

Legal Profession National Law

December 2010

Part 4.3 – Legal Costs

<u>Division 1</u>	<u>Introduction</u>	3
<u>4.3.1</u>	<u>Objectives</u>	3
<u>4.3.2</u>	<u>Commercial or government clients</u>	3
<u>4.3.3</u>	<u>Third party payers</u>	4
<u>Division 2</u>	<u>Legal costs generally</u>	4
<u>4.3.4</u>	<u>Legal costs must be fair and reasonable</u>	4
<u>4.3.5</u>	<u>Avoidance of increased legal costs</u>	5
<u>Division 3</u>	<u>Costs disclosure</u>	5
<u>4.3.6</u>	<u>Disclosure obligations of law practice regarding clients</u>	5
<u>4.3.7</u>	<u>Disclosure obligations if another law practice is to be retained</u> ..	6
<u>4.3.8</u>	<u>Disclosure obligations of law practice regarding associated third party payers</u>	6
<u>4.3.9</u>	<u>Non-compliance with disclosure obligations</u>	6
<u>Division 4</u>	<u>Costs agreements</u>	7
<u>4.3.10</u>	<u>Client's right to costs agreement</u>	7
<u>4.3.11</u>	<u>Making costs agreements</u>	7
<u>4.3.12</u>	<u>Conditional costs agreements</u>	7
<u>4.3.13</u>	<u>Conditional costs agreements involving uplift fees</u>	8
<u>4.3.14</u>	<u>Contingency fees are prohibited</u>	8
<u>4.3.15</u>	<u>Effect of costs agreement</u>	9
<u>4.3.16</u>	<u>Certain costs agreements are void</u>	9
<u>Division 5</u>	<u>Billing</u>	9
<u>4.3.17</u>	<u>Form of bills</u>	9
<u>4.3.18</u>	<u>Request for itemised bills</u>	9
<u>4.3.19</u>	<u>Responsible principal for bill</u>	9
<u>4.3.20</u>	<u>Giving bills</u>	10
<u>4.3.21</u>	<u>Progress reports</u>	10
<u>4.3.22</u>	<u>Charging for bills prohibited</u>	10
<u>4.3.23</u>	<u>Notification of client's rights</u>	10
<u>Division 6</u>	<u>Unpaid legal costs</u>	10
<u>4.3.24</u>	<u>Restriction on commencing proceedings to recover legal costs</u>	10

4.3.25	Interest on unpaid legal costs	10
Division 7	Costs assessment	11
4.3.26	Application of this Division generally	11
4.3.27	Application of this Division where complaint made	11
4.3.28	Applications for costs assessment	11
4.3.29	Costs assessment	12
4.3.30	Factors in a costs assessment	12
4.3.31	Reasons to be given	13
4.3.32	Referral for disciplinary action	13
4.3.33	Admissibility determinations in disciplinary proceedings	13
4.3.34	Costs of costs assessment	13
4.3.35	Right of appeal or review	13
Division 8	Miscellaneous	14
4.3.36	Security for legal costs	14
4.3.37	Unreasonable legal costs—disciplinary action	14
4.3.38	National Rules for legal costs	14

Part 4.3 Legal costs

Division 1 Introduction

4.3.1 Objectives

The objectives of this Part are:

- (a) to ensure that clients of law practices are able to make informed choices about their legal options and the costs associated with pursuing those options; and
- (b) to provide that law practices must not charge more than fair and reasonable amounts for legal costs; and
- (c) to provide a framework for assessment of legal costs.

