CITATION:	*Northern Aboriginal Investment Corporation Pty Ltd & Ors v Paul Walsh & Ors (No 2)* [2024] NTSC 52
PARTIES:	NORTHERN ABORIGINAL INVESTMENT CORPORATION PTY LTD and NORTHERN AUSTRALIA ABORIGINAL DEVELOPMENT CORPORATION PTY LTD v PAUL WALSH & ASSOCIATES PTY LTD and PAUL WALSH
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT exercising Territory jurisdiction
FILE NO:	51 of 2018 (21826067)
DELIVERED:	19 June 2024
HEARING DATE:	On the papers
REVIEW OF:	BLOKLAND J

CATCHWORDS:
COSTS – Review of costs assessment – deficiencies in disclosure – plaintiffs not ‘sophisticated clients’ nevertheless costs agreement not set

aside – costs fair and reasonable – Assessor's determination upheld.

Statutes:
Aboriginal Land Rights Act (CW) s 35(4)

Corporations Act 2005 (Cth) s 45A(3)

Land Rights Act s 23(1)(e)

Legal Profession Act 2006 (NT) ss 295, 303(1)(c), 304(1), 306(1)(c), 323(7)(d), (7)(e), 323(7)(f), 326(1)(c), 328, 332(5), 345, 347, 352, 354, 358(1)

Legal Profession Regulations 2007 (NT), Regulation 806

Djuwalpi Marika v Northern Land Council No NTD 17 of 2013; *Gondarra v Minister for Families, Housing, Community Services and Indigenous Affairs* [2014] FCA; *Johkill Pty Ltd v Tsoukalis Lawyers and John Tsoukalis* ('*Johkill*') [2002] NTSC 86; *Rirratjingu Aboriginal Corporation v Northern Land Council* [2015] FCA 36; *Rirratjingu Aboriginal Corporation v Northern Land Council* [2016] FCA 2017; *Rirratjingu Aboriginal Corporation v Northern Land Council* [2017] FCAFC 48; *Rirratjingu Aboriginal Corporation v Northern Land Council*, 15 September 2017, No D1 of 2017 referred to.

REPRESENTATION:

Counsel:

Plaintiffs:	M Grove/M Short
Defendants:	T Liveris

Solicitors:

Plaintiffs:	Ward Keller
Defendants:	Paul Walsh and Associates

Judgment category classification:	C
Judgment ID Number:	BLO2407
Number of pages:	39

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Northern Aboriginal Investment Corporation Pty Ltd & Ors v Paul Walsh & Ors (No 2) [2024] NTSC 52
No. 51 of 2018 (21826067)

BETWEEN:

NORTHERN ABORIGINAL INVESTMENT CORPORATION PTY LTD
First Plaintiff

AND:

NORTHERN AUSTRALIA ABORIGINAL DEVELOPMENT CORPORATION PTY LTD
Second Plaintiff

AND:

PAUL WALSH & ASSOCIATES
First Defendant

AND:

PAUL WALSH
Second Defendant

Review of the determination of a costs assessor

(Forwarded to the parties: 19 June 2024)

Background

[1] By Originating Motion the plaintiffs applied under s 352 of the *Legal Profession Act 2006* (NT) (‘*LPA*’) for a review of two determinations made by the appointed costs assessor, Julian Wade Roper (‘the Assessor’).

[2] The parties could not agree about how a review should take place under the *LPA*. On 5 June 2019 I published an interim decision, 'Ruling on procedure to be undertaken on review'.[1] In that ruling it was determined that for the purposes of this review, the plaintiff should be permitted to file and serve grounds or objections and particulars which sufficiently identify the material before the Assessor which it submitted supported those grounds or objections. The defendants were permitted to file a response to the grounds or objections and identify any materials before the Assessor on which they sought to rely or draw to the Court's attention on the review.[2] It is trusted the reasons for that approach were clear from that ruling,[3] although not all parties agreed with the conclusions.

[3] Following that initial ruling and subsequent directions the plaintiffs filed a document 'Plaintiffs' Grounds of Review (Order of Blokland J made 5 June 2019)'. ('Plaintiffs' Grounds'). The defendants filed a document 'Defendants' Response to Plaintiffs' Grounds of Review' ('Defendants' Response'). Those documents will be referred to in due course. It is accepted the Review may extend beyond the issues raised by the parties. While it is appreciated this is not an appeal, as previously indicated, it was thought to be helpful during the course of the review to ascertain whether there were any specific matters the parties sought to draw to the Court's

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1 *Northern Aboriginal Investment corporation Pty Ltd & Ors v Paul Walsh & Ors* [2019] NTSC 43.

2 *Northern Aboriginal Investment Corporation Pty Ltd & Ors v Paul Walsh & Ors* [2019] NTSC 43 at [22].

3 Ibid.

attention as part of the review. Section 354 of the *LPA* provides the reviewer *must not* receive submissions from the parties *unless the reviewer decides otherwise*. I decided otherwise.

[4] The defendants maintain their objection to the procedure adopted, nevertheless have responded to the substance of some of the points raised by the plaintiffs. The Court is grateful to both counsel for their compliance with the Directions, notwithstanding there was some resistance to the same.

Overview

[5] On 28 May 2018, pursuant to s 345 of the *LPA*, the Assessor certified that he conducted a costs assessment of the invoices issued by the defendants in the period 9 December 2014 to 1 October 2015, with reference to the plaintiffs' applications and the materials and submissions produced.

[6] The Assessor certified that he dismissed the plaintiffs' application with respect to invoice No 14-197 as out of time under s 332(5) of the *LPA*. He certified the balance to be fair and reasonable and allowed the same in its entirety of $45,862.50 ('The first assessment').

[7] On 3 May 2018 the Assessor certified the determination of costs of the costs assessment as $7,700, inclusive of GST and that the parties be liable for payment of those fees in equal shares ($3,850 each) ('The second assessment').

[8] The *LPA* requires that a review be conducted independently. It is nevertheless useful to consider the Assessor's framework and reasons. The Assessor gave 'Reasons for Determination' ('Reasons') pursuant to s 347 of the *LPA*. The Reasons form part of the materials provided to the Court for the purpose of the review. The other materials the Court has been provided with and which have been the subject of the review are as follows (generally from the latest in time to the earliest):

- Email correspondence between the parties concerning invoices and payment to the Assessor and administrative matters; emails concerning the provision of submissions in response to the applicants' submissions with a date for response fixed for 20 April 2018.

