



## **Administrative and Equal Opportunity Division Guideline**

August 2017

# **Costs**

### **What does this Guideline explain?**

1. This Guideline answers the following questions:
  - a) Who pays for the costs of running a case in the Administrative and Equal Opportunity Division
  - b) Who can ask for costs
  - c) Who can be ordered to pay someone else's costs
  - d) What costs can a party ask for
  - e) How the Tribunal work out the amount of costs if it decides to make a costs order
  - f) When to ask for costs
  - g) How to ask for costs and what should be in the application
  - h) What the Tribunal does when it gets a costs application.

### **Definitions**

2. Definitions that explain words or concepts used in this Guideline are at the back of the Guideline.

### **Who pays for the costs of running a case in the Administrative and Equal Opportunity Division?**

3. The primary rule under s 60(1) of the Act is that each party pays their own costs. This applies to most matters in the Administrative and Equal Opportunity Division. If the primary rule applies, the Tribunal will not order a person to pay someone else's costs unless there are special circumstances.
4. The Tribunal is guided by the matters in section 60(3) of the Act in determining whether or not there are special circumstances. Those matters are:
  - a) a party has conducted their case in a way that unnecessarily disadvantages another party
  - b) a party has been responsible for unreasonably taking too long to complete the case
  - c) the relative strength of a party's case or whether the case was hopeless
  - d) the nature and complexity of the case
  - e) a party's case was frivolous, vexatious or misconceived
  - f) a party has not cooperated with the Tribunal in providing a just, quick and cheap resolution of the real issues in dispute

- g) a party has not complied with Tribunal orders or directions
  - h) any other matter the Tribunal thinks is relevant.
5. The Tribunal can order a person to pay someone else's costs, even if there are no special circumstances, if a particular law gives the Tribunal a choice or discretion about who pays costs. Those particular laws are:
- a) section 42(1)(b) of the *Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011*
  - b) section 46(1)(b) of the *Regional Relocation Grants (Skills Incentive) Act 2011*
  - c) section 44(1)(b) of the *Small Business Grants (Employment Incentive) Act 2015*
  - d) section 29(1)(b) of the *First Home Owner Grant (New Homes) Act 2000*
  - e) section 52(3) of the *Health Records and Information Privacy Act 2002*, but only if the Tribunal dismisses the complaint because it is frivolous, vexatious misconceived or lacking in substance or the Tribunal is satisfied that the applicant does not wish to proceed with the complaint
  - f) section 108(2)(a) of the *Government Information (Public Access) Act 2009* in particular circumstances relating to delayed decisions
  - g) the *Dormant Funds Act 1942*.
6. Each party always pays their own costs even if there are special circumstances in:
- a) *Working With Children Check matters under the Child Protection (Working with Children) Act 2012* and
  - b) Victims Recognition or Restitution matters under the *Victims Rights and Support Act 2013*.

### Who can ask for costs?

7. If the Tribunal can make an order for costs, any party may ask for costs.

### Who can be ordered to pay someone else's costs?

8. If the Tribunal can make an order for costs it may order that:
- a) another party pays costs
  - b) a party joined to the proceedings pays costs.

### What costs can a party ask for?

9. A party can ask for any of these costs:
- a) the fees charged by the lawyer for preparing and running their case
  - b) the out of pocket expenses (disbursements) of their lawyer
  - c) the out of pocket expenses (disbursements) of a self-represented party.
10. A party *cannot* ask for any of the following costs:

- a) their own travelling costs
- b) lost earnings of a self-represented person in preparing and running their case.

### **How the Tribunal work out the amount of costs if it decides to make a costs order?**

11. If the Tribunal decides to make a costs order it may:
- a) make an order for a fixed sum of money
  - b) order that a person pay a fixed percentage of a party's costs
  - c) order that costs are to be paid by one party, but leave it to the parties to agree on the actual amount. If the parties cannot agree, the Tribunal can order that costs be assessed by a costs assessor on a 'party and party' basis
  - d) in exceptional circumstances make an order for 'indemnity' costs.

### **When to ask for costs?**

12. Unless a party asks for costs, each party must pay their own costs. If a party wants to ask for costs, the application should be made in writing or verbally before the end of the hearing. The latest a costs application should be made is 28 days after the Tribunal has delivered the reasons for decision. Any further delay may be procedurally unfair and expensive for the parties and the Tribunal.

### **How to ask for costs and what should the application contain?**

13. A party who wants to ask for costs should:
- a) apply in writing to the Tribunal or apply verbally at the hearing
  - b) send a copy of the application to the other party or tell the party that an application will be made verbally at the hearing.
14. The costs application, whether made in writing or verbally at the hearing, should:
- a) identify the person who is being asked to pay the costs
  - b) if the primary rule applies, set out the special circumstances that justify an order for costs
  - c) identify the basis on which costs are sought such as party and party or indemnity
  - d) if a fixed amount is claimed, include the actual amount of costs and documents such as bills, accounts, invoices and receipts.

### **What does the Tribunal do when it gets a costs application?**

15. The Tribunal may direct:
- a) the party claiming costs to provide evidence of the amount claimed;
  - b) the other party or parties to reply to the costs application.
16. The Tribunal may:

- a) determine the application during the hearing
- b) adjourn the application and list it for a separate hearing
- c) determine the application on the basis of the documents provided without having a hearing. That is called determining the application 'on the papers'.

### What do some of the words in this Guideline mean?

- **Act:** *Civil and Administrative Tribunal Act 2013 (NSW)*
- **assessment of costs:** Assessment of costs is the way the precise amount of costs payable by one party to another party is calculated if the amount cannot be agreed. An assessment is conducted by a qualified costs assessor in accordance with the *Legal Profession Uniform Law Application Act 2014 (NSW)*.
- **costs:** Costs are the monies charged by lawyers for their fees. Costs also include 'out of pocket' expenses (disbursements) such as Tribunal filing fees, photocopying and barrister's fees.
- **indemnity costs:** Costs that are actually incurred by one party. The Tribunal will only order indemnity costs in exceptional circumstances.
- **party or parties:** A person or entity involved in a particular case or joined to the proceedings under section 44 of the Act. The Tribunal calls the person or entity that brings an application 'the applicant' and the person or entity they seek orders against 'the respondent'.
- **party and party costs:** Costs that are reasonably incurred by one party and that are necessary to conduct the proceedings.
- **registrar:** The Principal Registrar or any other person employed as a Registrar of the Tribunal
- **Rules:** *Civil and Administrative Tribunal Rules 2014*.

### This Guideline applies to:

Proceedings in the Administrative and Equal Opportunity Division of the Tribunal.

### Effective Date

1 August 2017

### Notes

You must use the latest version of this Guideline. The latest version of this Guideline is on the [NCAT website](#).

The law about the information in this Guideline is mainly in:

- Section 60 of the *Civil and Administrative Tribunal Act 2013*

- Schedule 3, clause 12 and 13 of the *Civil and Administrative Tribunal Act 2013*.

There is a copy of this Act on the [NSW Legislation website](#).

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