4.3.2 Commercial or government clients

- (1) This Part does not apply to commercial or government clients, but this section and sections 4.3.12 (1), (7) and (8), 4.3.13, 4.3.14 and 4.3.16 (3), (4) and (5).
- (2) For the purposes of this Law, a *commercial or government client* is a client of a law practice where the client is:
 - (a) a law practice; or
 - (b) one of the following entities defined or referred to in the Corporations Act:
 - (i) a public company, a subsidiary of a public company, a large proprietary company, a foreign company, a subsidiary of a foreign company or a registered Australian body;
 - (ii) a liquidator, administrator or receiver;
 - (iii) a financial services licensee;
 - (iv) a proprietary company, if formed for the purpose of carrying out a joint venture and if any shareholder of the company is a person to whom disclosure of costs is not required;
 - (v) a subsidiary of a large proprietary company, but only if the composition of the subsidiary's board is taken to be controlled by the large proprietary company as provided by subsection (3); or
 - (c) an unincorporated group of participants in a joint venture, if one or more members of the group are persons to whom disclosure of costs is not required and one or more members of the group are not such persons and if all of the members of the group who are not such persons have indicated that they waive their right to disclosure; or
 - (d) a partnership that carries on the business of providing professional services if the partnership consists of more than 20 members or if the partnership would be a large proprietary company (within the meaning of the Corporations Act) if it were a company; or
 - (e) a body or person incorporated in a place outside Australia; or
 - (f) a person who has agreed to the payment of costs on a basis that is the result of a tender process; or
 - (g) a government authority in Australia or in a foreign country; or
 - (h) a person specified in, or of a class specified in, the National Rules.
- (3) For the purposes of subsection (2) (b) (v), the composition of the subsidiary's board is

taken to be controlled by the large proprietary company if the large proprietary company, by exercising a power exercisable (whether with or without the consent or concurrence of any other person) by it, can appoint or remove all, or the majority, of the directors of the subsidiary.

- (4) For the purposes of subsection (3), the large proprietary company is taken to have power to make an appointment referred to in that subsection if:
 - (a) a person cannot be appointed as a director of the subsidiary without the exercise by the large proprietary company of such a power in the person's favour; or
 - (b) a person's appointment as a director of the subsidiary follows necessarily from the person being a director or other officer of the large proprietary company.

4.3.3 Third party payers

- (1) For the purposes of this Law:
 - (a) a person is a *third party payer*, in relation to a client of a law practice, if the person is not the client and:
 - (i) is under a legal obligation to pay all or any part of the legal costs for legal services provided to the client; or
 - (ii) has already paid all or a part of those legal costs under such an obligation; and
 - (b) a third party payer is an *associated third party payer* if the legal obligation referred to in paragraph (a) is owed to the law practice, whether or not it is also owed to the client or another person; and
 - (c) a third party payer is a *non-associated third party payer* if the legal obligation referred to in paragraph (a) is owed to the client or another person but not the law practice.
- (2) The legal obligation referred to in subsection (1) can arise by or under contract or legislation or otherwise.
- (3) A law practice that retains another law practice on behalf of a client is not on that account a third party payer in relation to that client.
- (4) The National Rules may provide that particular references in this Law to a client include references to an associated third party payer.

Division 2 Legal costs generally

4.3.4 Legal costs must be fair and reasonable

- (1) A law practice must, in charging legal costs, charge costs that are no more than fair and reasonable in all the circumstances and that in particular are:
 - (a) proportionately and reasonably incurred; and
 - (b) proportionate and reasonable in amount.
- (2) In considering whether legal costs satisfy subsection (1), regard must be had to whether the legal costs reasonably reflect:
 - (a) the level of skill, experience, specialisation and seniority of the lawyers concerned; and
 - (b) the level of complexity, novelty or difficulty of the issues involved, and the extent to which the matter involved a matter of public interest; and
 - (c) the labour and responsibility involved; and

- (d) the circumstances in acting on the matter, including (for example) any or all of the following:
 - (i) the urgency of the matter;
 - (ii) the time spent on the matter;
 - (iii) the time when business was transacted in the matter;
 - (iv) the place where business was transacted in the matter;
 - (v) the number and importance of any documents involved; and
 - (e) the quality of the work done; and
 - (f) the retainer and the instructions (express or implied) given in the matter.
- (3) In considering whether legal costs are fair and reasonable, regard must also be had to whether the legal costs conform to any applicable requirements of this Part, the National Rules and any fixed costs legislative provisions.
- (4) A costs agreement is prima facie evidence that legal costs disclosed in the agreement are fair and reasonable if:
- (a) the provisions of Division 3 relating to costs disclosure have been complied with; and
 - (b) the costs agreement does not contravene, and was not entered into in contravention of, any provision of Division 4.