- Letter from the respondent to the Assessor of 20 April 2018 responding to the applicants' further written submissions.

- Email correspondence dealing with various requests from the Assessor for items of information and responses.

- Email correspondence between solicitors and a barrister (once they were engaged) and the Assessor to determine which of the materials were appropriate to provide to the Court (8 June 2018-16 August 2018).

- Letter from the respondent (Mr Walsh) of 2 March 2018 enclosing in particular the requested itemised Bills: Tax invoices: No 15-05; 15-45;

15-88; Tax invoice No 15-17; 15-48; 15-173; 14-197; 15-33; 15-80; 14-197; 15-17; 15-33; 15-48; 15-80.

- Letter from applicants (Mr Grove) 11 April 2018, setting out further submissions including disclosure, and the scope of the retainer.

- Email submissions and consideration of authorities to be relied on by the Assessor (15 January 2018).

- Letter from Paul Walsh (2 March 2018) Itemised Bills and Statement of John Hofmeyer, 27 February 2018.

- Submissions of the applicants on the issue of time limits (6 December 2017).

- Response to the application of 26 April 2016 (Mr Walsh, 28 November 2017) with the following annexures:

  Annexure A: Letter from applicants (Mr Grove) to the respondent (20 April 2016).

  Annexure B: Letter from the respondent (Mr Walsh) to the applicants (6 June 2016).

  Annexure C: Statement of John Hofmeyer, Executive Officer of the Aboriginal Investment Group ('AIG') (28 November 2017) with attachments relevant to the issue of a

subpoena in relation to Federal Court proceedings NTD 31 of 2014.

Annexure D: Affidavit of Paul Gerard Walsh sworn 2 December 2014 (with annexures) on the question of time required for AIG to respond to the subpoena.

Annexure E: Letter from Minter Ellison to the Northern Land Council and Paul Walsh (12 March 2015) on transfer of proceedings to the Federal Court.

Annexure F: Statement by Ron Michael David Levy of the Northern Land Council (28 November 2017) 28 November 2017.

Annexure G: Email from Steve Smith, AIG, to Paul Walsh (14 December 2015).

Annexure H: Email from Steve Smith, AIG, to Paul Walsh (12 February 2016).

Annexure I: Letter from Paul Walsh to Steve Smith AIG, (16 February 2016) referring 30 items enclosed. Letter to Carter Newell, solidities for the insurer (25 February 2016).

- Email correspondence between the parties and the Assessor upon receipt of the application including request for information. Email

correspondence on the question of whether the application for assessment was out of time.

- Correspondence from the Law Society NT.

- Application on behalf of the plaintiffs for a Costs Assessment informing that the amount of costs in dispute was $68,199.50 (26 April 2016), attachments including the disputed invoices and subsequent correspondence and submissions to the Assessor.

[9] The materials the Assessor had regard to are listed in paragraph [21] of the Reasons. As I understand it, the same materials were by agreement before this Court to form the material to be considered as part of the Review.

The subject litigation which required a costs agreement

[10] During the course of Federal Court proceedings between the Rirratjingu Aboriginal Corporation & Ors ('RAC') and the Northern Land Council ('NLC'), the defendants were engaged by the Northern Australia Aboriginal Development Corporation trading as the Aboriginal Investment Group (AIG) to respond to a draft subpoena issued to it. The Assessor noted this work was covered by Invoice 14-197. The work in relation to that invoice appeared to have been completed by 9 December 2014.[4]

[11] The RAC had issued Supreme Court Proceedings against the Northern Aboriginal Investment Corporation Pty Ltd (NAIC), the Northern Australia

4 Reasons at [2].

Aboriginal Development Corporation Pty Ltd (NAADC) and its then Executive Officer, John Hofmeyer on or about November 2017. The Northern Aboriginal Investment Corporation Pty Ltd and Northern Australia Aboriginal Development Corporation Pty Ltd are both part of the AIG.

[12] The litigation was unique, complex and would have serious financial consequences for the parties concerned. The principal legal officer for the NLC, Mr Ron Levy provided a statement (28 November 2017) which is part of the material before the Assessor and hence this Review. Mr Levy explained the background involves the years of negotiation of an agreement to secure the future operations of the Rio Tinto Alcan Alumina refinery and bauxite operations, with substantial benefits to be provided to traditional owners. The agreement of 2011 is referred to as the 'Gove Agreement' and the parties were the Rio Tinto Alcan entities, the NLC, the Arnhem Land Aboriginal Land Trust and representatives of three traditional owner groups: Gumatj, Rirratjingu and Galpu.

[13] The financial benefits which were paid by the NLC pursuant to s 35(4) of the *Aboriginal Land Rights Act* (CW) required apportionment between the three traditional owner groups which replicated what was provided in the Gove agreement. The Rirratjingu traditional owners were represented by the RAC in terms of professional services during the negotiation period. The AIG provided corporate and related advice and assistance to the Land Council and to RAC. The AIG had a pre-existing relationship with RAC in terms of the provision of professional services. The apportionment of

payments subject to the Gove operations were disbursed by the NLC in the following proportions: 71.61% to the Gumatj; 26.87% to the Rirratjingu and 0.49% to the Galpu.

[14] Both the Gove agreement and the disbursements have been the subject of considerable litigation. Mr Levy drew attentions to *Gondarra v Minister for Families, Housing, Community Services and Indigenous Affairs*[5] and *Djuwalpi Marika v Northern Land Council*.[6] The litigation which in part is the subject of this costs dispute concerns the RAC and other members of the Rirratjingu group who filed a writ in this Court claiming the Rirratjingu were entitled to 50% of payments under the Gove agreement, rather than the negotiated 26.87%. The RAC sought compensation for the alleged shortfall. Although the writ was filed in May 2014, it was not formally served at that time. Although the NLC was provided with a copy, Mr Levy states he understood Mr Hofmeyer was not provided with a copy, either formally or informally. The claim alleged that the Rirratjingu traditional owners only agreed to the Gove agreement on the basis that their share would be 50 per cent. This and other allegations, some of which were made against AIG and Mr Hofmeyer were denied. The writ was served on the defendants to the action on or about 28 November 2014. At that time, Mr Levy states a cross-vesting application was foreshadowed to transfer the writ to the Federal Court but was not finalised. By consent, that took place in March 2017,

5 [2014] FCA.

