



SUMMARY OF RECOMMENDATIONS

Section 2: Applications for Assessment (pp35-43)

Para 2.1 Application by client or third party payer for practitioner assessment

1. The current 12 month limitation period in which a client may object to a practitioner/client bill be retained, except where a client has paid a bill, in which case it be limited to a period of 60 days after final payment. (p35)
2. Jurisdiction to extend time for objecting to a bill be conferred on the MCA. (p36)

Para 2.2 Application by law practice retaining another law practice

3. LPA s352 be amended so that where the costs respondent is a law practice, the costs respondent may object to the bill only with leave. Jurisdiction to grant leave should be conferred on the MCA. (p36)

Para 2.3 Application in respect of interim bills

4. An application for assessment of an interim bill can be made at any time until the time for application in respect of the final bill has expired. (p37)

Para 2.4 Service of applications

5. In party/party assessments, an application may be served at the address for service of a party in the proceedings in which the costs order was made. (p39)
6. In practitioner assessments, an application may be served:
 - (a) In any manner that has been agreed
 - (b) In any manner reasonably calculated to bring the application to the notice of the costs respondent where the MCA is satisfied that personal service is not reasonably practicable. (p40)

Para 2.5 Who may apply – beneficiaries?

7. A beneficiary is within the definition of third party payer. (p42)

Para 2.6 Filing Fees

8. The structure of filing fees be amended to facilitate early estimates, and an *ad valorem* full fee be payable on objection to an early estimate by the objecting party. (p43)

Para 2.7 Amendment (of application for assessment because of changes in membership of unincorporated law practice)

9. Where the law practice has made disclosure in accordance with Part 3.2, Division 3, disclosure is to be considered disclosure on the part of any successor law practice. (p43)



Section 3: The Assessment Process

Para 3.1 Review (of process)

10. Remove: In party/party assessments, an application be served 21 days before it is filed. (p48)
11. The CARC (Costs Assessment Rules Committee) make standard procedural rules governing the process of assessment. (p48)
12. LPR be amended to provide that:

A costs applicant must lodge with an application for costs assessment the initial filing fee and:

In the case of a party/party application, an account of work done and the costs claimed and the basis on which they have been calculated.

In the case of a practitioner/client application, a bill setting out the work done and the costs claimed and the basis on which they have been calculated.

In the case of a client/practitioner application, any bill for the costs that the client has been given, and a statement setting out the client's objections. (p48)

Within 28 days after service, the costs respondent must file a response with the MCA, which:

In the case of a party/party application, must set out the respondent's objections to the account, identifying each component and the amount that is disputed.

In the case of a practitioner/client application, must set out the respondent's objections to the bill, identifying each component and the amount that is disputed.

In the case of a client/practitioner application, must be accompanied by a bill setting out the work done and the costs claimed and the basis on which they have been calculated. (p48-49)

Upon expiration to the time for filing a response, the MCA must:

- (a) Issue an interim certificate for any amount that is not in dispute; and
- (b) Refer the matter to an assessor. (p49)

On a **default assessment**, the assessor must review the application and, to the extent they appear manifestly unreasonable:

In a party/party application, allow the costs in the sum claimed in the application;

In a practitioner/client application, allow the costs in the sum claimed in the application;

In a client/practitioner application, uphold the objections made in the application. (p49)

Part 3.2 Early estimates

13. LPR be amended to provide that, upon reference of an application to an Assessor for **contested assessment**, the Assessor may:
- Direct the parties to attend for a confidential conference; and/or
 - Make and issue an estimate of the approximate total that is likely to be allowed
 - Direct that the matter proceed to full assessment, as well as direct that the parties file submissions, summons and examine witnesses, require the production of books, papers and documents, and issue subpoenas. (p52)
14. The greater part of the filing fee for assessment be payable only when the matter is to proceed to full assessment and be payable by the party that has objected to the early estimate. (p52)
15. A party who objects to the early estimate be required to pay the amount of the early estimate. (p52)
16. A party who objects to an early estimate be required to make a confidential offer to the other.

A party who objects to an early estimate and betters its offer of compromise is entitled to the costs of the assessment from the point of the early estimate.

A party who objects to an early estimate and does not better its offer of compromise must pay the costs of the assessment from that point. (p52)

Part 3.3 Standardised and electronic forms for bills and objections

17. The CARC make rules to the effect that where a detailed account or bill is required for the purposes of assessment, it must set out the work done and the costs claimed and the basis on which they have been calculated. (p55)
18. The CARC develop a standard list of objections. (p55)
19. The Supreme Court Registry develop a portal for the electronic lodgement and exchange of applications and responses in assessment. (p55)

Part 3.4 Facilitating global assessments

20. The LPA be amended to make explicit that global assessment of costs is permissible and when. (p57)
21. The CARC develop guidelines specifying appropriate lump sum amounts to be allowed, with Assessors having discretion to depart from them. (p57)

Part 3.5 ADR

22. The MCA be empowered to direct that the parties to an assessment participate in an ADR procedure. (p61)
23. The MCA maintain a panel of suitably qualified persons for that purpose. (p61)



Part 3.6 Time standards

24. The CARC develop time standards for completion of assessment and reviews:
- (a) Where the disputed costs are less than \$100,000, within three months of referral;
 - (b) Where the disputed costs exceed \$100,000, within six months of referral. (p62)