4.3.5 Avoidance of increased legal costs

A law practice must not act in a way that unnecessarily results in increased legal costs payable by a client, and in particular must act reasonably to avoid unnecessary delay resulting in increased legal costs.

Division 3 Costs disclosure

4.3.6 Disclosure obligations of law practice regarding clients

- (1) A law practice must, when or as soon as practicable after instructions are initially given in a matter, provide the client with information disclosing the basis on which legal costs will be calculated in the matter and an estimate of the total legal costs.
- (2) A law practice must, when or as soon as practicable after there is any significant change to anything previously disclosed under this section, provide the client with information disclosing the change, including information about any significant change to the legal costs that will be payable by the client.
- (3) Information provided under this section must contain:
 - (a) a sufficient and reasonable amount of information about the impact of the change on the legal costs that will be payable to allow the client to make informed decisions about the future conduct of the matter; and
 - (b) information about the client's rights:
 - (i) to negotiate a costs agreement with the law practice; and
 - (ii) to negotiate the billing method (for example, by reference to timing or task); and
 - (iii) to receive a bill from the law practice and to request an itemised bill after receiving a bill that is not itemised or is only partially itemised; and
 - (iv) to seek the assistance of the Commissioner in the event of a dispute about

legal costs.

- (4) The law practice must take all reasonable steps to satisfy itself that the client has understood and given consent to the proposed course of action for the conduct of the matter and the proposed costs after being given that information.
- (5) Disclosure under this section must be made in writing, but the requirement for writing does not affect the law practice's obligations under subsection (4).
- (6) Disclosure is not required to be made under this section if the total legal costs in the matter (excluding GST and disbursements) are not likely to exceed the amount specified in the National Rules for the purposes of this subsection.

4.3.7 Disclosure obligations if another law practice is to be retained

- (1) If a law practice (the *first law practice*) intends to retain another law practice (the *second law practice*) on behalf of a client, the first law practice must disclose to the client the details specified in section 4.3.6 (1) in relation to the second law practice, in addition to any information required to be disclosed to the client under section 4.3.6.
- (2) If a law practice (the *first law practice*) retains or intends to retain another law practice (the *second law practice*) on behalf of a client, the second law practice is not required to make disclosure to the client under section 4.3.6, but must disclose to the first law practice the information necessary for the first law practice to comply with subsection (1).
- (3) This section does not apply if the first law practice ceases to act for the client in the matter when the second law practice is retained.

4.3.8 Disclosure obligations of law practice regarding associated third party payers

- (1) If a law practice is required to make a disclosure to a client of the law practice under section 4.3.6 or 4.3.7, the law practice must, in accordance with subsection (2), also make the same disclosure to any associated third party payer for the client, but only to the extent that the details or matters disclosed are relevant to the associated third party payer and relate to costs that are payable by the associated third party payer in respect of legal services provided to the client.
- (2) A disclosure under subsection (1) must be made in writing:
 - (a) at the time the disclosure to the client is required; or
 - (b) if the law practice only afterwards becomes aware of the legal obligation of the associated third party payer to pay legal costs of the client—as soon as practicable after the practice became aware of the obligation.

4.3.9 Non-compliance with disclosure obligations

- (1) If a law practice contravenes the disclosure obligations of this Part:
 - (a) the costs agreement concerned (if any) is void; and
 - (b) the client or an associated third party payer is not required to pay the legal costs until they have been assessed or any costs dispute has been determined by the Commissioner; and
 - (c) the law practice must not commence or maintain proceedings for the recovery of any or all of the legal costs until they have been assessed or any costs dispute has been determined by the Commissioner; and
 - (d) the contravention is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any principal of the law practice or any legal practitioner associate or foreign lawyer associate involved in the

contravention.

- (2) In a matter involving both a client and an associated third party payer where disclosure has been made to one of them but not the other, this section:
 - (a) does not affect the liability of the one to whom disclosure was made to pay the legal costs; and
 - (b) does not prevent proceedings being maintained against the one to whom the disclosure was made for the recovery of those legal costs.