6 No NTD 17 of 2013.

although it was in August 2014 that the RAC and some Rirratjingu persons filed separate proceedings in the Federal Court on the question of the disbursements. The claim was unsuccessful both before Mansfield J and on appeal to the Full Federal Court.[7]

[15] As Mr Levy points out, in the 2015 judgement Mansfield J at [122] referred to the Supreme Court writ and noted the action concerns damages for what the Rirratjingu said was their proper and true share. In effect the RAC were seeking the Court determine the apportionments, the implication being that the NLC could not lawfully determine the apportionments. There was some acknowledgement that the Federal Court decision could impact the claim before this Court. Mansfield J and the Full Court held that the NLC did have authority to make the apportionment that it did.

[16] The subpoena was issued by RAC in the Federal Court proceedings (NTD 31 of 2014) which required AIG to produce documents. AIG was not a party to those proceedings. Other applications continued in the Federal Court. Mr Levy stated he was aware the defendants had acted for AIG in the past and had contacted Mr Levy with respect to the subpoena. He described the discussions as 'quite extensive, in my view appropriately so'.[8]

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7 The following judgements were delivered as a result of the litigation: *Rirratjingu Aboriginal Corporation v Northern Land Council* [2015] FCA 36; 324 ALR 240 (Mansfield J); *Rirratjingu Aboriginal Corporation v Northern Land Council* [2016] FCA 2017 Mansfield J; *Rirratjingu Aboriginal Corporation v Northern Land Council* [2017] FCAFC 48; *Rirratjingu Aboriginal Corporation v Northern Land Council*, 15 September 2017, No D1 of 2017 (Rejection of Special Leave Application brought by RAC).

8 Statement of Ron Levy, 28 November 2017 at 36.

[17] Mr Levy recorded further discussions with Mr Walsh in late November and/or early December 2014. Mr Levy held the view there was a close relationship between the two proceedings and that all parties agreed the writ would not substantially proceed pending the outcome of the Federal Court proceedings. Both the Supreme Court and the Federal Court accepted that process which simultaneously acknowledged the close relationship between the two sets of proceedings. All parties consented to the transfer of the Supreme Court action to the Federal Court in 2017.[9]

[18] A costs agreement of 28 November 2014 provided by the defendants, respondents before the Assessor, to NAADC was to 'act for and advise [Hofmeyer], [NAIC] [NAADC] in the matter of [The Supreme Court Proceedings] and associated Federal Court proceedings'[10] and was executed on behalf of NAIC, NAADC and Hofmeyer, by Hofmeyer on 17 December 2014. The Assessor found most of the invoices appeared to relate to work undertaken for the plaintiffs and John Hofmeyer with respect to 'a seeming watching brief in Federal Court Proceedings and their respective representation in the Supreme Court Proceedings'. The Assessor mentioned that all invoices were paid in full, relatively contemporaneously with their respective dates of issue and without complaint.[11]

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9 Statement of Ron Levy, 28 November 2017 at [36]-[38].

10 Reproduced in the Reasons at [6].

11 Reasons at [8]-[9].

[19] It appears from the correspondence provided and from comments by the Assessor, an insurer was engaged by the plaintiffs and that by December 2015, Steve Smith, the general manager of the Aboriginal Investment Group (AIG) was seeking a form of insurance coverage for both the Supreme Court and Federal Court actions.[12] That matter remains largely opaque. Whether any consequences on costs would flow from the plaintiffs' insurance or potential reimbursement by a third party remain unknown. The Assessor found such a state of affairs unsatisfactory.[13] I agree. At this stage nothing further is known. There is reference in the Memorandum of Fees, Tax Invoice No15-173 to 'Attendance upon David Fisher, Carter Newell solicitors to discuss and advise' which may be a reference to solicitors for the insurers as is indicated elsewhere, however, little more is known. The Memorandum of Fees, Tax Invoice No 15-45 also refers to attendance upon David Fisher of Carter Newell 'solicitors for client insurer'. There is no indication about what was done with Carter Newell in the Memorandum of Fees; the defendants point out that they were instructed by Steve Smith to assist with the insurance claim and that Smith and AIG continued to instruct the defendants over 2 years after the first invoice was issued (on 9 December 2014).[14] Nevertheless there remains very little detail about the involvement of insurers and any outcome related to their engagement.

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12 Reasons at 10-12.

13 Reasons at 12.

14 Defendant's Response at [9].

Request for an itemised bill of costs

[20] In February 2016, Steve Smith of AIG by email raised concerns with the defendants about the lack of itemization of work already performed and paid for by AIG. Smith made it plain he was not questioning the work already undertaken, but was concerned 'the insured' should have been engaged sooner and 'appraised of the matters as they progressed and not after the fact, which is not an issue for you to address, that is an issue and a concern for AIG'.[15] As the Assessor mentioned, it would make more sense if 'the insured' was a typographical error and likely referred to 'the insurer' as in the insurer for the plaintiffs. As above, surrounding issues concerning what basis the plaintiffs were insured on and whether insurance impacts on costs remain unresolved. In any event the email of 12 February 2016 clearly constitutes a request for an itemised bill of costs required by s 327 of the *LPA*. Section 327 provides:

> **327 Request for itemised bill**
>
> (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) The law practice must comply with the request within 21 days after the date on which the request is made.
>
> (3) 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

15 Submission in response of Paul Walsh (29 November 2017), annexure H, email of Steve Smith of 12 February 2016; Reasons at 14.

itemised bill may only be made in relation to those costs that the person is liable to pay.

(4) Subject to subsection (5), a law practice must not start legal proceedings to recover legal costs from a person who has been given a lump sum bill until at least 30 days after the date on which the person is given the bill.

(5) If the person makes a request for an itemised bill under this section, the law practice must not start legal proceedings to recover the legal costs from the person until at least 30 days after complying with the request.

(6) A law practice is not entitled to charge a person for the preparation of an itemised bill requested under this section.

(7) Section 325(2) and (5) apply to the giving of an itemised bill under this section.

