If the client's dispute relates to any other matter, costs are to be assessed on the basis of the specified rate despite section 208A (which details those matters which a Costs Assessor must consider when assessing a Bill of Costs)

A Costs Assessor is also bound by a costs agreement which provides for the payment of a premium, which is not determined to be unjust under section 208D.

Practitioners should note that the limiting ability of section 208C does not apply to a matter where a costs assessor determines that the costs agreement is unjust pursuant to section 208D

Unjust costs agreements: s. 208D

A Costs Assessor has the power to determine whether a costs agreement is unjust. In doing so the Costs Assessor must consider not only the costs agreement itself, but also the circumstances relating to the costs agreement at the time it was made under section 208D of the Act.

Effect of costs agreements in assessment of party/party costs.

A Costs Assessor is not to take into account any costs agreement in making a determination on what costs are payable in an application for assessment of party/party costs: s. 208H. Whilst this in effect would seem to preclude a costs agreement from forming any basis upon which a costs assessor may assess costs, it is common practice for a Costs Assessor to call for costs agreements in party/party assessments, as they are certainly entitled to do: ss.207 and 208.

A reason given for requesting a copy of the costs agreement is usually founded upon an allegation by the party liable to pay the costs, that allegation being that the costs indemnity rule has been breached. The costs indemnity rule states that party/party costs are not to exceed solicitor/client costs.

Conclusion

In conclusion, the costs agreement combined with disclosure requirements can successfully be used as a tool to develop a relationship with your clientele that lessens the chances of disputes. ■

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Victorian Alert!

John Voyage, Melbourne

John Voyage

The normal twelve month time period for reviewing decisions of the Transport Accident Commission to the Victorian Civil and Administrative Tribunal has been amended!

The *Tribunals and Licensing Authority (Miscellaneous Amendments) Act 1998* reduces from twelve months to just twenty-eight days the time for reviewing certain decisions by TAC to the VCAT - including decisions under Section 23 for rehabilitation, and Section 70 for rejecting the claim.

The TAC has yet to make changes to this effect in its notifications to claimants of decisions. At present the VCAT seems also to be unaware of the change. However, there is a compelling argument that any Applications for Review filed after twenty-eight days are without jurisdiction. In those cases Applicants who are out of time as a result of the misrepresentation of the twelve month appeal period by TAC may need to consider claiming directly upon TAC at common law. ■

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