Division 4 Costs agreements

4.3.10 Client's right to costs agreement

A client of a law practice has the right to require and to have a negotiated costs agreement with the law practice.

4.3.11 Making costs agreements

- (1) A costs agreement may be made:
 - (a) between a client and a law practice retained by the client; or
 - (b) between a client and a law practice retained on behalf of the client by another law practice; or
 - (c) between a law practice and another law practice that retained that law practice on behalf of a client; or
 - (d) between a law practice and an associated third party payer.
- (2) A costs agreement must be written or evidenced in writing.
- (3) A costs agreement may consist of a written offer that is accepted in writing or (except in the case of a conditional costs agreement) by other conduct.
- (4) A costs agreement cannot provide that the legal costs to which it relates are not subject to a costs assessment.

4.3.12 Conditional costs agreements

- (1) A costs agreement (a *conditional costs agreement*) may provide that the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which those costs relate.
- (2) A conditional costs agreement must:
 - (a) be in writing and in plain language; and
 - (b) set out the circumstances that constitute the successful outcome of the matter to which it relates.
- (3) A conditional costs agreement must:
 - (a) be signed by the client; and
 - (b) include a statement that the client has been informed of the client's rights to seek independent legal advice before entering into the agreement.
- (4) A conditional costs agreement must contain a cooling-off period of not less than 5 clear business days during which the client, by written notice, may terminate the agreement, but this requirement does not apply where the agreement is made between law practices only.
- (5) If a client terminates a conditional costs agreement within the cooling-off period, the law practice:

- (a) may recover only those legal costs in respect of legal services performed for the client before that termination that were performed on the instructions of the client and with the client's knowledge that the legal services would be performed during that period; and
 - (b) in particular, may not recover any uplift fee.
- (6) A conditional costs agreement may provide for disbursements to be paid irrespective of the outcome of the matter.
- (7) A conditional costs agreement may relate to any matter, except a matter that involves:
 - (a) criminal proceedings; or
 - (b) proceedings under the *Family Law Act 1975* of the Commonwealth; or
 - (c) proceedings under legislation specified in the National Rules for the purposes of this section.
- (8) A contravention of provisions of this Law or the National Rules relating to conditional costs agreements by a law practice is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any principal of the law practice or any legal practitioner associate or foreign lawyer associate involved in the contravention.

4.3.13 Conditional costs agreements involving uplift fees

- (1) A conditional costs agreement may provide for the payment of an uplift fee.
- (2) If a conditional costs agreement relates to a litigious matter:
 - (a) the agreement must not provide for the payment of an uplift fee unless the law practice has a reasonable belief that a successful outcome of the matter is reasonably likely; and
 - (b) the uplift fee must not exceed 25% of the legal costs (excluding disbursements) otherwise payable.
- (3) A conditional costs agreement that includes an uplift fee:
 - (a) must identify the basis on which the uplift fee is to be calculated; and
 - (b) must include an estimate of the uplift fee or, if that is not reasonably practical:
 - (i) a range of estimates for the uplift fee; and
 - (ii) an explanation of the major variables that may affect the calculation of the uplift fee.
- (4) A law practice must not enter into a costs agreement in contravention of this section or of the National Rules relating to uplift fees.

Maximum civil penalty: 100 penalty units.

4.3.14 Contingency fees are prohibited

- (1) A law practice must not enter into a costs agreement under which the amount payable to the law practice, or any part of that amount, is calculated by reference to the amount of any award or settlement or the value of any property that may be recovered in any proceedings to which the agreement relates.

Maximum civil penalty: 100 penalty units.

- (2) Subsection (1) does not apply to the extent that the costs agreement adopts an applicable fixed costs legislative provision.
- (3) A contravention of subsection (1) by a law practice is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any

principal of the law practice or any legal practitioner associate or foreign lawyer associate involved in the contravention.

4.3.15 Effect of costs agreement

Subject to this Law, a costs agreement may be enforced in the same way as any other contract.

4.3.16 Certain costs agreements are void

- (1) A costs agreement that contravenes, or is entered into in contravention of, any provision of this Division is void.

