

[Act 1998 No 83]



New South Wales

Legal Profession Amendment (Costs Assessment) Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to amend the *Legal Profession Act 1987* so as:

- (a) to remove the requirement that the remuneration of costs assessors be funded from the Statutory Interest Account and that fees and other payments received in relation to a costs assessment be paid to the Statutory Interest Account, and
- (b) to allow regulations to be made under that Act to fix the costs payable for legal services in connection with any motor vehicle accident matter, and
- (c) to allow the proper officer of the Supreme Court to postpone or refund a fee payable under that Act in connection with an application for costs assessment, and
- (d) to require costs assessors to give reasons for their decisions, and
- (e) to provide for a review procedure in relation to decisions by costs assessors.

* Amended in committee—see table at end of volume.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Legal Profession Act 1987* set out in Schedule 1.

Schedule 1 Amendments

Remuneration of costs assessors and funding of costs assessments generally

Schedule 1 [1] and [14] remove the requirement that payments be made from the Statutory Interest Account maintained by the Law Society under the *Legal Profession Act 1987 (the Act)* for the purpose of paying the costs related to the remuneration of costs assessors. Instead, all costs related to the administration of Part 11 of the Act (other than the costs of the costs assessors' rules committee) are to be paid out of money to be provided from an account to be established for the Attorney General's Department.

Schedule 1 [14] also removes the requirement that an application fee for assessment, or a payment for the costs of a costs assessor, be paid to the credit of the Statutory Interest Account. Instead, such fees and costs are to be paid to an account to be established for the Attorney General's Department.

Schedule 1 [2] makes it clear that the costs related to the remuneration of a costs assessor can be recovered from the party who is required to pay for the costs of a costs assessment under the Act.

Schedule 1 [15] allows the Attorney General, rather than the Bar Council and Law Society, to determine the remuneration payable to costs assessors.

Schedule 1 [8] provides that, if the costs of a costs assessment are payable by a party to the assessment, the costs assessor may refuse to issue a certificate that sets out his or her determination in relation to a costs assessment until the costs of the costs assessor in connection with that assessment have been paid (as required by section 208JA of the Act).

Fees payable for legal services in connection with motor vehicle accident matters

Schedule 1 [3] inserts a power to make regulations under the Act that fix the fair and reasonable costs for legal services in any motor vehicle accident matter. The Act provides that a barrister or solicitor is not entitled to be paid or recover for a legal service an amount that exceeds the fair and reasonable cost fixed for the service by regulations under the Act. **Schedule 1 [13]** is a consequential amendment.

Postponement or refund of fees

Schedule 1 [4] allows the proper officer of the Supreme Court to postpone the payment of an application fee for a costs assessment under the Act in cases of hardship. **Schedule 1 [6]** is a consequential amendment.

Schedule 1 [5] allows the proper officer of the Supreme Court to refund the application fee (either in whole or in part) if satisfied it is appropriate because the application is not proceeded with.

Reasons for decisions of costs assessors

Schedule 1 [9] inserts a provision that requires costs assessors to give reasons for their decisions, in accordance with regulations under the Act. It also requires costs assessors to provide the parties with such supplementary information as the regulations may require.

Review procedure

Schedule 1 [11] provides for a review procedure for determinations by costs assessors.

The provisions allow a party to an assessment who is dissatisfied with the determination of the costs assessor to apply for a review of the determination. Reviews are to be conducted by a panel consisting of 2 costs assessors. The operation of the costs assessor's determination is suspended while the panel conducts the review. The parties to the assessment, and the costs assessor who conducted the assessment, may be required to provide any relevant documents to the panel. Following a review, the panel may affirm the determination that is the subject of the review or set it aside and substitute a

new determination. The panel may also make decisions as to who should pay the costs of the review. Decisions of the panel are subject to appeal in the same way as decisions of a costs assessor. Regulations may be made with respect to reviews under the new provisions.

Schedule 1 [7], [10] and [12] make consequential amendments.

Savings and transitional provisions

Schedule 1 [16] provides power for the making of savings and transitional regulations.

Schedule 1 [17] inserts transitional provisions in the Act.