[21] A practitioner must comply with the request within 21 days (s 327(2)). The Assessor found no evidence of compliance until 2 March 2018, and no explanation for such non-compliance.[16] On the materials provided to the Court, I can find no evidence of any explanation, however that does not impact this review in a significant way. The Assessor noted there were difficulties associated with preparation of the itemised bills as the defendants' law practice was sold in November 2015.[17]

[22] Itemised bills were provided to the Assessor which were enclosed with a letter dated 2 March 2018. As above there is no explanation on why the Itemised Bills were not provided earlier. It appears the Itemised Bills were

16 Reasons at [17].

17 Reasons at [64].

received by the then plaintiff's Executive Officer. A further statement from Mr John Hofmeyer, as Executive Officer for the plaintiffs and a party to the proceedings in his own right provided the Assessor with a letter. That letter refers to his previous statement of 28 November 2017 which advised:

> I refer to the Invoices rendered by Mr Walsh in respect of acting in these matters and the work done. Copies attached at "C". I confirm that I personally reviewed all of these invoices and was satisfied that they were reasonable and properly reflected the necessary work that Mr Walsh was instructed to do and did do and accordingly authorised them for payment.

[23] As above, the defendant's submission highlighted correspondence of 14 December 2015 in which the then General Manager of AIG advised he thought there was a relative nexus between the two issues (referring to both the Supreme Court Action and the Federal Court Proceedings) and would seek insurance coverage. In the same letter, the defendants set out the portion of the letter of the General Manager of AIG to the effect he was not questioning the work done and confirmed Mr Hofmeyer had paid all invoices. His concern was with notifying the 'insured', or most likely meant the 'insurer' of the litigation and its progression.[18]

[24] These opinions on the acceptance of the work done, including the fact that there was no question as to the work's necessity and quality tend to support the case that costs were invoiced for work which was authorised and costs which were fair and reasonable. Not all of the Itemised Bills sufficiently

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18 Although here, as above it is accepted reference to the 'insured' is likely to, and makes sense that Smith meant the 'insurer'.

illustrate how costs were determined. However, the defendants have provided evidence in the form of the two statements from the Executive Officer Mr Hofmeyer (27 November 2017) and (27 February 2018) the latter which particularly states the bills represent the work agreed and undertaken. Further support for acceptance of the fees may be found in the email of Steve Smith of 12 February 2016. At a more conceptual level, the statement of Ron Levy of 28 November 2017 tends to support the defendant's position given it demonstrates the complexity of the work and the connection between the two sets of proceedings.

[25] In my view not all of the Itemised Bills comply with the *LPA*. The definition of "itemised bill" in s 295 is: **itemised bill** means a bill that specifies in detail how the legal costs are made up in a way that would allow them to be assessed under Division 8. As Huntingford AJ pointed out in *Johkill Pty Ltd v Tsoukalis Lawyers and John Tsoukalis* ('*Johkill*')[19] the consequences of a law practice's failure to provide an itemised bill in accordance with s 327 are not as clearly set out in the Act as they might be. Section 327(5) prohibits a law practice from starting 'legal proceedings' to recover costs until at least 30 days have passed since the law practice has delivered the itemised bill. As in *Johkill* that has no application here because it is understood that the costs were paid contemporaneously.

19 [2002] NTSC 86 at [31].

[26] The Memorandum of Fees and Tax Invoice No 14-197 (which was not considered by the Assessor as it was found to be out of time) states that it includes services required for the Supreme Court action (No: 39 of 2014) and the Federal Court proceedings (NTD 31 of 2014). All invoices referred to both actions. Some invoices do not make it clear which items relate to the Supreme Court action and which relate to the Federal Court subpoena issue or the broader Federal Court proceedings. Invoice 14-197 is somewhat exceptional as it clearly relates to the Federal Court subpoena issue. The distinction is important as it might be expected the overall work required for the Federal Court matter, save for the subpoena issue, at least initially was not as significant as the Supreme Court matter. The plaintiffs were not initially parties to the Federal Court matter, although AIG was served with the subpoena. It may be anticipated that the work involved in the subpoena issue and a 'watching brief' would not be as complex as the position of the parties to both actions. This may be so even accepting there is cross-over, and significantly so, in the history of the two sets of litigation. There are a number of references to the NLC in Invoice 14-197. From the outset the NLC was a defendant in both the Supreme Court action and the Federal Court action.

[27] All Memoranda of Fees and Tax Invoices state that as with No 14-197 above, the legal services are required for both the Supreme Court action (No: 39 of 2014) and the Federal Court (NTD 31 of 2014).

[28] The Memorandum of Fees and Tax Invoice No 15-05 provides:

> 12.12.14: Receive and consider correspondence from Bob Gosford, NLC, conference with Bob Gosford, correspondence and appearances, correspondence to client, correspondence to Minter Ellison re Statement of Claim, review Supreme Court Rules.
>
> (32Units).

[29] From that portion of Tax Invoice 15-05, it may be inferred that work carried out on 12.12.14 relates to the Supreme Court matter given the reference to the 'Statement of Claim' and 'review Supreme Court Rules'.

[30] Save for the item dated 08.01.15, three items on Tax Invoice 15-05 do not indicate which action is being referred to:

> 15.12.14: Receive and consider correspondence from NLC, receive and consider correspondence from client. (2 Units)
>
> 18.12.14: Conference Bob Gosford NLC, receive and consider correspondence from Minter Ellison, receive and consider correspondence from NLC, correspondence and documents to client, attendance upon client to update and advise. (25 Units).
>
> 19.12.14: Receive and consider correspondence from counsel, correspondence to counsel, correspondence from and to NLC. (15 Units).
>
> 08.01.15: Conference Bob Gosford NLC, receive and consider correspondence from NLC, receive and consider correspondence from Supreme Court, receive and consider correspondence from solicitors for the Plaintiffs, correspondence from and to counsel, correspondence to client, prepare Brief to counsel. (60 Units).

[31] Given the reference to Supreme Court correspondence, it may be assumed that at least most of that Bill was for work done on the Supreme Court action. The final items on Tax Invoice 15-05 are:

> 11.01.15: Receive and consider correspondence from client, receive and consider correspondence from counsel, correspondence to client, correspondence to NLC, prepare Brief to counsel. (38 Units)
>
> 31.01.15: Received documents, prepare brief (67 Units) Clerk.
>
> 14.01.15: Prepare for and appear at directions hearing, conference Bob Gosford NLC, reporting to client, correspondence to client, correspondence to counsel. (80 Units)
>
> Clerk Brief preparation, searches Bill File. (80 Units).
>
> The total of that invoice was $21,162.45 which included Disbursements for telephone, facsimile, postage and copying of $4,783.45 and GST on the total Bill.