Note. If a costs agreement is void due to a failure to comply with the disclosure obligations of this Part, the costs must be assessed before the law practice can seek to recover them (see section 4.3.9 (1)).

- (2) A law practice is not entitled to recover any amount in excess of the amount that the law practice would have been entitled to recover if the costs agreement had not been void and must repay any excess amount received.
- (3) A law practice that has entered into a costs agreement in contravention of section 4.3.13 is not entitled to recover the whole or any part of the uplift fee and must repay the amount received in respect of the uplift fee to the person from whom it was received.
- (4) A law practice that has entered into a costs agreement in contravention of section 4.3.14 is not entitled to recover any amount in respect of the provision of legal services in the matter to which the costs agreement related and must repay any amount received in respect of those services to the person from whom it was received.
- (5) If a law practice does not repay an amount required by subsection (2), (3) or (4) to be repaid, the person entitled to be repaid may recover the amount from the law practice as a debt in a court of competent jurisdiction.

Division 5 Billing

4.3.17 Form of bills

A bill may be in the form of a lump sum bill or an itemised bill.

4.3.18 Request for itemised bills

- (1) If a bill is given by a law practice in the form of a lump sum bill, any person who is entitled to apply for an assessment of the legal costs to which the bill relates may request the law practice to give the person an itemised bill.
- (2) A request for an itemised bill must be made within 30 days after the date on which the legal costs become payable.
- (3) The law practice must comply with the request within 21 days after the date on which the request is made in accordance with subsection (2).
- (4) If the person making the request is liable to pay only a part of the legal costs to which the bill relates, the request for an itemised bill may only be made in relation to those costs that the person is liable to pay.

4.3.19 Responsible principal for bill

- (1) A bill given by a law practice, or a letter accompanying the bill, must:
 - (a) be signed by a principal of the law practice designated in the bill or letter as the responsible principal for the bill; or
 - (b) nominate a principal of the law practice as the responsible principal for the bill.

- (2) If a principal does not sign or is not nominated as the responsible principal for a bill given by a law practice, each principal of the law practice is taken to be a responsible principal for the bill.

4.3.20 Giving bills

A bill is to be given to a client in accordance with the National Rules.

4.3.21 Progress reports

- (1) A law practice must give a client, on reasonable request, without charge and within a reasonable period, a written report of the legal costs incurred by the client to date, or since the last bill (if any), in the matter.
- (2) A law practice retained on behalf of a client by another law practice is not required to give a report to the client under subsection (1), but must disclose to the other law practice any information necessary for the other law practice to comply with that subsection.
- (3) Subsection (2) does not apply if the other law practice ceases to act for the client in the matter when the law practice is retained.

4.3.22 Charging for bills prohibited

A law practice must not make a charge for preparing or giving a bill, and any charge made for that purpose is not recoverable by the law practice.

4.3.23 Notification of client's rights

A law practice must ensure that a bill includes or is accompanied by a written statement setting out:

- (a) the avenues that are open to the client in the event of a dispute in relation to legal costs; and
- (b) any time limits that apply to the taking of any action referred to in paragraph (a).

Division 6 Unpaid legal costs

4.3.24 Restriction on commencing proceedings to recover legal costs

- (1) A law practice must not commence legal proceedings to recover legal costs from a person unless a bill has been given for the legal costs and the bill complies with the requirements of this Law and the National Rules.
- (2) A law practice must not commence legal proceedings to recover legal costs from a person who has been given a bill until:
 - (a) where the legal costs are the subject of a costs dispute before the Commissioner—the Commissioner has closed or resolved the dispute; and
 - (b) at least 30 days after the later of:
 - (i) the date on which the person is given the bill; or
 - (ii) the date on which the person receives an itemised bill following a request made in accordance with section 4.3.18.

4.3.25 Interest on unpaid legal costs

- (1) A law practice may charge interest on unpaid legal costs if the costs are unpaid 30 days or more after the law practice has given a bill for the costs in accordance with this Part.
- (2) A law practice may also charge interest on unpaid legal costs in accordance with a costs agreement.
- (3) A law practice must not charge interest under this section on unpaid legal costs unless the

bill for those costs contains a statement that interest is payable and of the rate of interest.

