

NORTHERN TERRITORY OF AUSTRALIA

LEGAL PROFESSION (COSTS DISCLOSURE AND ASSESSMENT)
AMENDMENT REGULATIONS 2007

Subordinate Legislation No. 39 of 2007

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NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 39 of 2007*

Legal Profession (Costs Disclosure and Assessment) Amendment Regulations 2007

I, THOMAS IAN PAULING, the Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Legal Profession Act*.

Dated 19 December 2007.

T. I. PAULING
Administrator

By His Honour's Command

C. B. BURNS
Minister for Justice and Attorney-General

* Notified in the *Northern Territory Government Gazette* on 20 December 2007.

1 Citation

These Regulations may be cited as the *Legal Profession (Costs Disclosure and Assessment) Amendment Regulations 2007*.

2 Regulations amended

These Regulations amend the *Legal Profession Regulations*.

3 New Part 3.3

After regulation 80

insert

Part 3.3 Costs disclosure and assessment

80A When does matter have substantial connection with this jurisdiction

For Part 3.3 of the Act, a matter involving a client of a law practice has a substantial connection with this jurisdiction in any of the following circumstances:

- (a) the client is an individual resident in this jurisdiction;
- (b) the client is a body corporate and either of the following applies:
 - (i) the client carries on its business activities principally in this jurisdiction;
 - (ii) the legal services provided or to be provided relate principally to business activities carried on by the client in this jurisdiction;
- (c) the law practice, or the associate of the practice who is principally involved in the matter, engages in legal practice principally in this jurisdiction;
- (d) the legal services provided, or to be provided, relate to this jurisdiction, including, for example, legal services provided or to be provided for or in connection with:
 - (i) the conveyance or transfer of real property located in this jurisdiction; or

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- (ii) court proceedings in this jurisdiction.

80B Disclosure of costs to clients – form

For section 303(5) of the Act, form 1 of Schedule 2A is prescribed.

80C Exceptions to requirement for disclosure

For section 306(1)(f) of the Act, disclosure under section 303 or 304(1) of the Act is not required in the following circumstances:

- (a) the client is an overseas-registered foreign lawyer or a foreign law practice (respectively, within the meaning of Part 2.7 of the Act);
- (b) the client is a corporation that has a share capital and whose shares or the majority of whose shares are held beneficially for the Commonwealth, a State or Territory.

80D Interest on unpaid legal costs

- (1) For section 316(4) of the Act, the rate of interest is the rate equal to the Cash Rate Target as at the relevant date, increased by 2 percentage points.
- (2) Subregulation (1) does not apply to a period legal costs are unpaid occurring before the commencement of this regulation.
- (3) In this regulation:

Cash Rate Target means the percentage (or maximum percentage) specified by the Reserve Bank of Australia as the Cash Target Rate.

relevant date means the date the bill was issued by the law practice concerned.

80E Reference to client

For section 317(6) of the Act, sections 318 and 330 of the Act are prescribed.

80F Proceedings for conditional costs agreement

For section 318(2)(c) of the Act, proceedings under the following Acts are prescribed:

- (a) *Adoption of Children Act*;
- (b) *Community Welfare Act*;

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- (c) *Crimes (Victims Assistance) Act* (repealed);
 - (d) *Victims of Crime Assistance Act*.

80G Notice of client's rights – form

For section 326(3) of the Act, form 2 of Schedule 2A is prescribed.

80H Application for costs assessment

- (1) For section 335(1)(a) of the Act, an application for a costs assessment must be made in the approved form.
- (2) For section 335(1)(b) of the Act, the fee is the greatest of the following amounts:
 - (a) 100 revenue units;
 - (b) 1% of the amount remaining unpaid on the bill of costs when the application is made;
 - (c) 1% of the amount of costs in dispute when the application is made.
- (3) For subregulation (2)(c), the amount of costs in dispute is the total amount of costs for the legal services for which the costs claimed are disputed by the person liable to pay them.