[32] The Memorandum of Fees Due and Tax Invoice No 15-17 again provides that costs are in respect of both the Supreme Court action and the Federal Court proceedings. The only indication that any item was billed for the Supreme Court action is on 28 January 2015. 'Attendance upon client to advise correspondence to counsel, receive and consider correspondence from Supreme Court, correspondence to client'. Otherwise the work is described in similar terms to that undertaken in respect of Tax Invoice 15-05. The total for Tax Invoice 15-17 is $9,217.55 including $1,891.55, inclusive of GST.

[33] The Memorandum of Fees Due and Tax Invoice No 15-33 combines items for costs for both Supreme Court and Federal Court actions. Clearly some is billed for the work on the Federal Court matter. The Invoice provides:
05 and 06.02.15: 'Receive and consider correspondence from client, puruse judgement in Federal Court proceedings, correspondence and judgement to

counsel, attendance upon solicitors for Plaintiffs, attendance upon client to discuss and advise, correspondence to client'. (24 Units). It was clearly necessary for the defendants to be fully aware of the Federal Court judgement and consequently engage the plaintiffs about it.

[34] It may be safely assumed the balance of items in Invoice 15-33 are relevant to the Supreme Court matter.

> 09.02.15: Receive and consider correspondence from Minter Ellison re Statement of Claim, attendance upon counsel to discuss, attendance upon NLC re-proposed process, correspondence to Minter Ellison, correspondence to client and NLC. (13 Units)
>
> 13.02.15: Receive correspondence and draft Orders from Minter Ellison, settle draft Orders and correspondence from Minter Ellison. (8 Units)
>
> 16.02.15: Receive and send correspondence between the Supreme Court, Minter Ellison and NLC, review and sign Consent Orders. (4 Units)
>
> 17.02.15: Receive and consider correspondence re Directions Hearing and Orders from Supreme Court and Minter Ellison, review file, correspondence to client. (10 Units). Clerk Bill file and file administration. The total for that Tax Invoice No 15-33 was $3,454.00 including $33 for this investments and GST.

[35] It is not clear from Memorandum of Fees Due and Tax Invoice 15-45 which of the two sets of litigation are being billed, although the context was likely to be clear to those engaged with the litigation. The total fee is $1435.50 inclusive of GST and disbursements. The Memorandum of Fees Due and Tax Invoice No 15-48 may be taken as referring to the Supreme Court matter,

principally overseeing correspondence. The total fee was $2,145, including disbursements and GST.

[36] The Memorandum of Fees Due and Tax Invoice 15-80 appears to principally concern the Statement of Claim and a Directions Hearing in the Supreme Court. The total fee was $5,159.00 including GST and disbursements.

[37] It is not clear from the Memorandum of Fees Due and Tax Invoice No 15-88 whether it is referable to both actions or one of them. The total fee for that Bill was $2904 including disbursements and GST. Neither is it clear from Memorandum of Fees Due and Tax Invoice No 15-173 whether the items billed are referable to the Supreme Court or Federal Court action. The total fee was $616 inclusive of disbursements and GST.

[38] Many of the items listed in the various invoices refer to ‘reviewing correspondence’. It is impossible to assess what the correspondence was and whether it was a reasonable cost. However, given the evidence primarily from Mr Hofmeyer and to a lesser extent Mr Smith, it can be concluded these matters were checked at an appropriate time by Mr Hofmeyer who understood the work being undertaken, authorised it and arranged the payment for it. The defendants were entitled to rely on Mr Hofmeyer’s instructions and the authorisation he had from the relevant Boards, actually or ostensibly. Mr Hofmeyer has confirmed that he was at all times authorised by the Boards.

[39] I mention here that in reviewing the costs, the costs per unit throughout the period covered by the invoices were in accordance with the Costs Agreement. The plaintiffs were invoiced at $40 per unit for senior legal practitioners and $15 per unit for clerks and various administrative matters. The Costs Agreement reflects this: $400 per hour for a senior solicitor and $150 per hour for paralegal or clerical staff. While it has been pointed out that the Assessor did not call for the defendant's files, and although the work billed was done in 2014- 2015, the unit costs appear broadly consistent with the Costs Agreement.[20]

[40] All Itemised Bills and the earlier lump sum Bills included a statement as to the clients' rights in the following terms:

> Your rights in relation to legal costs. The following avenues are available to you if you are not happy with this bill:
>
> 1. Discussing your concerns with us
>
> 2. Costs mediation
>
> 3. Having our costs assessed
>
> 4. Applying to set aside our costs agreement.
>
> 5. For more information about your rights, you can contact the Law Society Northern Territory.

20 This also seems largely in keeping with the 'Solicitors Costs – Taxation Guidelines' issued by the Court and used by the Taxation Master, issued under Supreme Court Rules, Order 63.

[41] This statement of rights did not comply with s 326(1)(c) of the *LPA* as it did not give information about time limits for exercising rights. It does not comply with Regulation 80G of the *Legal Profession Regulations*, in that it does not follow the prescribed form. The plaintiffs are a commercial operation and Mr Hofmeyer as a plaintiff and Executive Officer would have more business acumen and awareness of costs and negotiating costs than an ordinary consumer. The material indicates the complexity of the structure of the plaintiff corporations.[21] However, whether the defendants can be exempted from the provisions of the Act requires consideration of whether the plaintiffs are 'sophisticated clients' under the *Legal Profession Act*. Although I conclude the material does not show the plaintiffs are 'sophisticated clients', Mr Hofmeyer as Executive Officer to the relevant boards gives assurances in his statement that he was aware of his rights as a client in respect of legal fees but at no time had any reason to raise any issue and none were raised.[22]

The Costs Agreement

[42] The Assessor found the plaintiffs, applicants before the Assessor, were 'sophisticated clients', hence the defendants were exempted from certain of the disclosure obligations. Section 303 of the *LPA* provides a law practice must disclose the basis on which costs will be calculated. Under 303(1)(b) the client has the following rights: to negotiate a costs agreement; receive a

21 Statement of Ron Levy, 28 November 2017.

22 Statement of John Hofmeyer, 28 November 2017 at 11.

bill and request an itemised bill; be notified as to any changes; receive an estimate of the total legal costs including variables and possible changes; details of the intervals at which they will be billed; rates of interest; an estimate of the range of costs; progress reports and details of who may be contacted and information on dispute resolution mechanisms.