- (4) A law practice must not charge interest under this section or under a costs agreement at a rate that exceeds the rate specified in or determined under the National Rules for the purposes of this section.
- (5) A law practice must not charge interest under this section or under a costs agreement on a bill given more than 6 months after the completion of the matter.
- (6) Subsection (5) does not apply where:
 - (a) the law practice has provided a lump sum bill within the 6-month period after completion, but the client or an associated third party payer requests an itemised bill outside of the 6-month period; or
 - (b) a bill has not been issued within the 6-month period (or an earlier bill has been issued but withdrawn) at the request of the client or associated third party payer.

Division 7 Costs assessment

4.3.26 Application of this Division generally

This Division applies to legal costs payable on a solicitor-client basis.

4.3.27 Application of this Division where complaint made

Despite anything to the contrary in this Part, legal costs that are or have been the subject of a costs dispute under Chapter 5 may not be the subject of a costs assessment under this Division except to the extent that:

- (a) the Commissioner is unable to resolve the costs dispute and has notified the parties of their entitlement to apply for a costs assessment; or
- (b) the Commissioner arranges for a costs assessment under section 5.2.20.

4.3.28 Applications for costs assessment

- (1) Applications for an assessment of the whole or any part of legal costs payable to a law practice may be made by any of the following:
 - (a) a client who has paid or is liable to pay them to the law practice;
 - (b) a third party payer who has paid or is liable to pay them to the law practice or the client;
 - (c) the law practice;
 - (d) another law practice, where the other law practice retained the law practice to act on behalf of a client and the law practice has given the other law practice a bill for doing so.
- (2) An application under this section is to be made in accordance with applicable jurisdictional legislation.
- (3) An application under this section must be made within 12 months after:
 - (a) the bill was given to, or the request for payment was made to, the client, third party payer or other law practice; or
 - (b) the legal costs were paid if neither a bill nor a request was made.
- (4) However, an application that is made out of time may be dealt with by the costs assessor if the designated tribunal, on application by the costs assessor or the client or third party payer who made the application for assessment, determines, after having regard to the delay and the reasons for the delay, that it is just and fair for the application for

assessment to be dealt with after the 12-month period.

- (5) 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 but who would be a commercial or government client if the third party payer were a client of the law practice concerned.
- (6) If the third party payer is a non-associated third party payer, the law practice concerned must provide the third party payer, on the written request of the third party payer, with sufficient information to allow the third party payer to consider making, and if thought fit to make, an application for a costs assessment under this section.
- (7) If an application for a costs assessment is made in accordance with this Division:
 - (a) the costs assessment must take place without any money being paid into court on account of the legal costs the subject of the application; and
 - (b) the law practice must not commence any proceedings to recover the legal costs until the costs assessment has been completed.
- (8) A costs assessor is to cause a copy of an application for a costs assessment to be given to any law practice or client concerned or any other person whom the costs assessor thinks it appropriate to notify.
- (9) A person who is notified by the costs assessor under subsection (8):
 - (a) is entitled to participate in the costs assessment process; and
 - (b) is taken to be a party to the assessment; and
 - (c) if the costs assessor so determines, is bound by the assessment.
- (10) If there is a non-associated third party payer for a client of a law practice, then, despite any other provision of this Division, the assessment of the costs payable by the non-associated third party payer does not affect the amount of legal costs payable by the client to the law practice.

4.3.29 Costs assessment

- (1) Assessments of legal costs are conducted by costs assessors, and are to be conducted in accordance with this Part, the National Rules and any applicable jurisdictional legislation.
- (2) On a costs assessment, the costs assessor must:
 - (a) determine whether or not a valid costs agreement exists; and
 - (b) determine whether legal costs are fair and reasonable and, to the extent they are not fair and reasonable, determine the amount of legal costs (if any) that are to be payable.

Note. A costs agreement can be void under section 4.3.9 or 4.3.16.

