection (2), an assessor may issue to each party a certificate specifying the costs of the costs assessment.
- (6) If the application for a costs assessment has been dealt with by more than one costs assessor, a certificate issued can specify the costs of another costs assessor.
- (7) The certificate is, on the filing of the certificate in a court of competent jurisdiction, taken to be a judgment of the court for the amount of unpaid costs.
- (8) In this section:

**costs of the costs assessment** means the costs incurred by the costs assessor (including the costs related to the assessor's remuneration) in the course of a costs assessment.

## **20 Repeal and substitution of section 350**

Section 350

*repeal, substitute*

## **350 Recovery of costs of costs assessment**

- (1) This section applies if the costs of a costs assessment have been determined under section 346.
- (2) Subject to subsection (3), the costs assessor may:
  - (a) require any party to the costs assessment to pay the costs of the costs assessment; or
  - (b) determine that the costs of the costs assessment must be shared between the parties to the costs assessment in the way the assessor considers appropriate.
- (3) The law practice to which the costs that are the subject of the costs assessment are payable, or were paid, must pay the costs of the costs assessment if:
  - (a) the assessor is satisfied the law practice failed to comply with Division 3; or
  - (b) on the assessment the legal costs are reduced by 15% or more.

- (4) The assessor may refer to the Supreme Court a question of law relating to the recovery of the costs of the costs assessment.
- (5) The Court may make the order it considers appropriate concerning the recovery of the costs of the costs assessment.

## **21 Amendment of section 351 (Definition)**

- (1) Section 351, heading

*omit, substitute*

### **Definitions**

- (2) Section 351

*insert (in alphabetical order)*

**determination**, of a costs assessor, includes an order or determination of a costs assessor made under section 323.

## **22 Amendment of section 352 (Application by party for review of determination)**

- (1) Section 352(1)

*omit, substitute*

- (1) An application to a reviewer for a review of a determination of a costs assessor may be made:
  - (a) for a determination under section 323 – by a party to the costs agreement; or
  - (b) for a determination under section 344 or 346 – by a party to the costs assessment.

- (2) Section 352(2)(a)

*omit, substitute*

- (a) unless the reviewer allows further time – be made within 28 days after:
  - (i) for a determination under section 323 – the determination is made; or
  - (ii) for a determination under section 344 – the issue of the certificate under section 345 specifying the determination; or

- (iii) for a determination under section 346 – the issue of the certificate under that section specifying the determination; and

**23 Amendment of section 353 (Reviewer may review determination of costs of costs assessment)**

Section 353(1)

*omit*

346(6)

*substitute*

346

**24 Amendment of section 358 (Recovery of costs of review)**

Section 358(4)(a)

*omit*

351

*substitute*

352

**25 Amendment of section 361 (Appeal against determination or decision)**

- (1) Section 361(1), all the words after "a review"

*omit*

- (2) Section 361(2)

*omit, substitute*

- (2) However, Subdivision 6 applies in relation to a determination or decision of a reviewer under this Subdivision as if references to a costs assessor were references to the reviewer.

**26 Amendment of section 366 (Costs assessors)**

Section 366(4)

*omit*

legal practitioner

*substitute*

lawyer

**27 New section 676A**

After section 676

*insert*

**676A Rule-making power**

- (1) The Disciplinary Tribunal may make rules for its practice and procedure.
- (2) The rules may provide for the giving of a notice to a person to appear at a hearing of the Tribunal to give evidence or produce a document or other thing.

**Part 5 Amendment of *Victims of Crime Assistance Act***

**28 Act amended**

This Part amends the *Victims of Crime Assistance Act*.

**29 Amendment of section 61 (Imposition of levy)**

Section 61(3)(b)

*omit, substitute*

- (b) on a child is \$20; or
- (c) on a body corporate is \$200.