[43] The Costs Agreement stated the amount which would be invoiced as professional fees, as above, on an hourly basis. It sets out the particular costs of certain disbursements, but only of photocopying, facsimiles, phone calls and scanning. In terms of other fees and disbursements, clause 4 of the Costs Agreement states ‘so far as reasonably practicable, [the defendants] will obtain your prior approval before incurring substantive or unusual disbursements’.

[44] In terms of the overall estimate of the Legal Costs, clause 7 of the Costs Agreement states ‘It is not reasonably practicable to provide an estimate of the total legal costs in advance of instructions on any specific matter. A range of estimates of the total legal costs will be discussed with you upon receipt of instructions on specific matters as they arise.’

[45] Clause 13 of the Costs Agreement advises of the right to receive a bill of costs which will be either lump sum or itemised, either at the conclusion of the matter, or at intervals of at least one month, noting disbursements may be billed at any time, or at termination of the retainer. The Costs Agreement states an itemised bill will be provided within 21 days of request.

[46] Most, but not all of the rights of a client referred to in s 303 of the *LPA* are listed in clause 22 of the Costs Agreement and as above, some of those rights were listed in the Memoranda of Fees and the relevant invoices. The Costs Agreement is partially compliant with the *LPA*.

[47] On 26 April 2016, the current solicitors for the plaintiffs wrote to the defendants advising they acted for NAIC and NAADC in relation to the Supreme Court matter, but did not act in the Federal Court matter and not for Mr Hofmeyer. It was said Mr Hofmeyer was not indemnified by NAIC or NAADC and that the plaintiffs were unaware of the nature of the work undertaken in the Federal Court. It is difficult to accept the plaintiffs were unaware of the Federal Court matter as it is common ground that due to certain similarities in the history and background of the matters, consideration was given to transferring the Supreme Court matter to the Federal Court from early in the litigation. I am unable to proceed on the basis as advanced at that time by the plaintiffs. The Costs Agreement referred to the Federal Court matter. It would be a very poor state of affairs if Mr Hofmeyer did not communicate on the issue of costs to the appropriate Boards, but as Executive Officer he has provided a statement that he was authorised to act on behalf of the relevant Boards. The defendants were entitled to rely on Mr Hofmeyer holding the appropriate authority.

[48] Further, it was suggested there was a conflict of interest between Mr Hofmeyer and NAIC and NAADC. Mr Hofmeyer was employed by NAADC and provided assistance to NAIC from time to time. After an employment

dispute, Mr Hofmeyer left the employment. It is the case as the plaintiffs submitted, Mr Hofmeyer was being sued in his own right. Mr Hofmeyer was sued given his position and the duties he discharged in his capacity as the Executive Officer of the plaintiff corporations. It is accepted there were allegations made against him but it is understood this was in his capacity as Executive Officer. There would not seem to be any other basis for him to have been made a party to the proceedings. For the period he was employed by the plaintiffs, his interests when acting as Executive Officer coincided with the plaintiffs' interests.

[49] These points were addressed at some level by the Assessor. The plaintiffs argued a separate retainer would have been required for the defendants to act for Mr Hofmeyer and to have the plaintiffs pay for such representation. In terms of the legal work done for the subpoena issue in the Federal Court, the plaintiffs also suggested they were not privy to the scope of the work required or whether it was reasonable or carried out in a reasonable way. As mentioned, the Federal Court proceeding is referred to in the Costs Agreement and while I agree it is not clear from some of the Itemised Bills what parts of the costs were referrable to the Federal Court matter, those items were checked by Mr Hofmeyer as correct.

[50] The application was foreshadowed to transfer the matter from the Supreme Court to the Federal Court during the time the defendants were acting for the plaintiffs. Mr Levy stated this foreshadowing took place shortly after service

of the writ in the Supreme Court matter which was on 28 November 2014.[23] The plaintiffs accept that there are some commonalities in the background of the claims in the Supreme Court and Federal Court. The Memorandum of Fees and Due and Tax Invoice 14-197 clearly refers to the work done on the subpoena issue in the Federal Court. While I agree that not all invoices make this clear, there is still the evidence of Mr Hofmeyer and to some extent Mr Smith and Mr Levy which shows the defendants were engaged to advise on the Federal Court matter, beyond the subpoena.

[51] It is fair to place significant weight on the statement of Ron Levy of 28 November 2017. At the relevant time he was the Northern Land Council's principal legal officer. As above, his statement provided information on the history of the litigation, both in terms of the 2011 'Gove Agreement' and subsequent Supreme Court and Federal Court litigation. Mr Levy had intimate knowledge of the relevant corporations. Mr Levy stated AIG was a trading name of a corporation owned by the NLC which encompassed the NAIC. The NAIC was also at least majority owned by the NLC and the NAAD was wholly owned by the NAIC. He stated AIG's role was to provide commercial and related advice and assistance to Aboriginal groups and corporate entities, including all of the Territory's four Land Councils. The AIG, including its Board, operates independently of the NLC.

23 Statement of Ron Levy, 28 November 2017.

[52] While the defendants did not initially give estimates of costs, the statements from Mr Hofmeyer indicate at all times he was kept informed of the various steps taken. He agrees with the contents of Mr Walsh's affidavit filed on behalf of the defendants setting out the points at which time instructions were given.

[53] The Costs Agreement was drafted in broad terms. It covered legal advice in both sets of proceedings and ancillary matters. The proceedings were lengthy and complex. It becomes clear from the materials that Mr Hofmeyer was kept well informed and approved of payments and processes throughout. Mr Hofmeyer's statement of 28 November 2017 sets out various meetings with the defendants, instructing generally and reviewing the evidence and materials, confirming that he wanted counsel engaged, briefed and available to react quickly in both the Supreme Court proceedings, the foreshadowed Federal Court proceedings and with respect to the Federal Court subpoena. He stated that when instructing, he acted in his capacity as the Executive Officer of AIG with the full authority of the relevant Boards. As above, he personally reviewed all of the invoices and was satisfied they properly reflected the necessary work the defendant was instructed to do. He said he was aware of a client's right in respect of legal fees but at no time had any reason to raise any issue with the defendant. While the estimate of costs before they were incurred are not dealt with in his statements, he personally reviewed invoices after the event and remained satisfied the invoices represented the work undertaken and agreed.

