



## Consumer and Commercial Division Guideline August 2017

# Costs

## Who pays for the costs of running a case?

### What does this Guideline explain?

1. This Guideline explains:
  - a) The general rule about who pays for the costs of running a case in the Consumer and Commercial Division
  - b) When the Tribunal can order someone else to pay a party's costs
  - c) Who can ask for costs
  - d) What costs a party can ask for
  - e) Who can be ordered to pay someone else's costs
  - f) How the Tribunal decides the amount of costs
  - g) When to apply for costs
  - h) How to apply for costs
  - i) 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.

### What are the general principles about who pays for the costs of a case?

3. In general, each party pays their own costs of running a case in the Consumer and Commercial Division.
4. In other types of cases, the Tribunal can order that someone else must pay a party's costs. For when this can happen see paragraphs 4 to 6 below.

### When can the Tribunal order someone else to pay a party's costs?

5. The Tribunal can order a party to pay another party's costs if:
  - a) It agrees that there are 'special circumstances' warranting an order for costs being made, or
  - b) Rule 38 applies, or
  - c) Particular legislation allows an order for costs.
6. Section 60(3) of the Act explains the types of special circumstances in which the Tribunal can decide that someone else should pay another party's costs. They are:

- a) A party has conducted their case in a way that unnecessarily disadvantages another party
  - b) A party has been responsible for unreasonably making the case take longer
  - 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 followed Tribunal orders or directions
  - h) Any other matter the Tribunal thinks is relevant.
7. Rule 38 allows the Tribunal to make an order for costs where:
- a) The claim is more than \$10,000 but no more than \$30,000 and an order is made under clause 10 of Schedule 4 of the Act because a party has conducted the proceedings in a way that unreasonably disadvantaged another party in the proceedings;
  - b) The claim is more than \$30,000.

### Who can ask for costs to be paid by someone else?

8. Any party to a case who thinks their case meets the rules in paragraphs 4 to 6 above can ask for their costs to be paid by someone else.

### What costs can a party ask for?

9. A party can ask for the following costs:
- a) The fees charged by their lawyer or professional agent for preparing or running the case.
  - b) The 'disbursements' of their lawyer or professional agent. Disbursements are extra 'out of pocket' expenses charged by a lawyer or professional agent – such as Tribunal filing fees, witness expenses and photocopying charges.
  - c) The disbursements' of a self-represented party or non-professional agent – such as Tribunal filing fees, witness expenses and photocopying charges.
10. A party *cannot* ask for any of the following costs:
- a) Their own travelling costs
  - b) Their own time spent in preparing or running the case, or lost earnings of a self-represented party or non-professional agent.

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

11. Any of these people can be ordered to pay someone else's costs:
- a) Another party
  - b) Anyone else who intervened in the case.

You may be able to obtain an order for costs against:

- c) Another party's lawyer or professional agent
- d) A witness.

### How are the costs calculated?

12. If the Tribunal decides to make a costs order, the amount of costs will be determined in one of the following ways:
- a) By agreement
  - b) By the costs being assessed under the *Legal Profession Uniform Law Application Act 2014*
  - c) By the Tribunal fixing an amount to be paid or specifying how costs are to be otherwise fixed.

### When should a party apply for costs?

13. A party may apply for costs when:
- a) They lodge an application;
  - b) Another party has failed to comply with a Tribunal order
  - c) At a final hearing or immediately after a decision is made.

### How should a party apply for costs?

14. A party may apply for costs in writing or may make an oral request at a hearing unless an order is made specifying the form of application.

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

15. The Tribunal will:
- a) Ask each party to explain why a costs order should or should not be made
  - b) Decide if a formal hearing is necessary
  - c) Consider the costs application and what each party has said
  - d) Make its decision as soon as it can.
16. It will decide to order:
- a) All of the costs to be paid by a particular person or persons, or
  - b) Part of the costs to be paid by a particular person or persons, or
  - c) Refused to order any costs, or
  - d) Make any other order it thinks appropriate.
17. The decision of the Tribunal may be given orally or in writing. A party may ask for written reasons as allowed by the Act.

### 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. An assessment may be done by the Tribunal. Otherwise, an assessment of legal costs is conducted by a specially qualified costs assessor in accordance with the *Legal Profession Uniform Law Application Act 2011* (NSW).
- **Costs:** Costs are the monies charged by lawyers or other professional agents for their fees. Costs also include 'out of pocket' expenses (disbursements) such as Tribunal filing fees, photocopying and barrister's fees. A self-represented party may make a claim for re-imbursment of certain expenses.
- **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'.
- **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 Consumer and Commercial 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:

- Sections 60 of the *Civil and Administrative Tribunal Act 2013*
- Rule 38 of the Civil and Administrative Tribunal Rules 2014
- Acts dealing with particular types of applications of the *Civil and Administrative Tribunal Act 2013*.

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

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