4.3.30 Factors in a costs assessment

- (1) In considering whether legal costs for legal work are fair and reasonable, the costs assessor must apply the principles in section 4.3.4 so far as they are applicable.
- (2) In considering whether legal costs for legal work are fair and reasonable, the costs assessor may have regard to the following matters:
 - (a) whether the law practice and any legal practitioner associate or foreign lawyer associate involved in the work complied with this Law and the National Rules;
 - (b) any disclosures made, including whether it would have been reasonably practicable for the law practice to disclose the total costs of the work at the outset (rather than simply disclosing charging rates);
 - (c) any relevant advertisement as to the law practice's costs or the skills of the law

practice or any legal practitioner associate or foreign lawyer associate involved in the work;

- (d) any other relevant matter.
- (3) The costs assessor must take into account the incidence of GST in a costs assessment.
- (4) In conducting an assessment of legal costs payable by a non-associated third party payer, the costs assessor must also consider whether it is fair and reasonable in the circumstances for the non-associated third party payer to be charged the amount claimed.

4.3.31 Reasons to be given

Costs assessors are to provide reasons for their costs assessments.

4.3.32 Referral for disciplinary action

On a costs assessment, a costs assessor:

- (a) may refer a matter to the Commissioner if the costs assessor considers that the legal costs charged are not fair and reasonable; and
- (b) must refer a matter to the Commissioner if the costs assessor considers that the legal costs charged, or any other matter raised in the assessment, may amount to unsatisfactory professional conduct or professional misconduct.

4.3.33 Admissibility determinations in disciplinary proceedings

Determinations of costs assessors are to be admissible in disciplinary proceedings as evidence as to the fairness and reasonableness of legal costs.

4.3.34 Costs of costs assessment

- (1) Without affecting the powers of a court or tribunal to award costs in relation to a costs assessment, a costs assessor is, subject to this section, to determine the costs of a costs assessment and by whom they are payable.
- (2) Unless the costs assessor believes that in all the circumstances it is not fair and reasonable for the costs to be paid otherwise, the costs of a costs assessment are payable by a law practice if:
 - (a) the law practice has failed to disclose a matter required to be disclosed by Division 3; or
 - (b) the law practice has failed to disclose a matter required to be disclosed in the manner required by Division 3; or
 - (c) the law practice's costs have been reduced by 15% or more on assessment.

4.3.35 Right of appeal or review

- (1) An applicant for assessment or the law practice concerned may, in accordance with applicable jurisdictional legislation, appeal against or seek a review of a decision of a costs assessor in the jurisdiction for which the costs assessor exercised his or her functions in relation to the decision.
- (2) The court or tribunal hearing the appeal or reviewing the decision may make any order it considers appropriate on the appeal or review.
- (3) This section does not apply where the Commissioner determines a costs dispute under Part 5.3.

Division 8 Miscellaneous

4.3.36 Security for legal costs

A law practice may take reasonable security from a client for legal costs (including security for the payment of interest on unpaid legal costs) and may refuse or cease to act for a client who does not provide reasonable security.

4.3.37 Unreasonable legal costs—disciplinary action

- (1) A contravention of a requirement of this Part that a law practice must not charge more than fair and reasonable legal costs is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of:
 - (a) the responsible principal or principals for a bill given by the law practice (see section 4.3.19); and
 - (b) each legal practitioner associate or foreign lawyer associate who was involved in giving the bill or authorising it to be given.
- (2) Subsection (1) applies to a responsible principal:
 - (a) whether or not he or she had actual knowledge of the bill or its contents; and
 - (b) whether or not he or she had actual knowledge that the legal costs were unfair or unreasonable.
- (3) However, subsection (1) does not apply to a responsible principal if he or she establishes that it was not reasonable for him or her to suspect or believe that the legal costs in the bill were unfair or unreasonable in the circumstances (otherwise than by the mere assertion of someone else involved in the law practice).

4.3.38 National Rules for legal costs

- (1) The National Rules may make provision with respect to any aspect of legal costs.
- (2) Without limitation, the National Rules may make provision with respect to the following:
 - (a) costs disclosure;
 - (b) costs agreements;
 - (c) costs billing;
 - (d) the payment of interest on unpaid costs;
 - (e) costs assessments.