[54] The Assessor recognised the defendant fell short of the obligation to disclose under s 303(1)(c) of the *LPA*, in terms of failing to give an estimate of legal costs and an explanation of the major variables that will affect the calculation of those costs. The bulk of the material available shows that although an estimate or estimates were not given, the plaintiffs, through the Executive Officer Mr Hofmeyer were kept informed of work done and costs incurred in an appropriate manner. I agree that the costs agreement fell short of what would be expected with regard to a non-corporate or a non-sophisticated client.

[55] As above the Assessor found the plaintiffs came within an exception through ss 295 and 306(1)(c) of the *LPA*, by finding the plaintiffs were 'sophisticated clients'.

[56] Section 295 of the *LPA* provides: **sophisticated client**: means a client to whom, because of s 306(1)(c) or (d), disclosure under ss 303 or 304(1) is or not required. Section 303(1)(c) and (d) requires an estimate of costs if reasonably practicable, or if not reasonable practicable, a range of estimates of the total legal costs; *and* an explanation of the major variables that will affect the calculation of those costs; *and* details of the intervals (if any) at which the client will be billed. The 'sophisticated client', through s 306(1)(c) is:

(i) a law practice or an Australian legal practitioner; or

(ii) 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 (each within the meaning of the *Corporations Act* (CW)).

[57] The Assessor relied on the definition of 'sophisticated client', as inclusive of a 'large proprietary company' as that term is used in s 45A(3) of the *Corporations Act* 2005 (Cth). At the time, the Assessor rejected the submission that the NAIC was not a sophisticated client, holding it was up to NAIC to prove it was not a 'sophisticated client'.[24] The Assessor reasoned there was no evidence to support the assertion that NAIC was not a 'sophisticated client' and without such evidence he would not find NAIC was *not* a sophisticated client. The Assessor took into account that while 'not definitive', online searches disclosed AIG had directional and administrative staff of 16 people.

[58] Relevantly s 45A(3) of the *Corporations Act* (Cth) provides:

> A proprietary company is a large proprietary company for a financial year if it satisfies at least two of the following paragraphs:
>
> (a) the consolidated revenue for the financial year of the company and the entities it controls (if any) is 25 million, or any other amount prescribed by the regulations for the purposes of paragraph (2)(a) or more;
>
> (b) the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is $12.5 million, or any other amount prescribed by the regulations for the purposes of paragraph (2)(b) or more;

24 Reasons at [42].

(c) the company and the entities it controls (if any) have 50, or any other number prescribed by the regulations for the purposes of paragraph (2)(c) or more employees at the end of the financial year.

[59] In my view there was not sufficient material to substantiate the characterisation of the plaintiffs or Mr Hofmeyer as 'sophisticated clients' for whom the protections granted to individuals under the *LPA* may not be required to be observed. The plaintiffs submitted they were denied procedural fairness and could have made submission on this point.[25] However, the plaintiffs made submissions to the Assessor about this.[26] Nevertheless, I cannot find material which supports the plaintiffs coming within the definition provided by s 45A(3) of the *Corporations Act* (Cth).

[60] I agree with the plaintiff's submission that it was for the defendants to show the plaintiffs were sophisticated clients, not as the Assessor held; that it was for the plaintiffs to show they were not. The context is that the *LPA* is consumer protection legislation and it is up to the defendants to show the plaintiffs could, as an exception to their obligations be regarded 'sophisticated clients' for the purposes of not enforcing disclosure or other rules on costs. The plaintiffs were clearly significant corporate clients. The definition of 'sophisticated client' does extend to entities under the control of another. NADCC is an entity under NAIC's control. The statement of Mr Levy describes corporate arrangements of some complexity and confirms

25 Plaintiff's Grounds at 1.4-1.5.

26 Reasons, at [40]-[43]; emails between the Assessor and the parties between 20 October 2017 and 26 October 2017.

NAAD is wholly owned by NAIC. However, the s 45A(3) definition requires proof of at least *two* of the following; consolidated revenue in the financial year of $25M or more, consolidated assets of the financial year of $12.5M, or 50 or more employees. Although Mr Levy's statement confirms the arrangements of the companies, the other parts of the criteria of 'sophisticated client' are not made out as it has not been shown the plaintiffs are a 'large proprietary company' in the terms of s 45A(3).

[61] Although I do not agree the plaintiffs are 'sophisticated clients' and although the Costs Agreement has serious deficiencies, having regard to the factors set out in s 323 of the *LPA*, I will not set aside the Costs Agreement. The law practice failed to provide an estimate of costs and failed to provide the full recital of a client's rights under the *LPA* and Regulations. However, the shortcomings are largely mitigated through Mr Hofmeyer's authorisation of the work and his opinion as to the reasonableness of the costs. Mr Hofmeyer had been the Executive Officer for AIG for 12 years. He is a Fellow of the Australian Institute of Company Directors. He stated that being a Fellow requires that he be appointed to a Board, and have considerable experience, seniority and good standing within the Australian director and governance community and consistently to demonstrate the highest levels of integrity, wisdom and generosity of knowledge amongst peers.[27] It can be concluded he understood the significance of the legal work undertaken and understood there would be costs of some significance

27 Statement, Mr Hofmeyer, 28 November 2017.

associated with both sets of litigation. Neither he nor the plaintiff corporations could be regarded as vulnerable clients, vulnerable to overcharging. Although submissions were made that the corporate plaintiffs were not kept informed, the preponderance of evidence is to the contrary.

[62] The corporate structure demonstrates the complexity of the arrangements to some degree as explained by Mr Levy in his statement of 28 November 2017 at [12]-[16]:

> The Aboriginal Investment Group (the AIG) is the trading name of a corporation (or corporate group) wholly or majority owned by the NLC. The primary corporations encompassed by that trading name are the Northern Aboriginal Investment Corporation Pty Ltd (**NAIC**) and the Northern Australia Aboriginal Development Corporation Pty Ltd (**NAAD**). The former (NAIC) is wholly or majority owned by the NLC, with NAAD wholly owned by NAIC.
>
> AIG's role is to provide commercial and related advice and assistance to Aboriginal groups and corporate entities. All four statutory land councils in the Northern Territory have established such entities (eg CentreCorp is partially owned by the Central Land Council). Land Councils have done so pursuant to a function under s 23(1)(e) of the *Land Rights Act*.
>
> For many years, and at all material times (including, I understand, at present), the board of NAIC was comprised by the nine persons who, from time to time, are members of the NLC Executive Council. The board of NAAD was comprised by some members of the Executive Council.
>
> Although owned by the NLC, and having commonality in board membership and Executive Council membership, the AIG operates independently of the NLC. For that purpose it employs staff, including an Executive Officer. At the time of the negotiation of the Gove agreement, and at all material times, the Executive Officer of the AIG was John Hofmeyer.

