

Costs in Criminal Cases Applications

Factsheet



Communities
& Justice

This document sets out the Department of Communities & Justice (**DCJ**)'s policy and procedures for assessing applications under the *Costs in Criminal Cases Act 1967 (the Act)*.

The purpose of the Act is to compensate defendants who have been acquitted or discharged, in certain circumstances. A court may grant a certificate under the Act to a defendant who has been acquitted or discharged at any time during a trial, or if the defendant successfully appeals against a conviction.

The Assessment Process

Applications under the Act are assessed by DCJ Legal.

An assessment comprises the following steps:

1. Determination as to whether payment is justified in the circumstances of the case;
2. If payment is justified, determination as to the costs that have reasonably been incurred; and
3. Moderation of the reasonably incurred costs, in accordance with the Attorney General (**AG**)'s rates applicable at the time relating to the proceedings for Legal Representation and departmental guidelines (where applicable), to determine the amount for payment.

Required Documents

In assessing an application, Legal relies upon the following documents that need to be provided by the applicant:

- A copy of the sealed certificate issued by the court;
- A Statutory Declaration confirming the amount claimed and that the applicant was personally liable for the costs. The relevant form can be found on the DCJ website at: <https://www.justice.nsw.gov.au/lsb/Pages/statutory-costs-ex-gratia-payments/costs-in-crim-cases-act-1967.aspx>;
- The Costs agreement(s) for solicitor/counsel;
- Itemised invoices relating to the work undertaken in respect of which the certificate was issued;
- Evidence of disbursements claimed; and
- If the applicant was in receipt of legal aid, all details of the grant of legal aid including amounts paid by the Commission, any contributions imposed on the applicant and a copy of the Notice of Assignment of costs.

If the required documents to support the assessment of the application in accordance with the Certificate are not received, a letter will be sent to the applicant/applicant's solicitor to advise that the application is invalid.

Additional Documents

In assessing the application Legal may also rely upon additional documents including:

- JusticeLink records;
- Transcripts of costs judgments;
- Reports prepared by the Office of the Director of Public Prosecutions;
- Court log sheets; and
- Court Bench sheets.

Legal will provide copies of any of the above relevant documents obtained to the applicant's solicitor and invite further submissions before finalising the assessment of the application.

Is payment justified?

The certificate issued by the court must be valid. An example of where a certificate is invalid is where a certificate has been granted before a trial has commenced.

The certificate issued must state the following two paragraphs:

- that it would not have been reasonable for the prosecution to institute proceedings if the prosecution had been in possession of all the relevant facts; and
- any act or omission of the defendant that may have contributed to the institution or continuation of proceedings was reasonable.

A sample certificate for production to the court can be found on the DCJ website at:

<https://www.justice.nsw.gov.au/lrb/Pages/statutory-costs-ex-gratia-payments/costs-in-crim-cases-act-1967.aspx>.

Assessment of Costs

Determining the amount for payment involves assessing the reasonableness of the costs claimed and the moderation of costs.

Reasonableness of Costs

A number of factors are considered in assessing the reasonableness of costs, including:

- The severity of the charges and complexity of the case;
- The length of the proceedings;

- Apportionment of costs between charges, if the certificate does not relate to all the charges;
- Whether the costs were incurred in the proceedings to which the certificate relates; and
- Whether costs claimed are excessive.

Please note that, in assessing the reasonableness of costs, Legal will estimate the time allocated to tasks based upon the invoices provided. An estimate may be made where the time allocated to each task or appearance is not indicated.

The following are examples of costs which may be considered unreasonable:

- Excessive preparation;
- Excessive client conferences, particularly during the trial;
- Court attendance where there is no court listing for that date;
- Court attendance for breach of bail proceedings;
- Full day's court attendance when the matter was only before the court for a short period of time on that date;
- Trial cancellation fees;
- Tasks of an administrative nature; and
- Disbursements which are not substantiated by receipts or other evidence.

Moderation of Costs

The reasonably incurred costs are moderated in accordance with the applicable Attorney General's (AGs) relevant rates for Solicitor, Junior Counsel and Senior Counsel.

The rates include secretarial, legal and administrative assistance and all overheads, such as postage and stationery, but not out of pocket disbursements.

The relevant rates can be found on the DCJ website at <https://www.justice.nsw.gov.au/legal-services-coordination/Pages/info-for-govt-agencies/attorney-generals-rates-for-legal-representation.aspx>.

Guidelines

The following are additional guidelines developed to assist in the preparation of an application and to promote consistency:

- **Travel time:** claims for travel time are moderated to half the provider's rate or half the AG rate, whichever is higher;
- **Paralegal work:** tasks performed by paralegals that are paraprofessional in nature (e.g. legal research) are moderated to half the AG rate for solicitor;
- **Accommodation, sustenance and per km fuel/travel claims:** claims are moderated in accordance with the relevant Premier and Cabinet Circular <https://arp.nsw.gov.au/c2021-03-meal-travelling-and-other-allowances-for-2020-21/>; and
- **Photocopying costs:** claims are moderated to \$0.25/page for black and white and \$0.50/page for colour.

Useful Points to Note

- A certificate is not an order for costs. It only entitles the applicant to make an application for payment.
- Applications where there is a grant of Legal Aid must be made by Legal Aid NSW.
- The court cannot make an award as to the amount for payment. The amount for payment is at the discretion of the Secretary of DCJ.