80J Circumstance in which assessor may not refuse to issue certificate

For section 345(8) of the Act, section 345(7) of the Act does not apply if the fee for the application for the costs assessment has been waived or postponed, either wholly or in part, by the costs assessor under section 335(4) of the Act.

80K Supplementary information for certificate of determination – sections 345 and 346 of Act

For section 347(1)(b) of the Act, the following supplementary information is required:

- (a) the total amount of costs for providing legal services determined to be fair and reasonable;
- (b) the total amount of disbursements determined to be fair and reasonable;
- (c) each disbursement varied by the determination;

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- (d) for any disputed costs – an explanation of:
 - (i) the basis on which the costs were assessed; and
 - (ii) how the submissions made by the parties were dealt with;
 - (e) if the costs assessor declines to assess a bill of costs – the basis for declining to do so;
 - (f) any further information the costs assessor considers necessary to clarify the determination of the application for a costs assessment.

80L Application for review of determination

- (1) For section 352(2)(b) of the Act:
 - (a) an application for a review of a determination of a cost assessor must be in the approved form and be accompanied by the following:
 - (i) an affidavit that notice of the application has been given to the other parties;
 - (ii) a copy of all the costs assessor's certificates of determination relating to the assessment that is the subject of the application;
 - (iii) a copy of the costs assessor's statement of reasons for the determination; and
 - (b) the applicant must give a copy of the application to each of the other parties.
- (2) For section 352(2)(c) of the Act, the fee is 275 revenue units.

80M Circumstance in which availability of certificate not contingent on payment of reviewer's costs

For section 357(6) of the Act, section 357(5) of the Act does not apply if the fee for the application for the review of the determination has been waived or postponed, either wholly or in part, by the reviewer under section 352(3) of the Act.

**80N Supplementary information for certificate of determination –
section 357 of Act**

For section 359(1)(b) of the Act, the following supplementary information is required:

- (a) the total amount of costs for providing legal services determined to be fair and reasonable;
- (b) the total amount of disbursements determined to be fair and reasonable;
- (c) each disbursement varied by the determination;
- (d) for any disputed costs – an explanation of:
 - (i) the basis on which the costs were assessed; and
 - (ii) how the submissions made by the parties were dealt with;
- (e) a statement of any determination of who (and to what extent) must pay either or both of the following:
 - (i) the fee paid or payable for the application of the review;
 - (ii) the costs of the costs assessor;
- (f) if the determination relates to costs other than party/party costs and the reviewer declines to deal with an application for review of a bill of costs – the basis for declining to do so;
- (g) if the determination deals with any matter of the kind referred to in section 323(1) or (4) of the Act (relating to the setting aside of a costs agreement) – a statement as to the panel's reasons for its decision on the matter;
- (h) any further information the reviewer considers necessary to clarify the determination of the review of the costs assessment.

4 New Schedule 2A

After Schedule 2

insert

Schedule 2A Forms

regulations 80B and 80G

Form 1 Disclosure of costs to clients

Legal Profession Act (section 303(5))

Legal costs – your right to know

You have the right to:

- negotiate a costs agreement with us
- receive a bill of costs from us
- request an itemised bill of costs after you receive of a lump sum bill from us
- request written reports about the progress of your matter and the costs incurred in your matter
- apply for costs to be assessed within 12 months if you are unhappy with our costs
- apply for the costs agreement to be set aside
- accept or reject any offer we make for an interstate costs law to apply to your matter
- notify us that you require an interstate costs law to apply to your matter.

For more information about your rights, please read the fact sheet titled *Legal Costs – your right to know*. You can ask us for a copy, obtain it from the Law Society Northern Territory or download it from the Law Society's website.

Form 2 Notification of client's rights

Legal Profession Act (section 326(3))

Your rights in relation to legal costs

The following avenues are available to you if you are not happy with this bill:

- requesting an itemised bill
- discussing your concerns with us
- costs mediation
- having our costs assessed
- applying to set aside our costs agreement.

For more information about your rights, please read the fact sheet titled *Your right to challenge legal costs*. You can ask us for a copy, obtain it from the Law Society Northern Territory or download it from the Law Society's website.