Part 3.7 Summary and default assessments

25. The CARC make rules providing for:
- (a) Summary assessment; and
 - (b) Default assessment. (p62)

Part 3.8 Early payment and interim certificates

26. LPA s368 be amended to clarify that interim certificates create a payment obligation without prejudice to the final determination, and can be varied by subsequent certificates. (p66)
27. The CARC make rules to the effect that interim certificates will be issued:
- Where at the expiration of time for filing a response, the difference between the bill and the objections exceeds the amount paid – that excess;
 - Where an early estimate has been made – an amount reflecting the estimate;
 - Where a party has obtained the setting aside of a regularly obtained default assessment – the amount that would have been due in accordance with the default assessment but for its being set aside;
 - At any stage of the assessment process, on the application of the receiving party, where the costs assessor considers, without assessing, that an amount is likely to be due – that amount or any lesser amount. (p66)

Part 3.9 Giving parties an opportunity to be heard

28. Costs assessors be given the discretion to conduct an oral hearing and the appropriate ancillary powers in recommendation 13. (p67-68)

Part 3.10 Judicial oversight

29. LPA s359 be amended to provide that Costs Assessors are authorised to determine all anterior and ancillary questions, but not so as to preclude the parties, by estoppel, from arguing such questions in subsequent litigation. (p71)
30. The facility afforded by LPA s366 for the relevant Court or Tribunal to determine questions of party/party costs be preserved. (p71)
31. Judicial and legal education programs give emphasis to lump sum costs orders. (P71)

Part 3.11 Consequences of non-disclosure

32. LPA s317(4) be amended to provide that where there is a failure to disclose, the amount of the costs may be reduced on assessment to an amount considered by the costs assessor to be fair and reasonable. (P73-74)
33. LPA s317 be amended to provide that nothing in the section affects the client's entitlement to recover the legal costs under a party/party costs order. (p74)

Part 3.12 Guidelines and publication

34. The CARC develop guidelines for assessors on when and/or at what rate frequent items would ordinarily be allowed on party/party assessments:
- Hourly and daily rates;
 - Office overheads, such as copying, scanning, telephone, faxes, travel expenses, and administrative work;
 - Agency search fees and filing fees;
 - Research time;
 - Reviewing time;
 - Conferences between lawyers for the client;
 - Briefing senior counsel;
 - Retaining experts; and
 - Retaining agents. (p76)
35. The CARC develop recommended formats for reasons for determination. (p76)
36. Selected decisions of costs assessors be published on the Scheme website. (p76)

Section 4: Determinations

37. LPA s363A be amended so that the interest to which a receiving party in practitioner/client or party/party assessment is entitled be included in the assessors' determination. (p80)
38. CPA s101 be amended to the effect that interest accrues in respect of party/party costs from such dates and rates as the court may order, and, in the absence of any order, from the date of the costs order at the rate applicable to a judgment debt. (p80)

Part 4.3 Costs of assessment

39. LPA s369 be amended to confer on costs assessors wider discretion in relation to costs of assessment of practitioner costs. (p84)
40. LPA s369 be amended so that default in s317 should not automatically subject a receiving party law practice to liability for the full costs of assessment. (p84)

Part 4.4 Reasons

41. A regulation be made pursuant to LPA s368(7) and 378(6) prescribing circumstances in which a party is entitled to receive a certificate without payment of the costs of the assessor where the law practice has been ordered to pay those costs and has failed to do so; and that failure may amount to unsatisfactory professional conduct. (p84)
42. LPA cl128 be amended. (p92-93)
43. LPR cl134 be amended. (p93)
44. LPA s370 be amended to clarify that an assessor need not give reasons for allowing costs that are not objected to; and should not disallow costs that are not objected to, except if they are manifestly unreasonable. (p93)
45. The MCA continue to monitor the information provided to the public to ensure that it is appropriate. (not a recommended action)

Section 5: Reviews and Appeals

46. The LPA be amended so that:
 - (a) A costs assessor's determination is only subject to review by a Review Panel
 - (b) The scope of the Review be limited to the part of the assessment and the grounds raised by the review application. (p98)
47. The CARC makes rules requiring that:
 - (a) A review applicant be required to lodge submissions identifying those parts of the assessment that are challenged, the grounds of the challenge, and any supporting argument;
 - (b) The review respondent be permitted to respond; and
 - (c) The applicant be permitted a reply. (p98-99)
48. The LPA and LPR be amended to create a simplified integrated appeal structure with jurisdiction reserved to the Supreme Court, such that:
 - (a) An appeal lies only from a decision of a Review Panel;
 - (b) Such an appeal lies:
 - a. To the District Court, but only by leave if the amount of costs in dispute is less than \$25,000;
 - b. To the Supreme Court, but only by leave if the amount of costs in dispute is less than \$100,000.
 - (c) The Supreme Court may remit to or remove any appeal from the District Court.
 - (d) Such an appeal be by way of rehearing. (p102)



Section 6: Other Matters

49. The office of the Manager, Costs Assessment be transferred into the Registry of the Supreme Court. (p104)
50. LPA, s394, be amended to extend the membership of the Costs Assessors Rules Committee to include a nominated Judge of the Supreme Court or District Court. (p104)
51. Proof on an adequate understanding of the LPA and LPR, legal practice and costs practice, be a mandatory requirement of the applicants in the selection process. (p108)
52. Applicants for appointment as Assessors be required to provide referees to attest to their relevant knowledge and competence in respect of legal practice, costs practice, and the LPA and LPR. (p108)
53. A program of continuing education for assessors be maintained through an induction session and an annual seminar, and should address the role of the costs assessor and the costs assessment process, the philosophy and purpose of the scheme and how it complements the disciplinary regime, the role of the OLSC, the role of the professional associations, and new practice areas. (p108)
54. The MCA issue updating circulars to Costs Assessors on recent developments. (p108)
55. The MCA establish an on-line forum for costs assessors. (p108)
56. The hourly remuneration rate for assessors be reviewed and increased to at least \$250 per hour. (p108)