> In 2008 the AIG and Mr Hofmeyer had a pre-existing relationship with the RAC, and its Rirratjingu membership. They had provided commercial and other services to the RAC and Rirratjingu for several years prior to 2008, which had included establishing commercial housing and other business ventures. As part of those services, Mr Hofmeyer had held executive or secretarial positions in the RAC and/or related entities. The AIG and Mr Hofmeyer continued to provide the services at all material times after 2008, including in relation to the negotiation of the Gove agreement and thereafter.

[63] The Assessor concluded that even if he was wrong on the issue of 'sophisticated client' and if the Costs Agreement was set aside, he would have in any event accepted the costs are fair and reasonable.

[64] When determining whether to set aside a costs agreement the factors to be taken into account under s 323(5) and (7) must be considered. Although the non-compliance by the law practice was significant, the context was that the law practice was dealing with a professional person with experience in corporate matters and governance who checked the bills of costs over the relevant period. The work in my view required a high level of skill, labour and responsibility from the practitioner.[28] The work that was done was within the scope of the retainer.[29] The hourly rate was reasonable for a senior practitioner. This was clearly complex, novel and difficult legal work.[30] The overall circumstances required high level skill and the costs were fair and reasonable in the circumstances and were as expected by Mr Hofmeyer.

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28 *LPA* s 323(7)(d).

29 *LPA* s 323(7)(e).

30 *LPA* s 323(7)(f).

[65] The only method of communication between the defendants and the corporate plaintiffs about costs appears to have been through Mr Hofmeyer. The evidence is that he communicated with the plaintiffs relevantly about legal advice and costs. He was a defendant himself but on account of being the Executive Officer and exercising the relevant functions in that role. I do not agree that in the circumstances he should have been the subject of a separate retainer or that a separate costs agreements should have been executed. That would have required additional costs. Even though the current plaintiffs do not agree they were informed, the defendants were entitled to rely on Mr Hofmeyer's authority, actual or ostensible.

[66] If there was not the evidence in this review that Mr Hofmeyer had assessed costs along the way as reasonable and representative of the work he had instructed and agreed to be done, then the Costs Agreement would be set aside. The costs incurred throughout were agreed by the Executive Officer at various intervals as reflective of the work authorised. As above, the basic units utilized in the agreement were fair.

Memorandum of costs on Invoice Number 14-197

[67] The date of Invoice Number 14-197 is 9 December 2014. The application for assessment was made on 26 April 2016. Under s 332(5) of the *LPA* an application for an assessment *must* be made within 12 months after:

> (a) The bill was given all the request for payment was made to the client or third party payer; or

(b) The costs were paid if neither a bill was given nor a request was made.

[68] Section 332(6) provides an exception of 'other than by':

(a) A sophisticated client; or

(b) Third party payer who would be a sophisticated client if the third party payer were a client of the law practice concerned;

may be dealt with by the costs assessor if the Supreme Court, on application by the 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 to be dealt with after the 12 month period.

[69] No application was made under s 332(6) of the *LPA* to the Court.

[70] The Assessor found, by reading s 328 of *LPA* on 'interim bills' together with s 332, that in effect an extension may apply to non-final bills.[31] Clearly, as the Assessor found, the Memorandum of Costs Due and Invoice No 14-197 was a 'final bill' for the legal work involved with AIG answering the subpoena in the Federal Court action. Invoice No 14-197 contained far more detail than the other bills. The time in which that bill could be submitted for assessment had clearly passed. Even if Invoice 14-197 were subject to costs assessment and review, it would not be set aside. The Invoice for the work done which was relatively complex is fair and reasonable and reasonably well described in the Invoice.

31 Reasons at 32-35.

Disbursements

[71] It is the case as the plaintiffs have pointed out, that there is no substantial information about the particulars of the larger disbursements included in the Invoices. However, there is ample material, particularly from Mr Hofmeyer and Mr Levy that disbursements relate to voluminous numbers of pages of uncollated documents which were delivered to the defendants by the plaintiffs for the purposes of being reviewed and considered in respect of responding to the subpoena and to brief senior and junior counsel in accordance with instructions. The case generated voluminous material. The litigation obviously had a significant history. In the circumstances the disbursements were fair and reasonable.

[72] As is evident from the reasons thus far, the involvement of and statements from Mr Hofmeyer in particular effectively saves the Costs Agreement. As above, I have concluded Invoice No 14-197 is not to be considered as it is out of time. I conclude the billing rates were appropriate, fair and reasonable. I agree with the plaintiffs that some of the invoices are not particular enough to objectively assess whether it was reasonable to carry out the work or whether it was carried out in a reasonable way.[32] However, the preponderance of the material indicates that within the context of complex, novel litigation, and the costs being checked by the Executive Officer, it can be concluded the costs were fair and reasonable.

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32 *LPA*; s 323(5)(b) and (c).

Costs of the assessment

[73] There is no reason to come to any different conclusion about the costs of costs Assessment ('The second assessment'). In all of the circumstances it was fair that the parties each bear half of the costs of the assessment. The plaintiffs, applicants before the Assessor were wholly unsuccessful, yet due to the conduct of the defendants by not complying earlier with a request for an itemised bill of costs, the matter became more complicated than it needed to be.

[74] Although my reasoning differs in some parts from the Assessor, independently I have concluded that notwithstanding a number of short comings and elements of non-compliance on the part of the defendants, the costs were fair and reasonable.

Costs of the review

[75] A reviewer is required by s 358(1) of the LPA to determine the costs of the review. Because the reviewer is the Supreme Court the costs of this review are determined to be nil. This is because 'costs' in s 358(9) mean 'the costs incurred by the reviewer in the course of the review'.

Certification as to determination of the review

1. The Assessors determination of costs dated 2 May 2018 is affirmed.

2. The Assessors determination of costs of the assessment dated 3 May 2018 is affirmed.

[76] These reasons shall be forwarded to the legal representatives of the parties. Failing ascertaining current legal representatives, the reasons will be forwarded to the Law Society NT. A courtesy letter will also be forwarded with these reasons.
