

## CRIMINAL COSTS RECOVERY CHECKLISTS

### **Criminal Procedure Act**

- Apply for costs immediately after acquittal or dismissal of proceedings and make it easy for the bench by handing up a schedule of costs incurred that you have previously prepared.
- Ask the Court for an order that the costs be paid to Legal Aid NSW.
- Obtain signed s45 Authority from client.
- Assigned practitioners can claim on Grants Online invoices for the costs and disbursements incurred in the usual manner. Select "YES" when asked if it is the final claim on the file and on the invoice, and you will be prompted to RECORD FILE OUTCOME.

Select "YES" to the question "Was your client awarded costs?" In the text box that appears you should enter details such as:

Costs award v police payable to Legal Aid 27/7/12 \$1650.  
Please pay uplift on costs claimed.

OR

Costs award v DPP \$5000, client authority attached, please pay at 80%

You can then SUBMIT the File Outcome attaching a copy of the client's Authority and complete your costs claim. The Grants Costs Solicitor will identify the matter and arrange payment of the uplift.

### **Suitors' Fund Act**

- Obtain **Stamped** and **Sealed** Certificate from Judge or their Associate.
- Obtain signed s45 Authority from client.
- Send *original* Certificate, Authority and explanation of reasons for issue of Certificate to the Grants Costs Solicitor.
- Apply for another extension if due to the abandonment of trial the trial days granted are insufficient to conclude the hearing.

### **Costs in Criminal Cases Act**

- Obtain **Stamped** and **Sealed** Certificate from Judge or their Associate.
- Obtain signed s45 Authority from client.
- Send *original* Certificate and Authority to the Grants Costs Solicitor, along with a **paper tax invoice** for the entirety of the proceedings with fees calculated at 175% of the scale. Copies of receipts for all disbursements should be submitted, along with details of any pre-trial proceedings and any period of private legal representation.
- The Grants Costs Solicitor will process further extensions to allow payment of the 75% uplift provided under the Legal Aid NSW fee scale.

**Other Costs Orders** - If costs are awarded to the legally aided client in other circumstances:

- Prepare a schedule of costs to be sought. This may include costs of earlier proceedings.
- When costs are awarded, attempt to reach agreement with the prosecution so that orders can be made (i) for a specific amount of costs and (ii) that those costs be paid to Legal Aid NSW by a set date.
- If costs can't be agreed, ask the Court to make an order for a specific amount anyway. You can try arguing that (i) you have attempted to resolve the costs figure with the prosecution, (ii) that the costs being sought are fixed under the Legal Aid NSW fee scales and (iii) if costs are not fixed Legal Aid NSW (and the DPP, for that matter) resources will be tied up with costs negotiations rather than their core work.
- Obtain signed s45 Authority from client.
- Send the Authority to the Grants Costs Solicitor along with details of the costs order – Legal Aid NSW may need additional information about the work done on the matter to calculate the appropriate costs uplift or if costs negotiations with the DPP have not succeeded.
- The Grants Costs Solicitor will process further extensions if required to allow payment of an uplift.

#### Costs Enquiries – Grants Costs Solicitor

Mike Snape:            9219-5009    [michael.snape@legalaid.nsw.gov.au](mailto:michael.snape@legalaid.nsw.gov.au)

**IN THE SUPREME COURT  
OF NEW SOUTH WALES  
CRIMINAL JURISDICTION  
AT**

**FILE NO \_\_\_\_\_**

**DIRECTOR OF PUBLIC PROSECUTIONS  
-V-  
(CLIENT NAME)**

**CERTIFICATE**

**SUITORS' FUND ACT, 1951**

**SECTION 6A**

I certify that:

- (1) A jury was empanelled in the trial of (CLIENT NAME) on an indictment of (CLIENT CHARGE) on (DATE).
- (2) The jury was discharged on (DATE), being the (..)th day of the trial.
- (3) The jury was discharged because (INSERT FULL DETAILS).....
- (4) A new trial was ordered to commence, and did commence, on (DATE)
- (5) The jury discharge was not attributable in any way to disagreement on the part of the jury or the act, neglect or default of the accused or the accused's Counsel or Solicitor.

**I HEREBY GRANT THE CERTIFICATE** to the said accused pursuant to

**Section 6A(1)(c)(ii) of the Suitors' Fund Act 1951.**

Dated this                      day of                      2012

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Judge

Seal of the Court

**CERTIFICATE FOR COSTS ON DISCHARGE**

Costs in Criminal Cases Act, 1967

CASE NUMBER: 2012/

DEFENDANT'S NAME: (CLIENT NAME)

WHEREAS at the DISTRICT COURT at SYDNEY on (DATE)

(CLIENT NAME)

Was charged summarily in respect of a charge of:  
(CLIENT CHARGES)

AND WHEREAS on the (DATE), I, discharged the said (CLIENT NAME) as to the information then under enquiry.

PURSUANT to the provisions of Section 2 of the Costs in Criminal Cases Act, 1967, I grant the said (CLIENT NAME) this certificate relating to the above mentioned charge.

PURSUANT to the provisions of Section 3 of the said Act, I certify that in my opinion:

(a) If the prosecution had, before the proceedings against the said (CLIENT NAME) were instituted, been in possession of evidence of all the relevant facts, it would not have been reasonable to institute proceedings

and

(b) that any act or omission of the said (CLIENT NAME) that contributed, or might have contributed, to the institution or continuation of the proceedings was reasonable in the circumstances.

I certify that I made no order for costs against the informant, prosecutor or complainant but had I made such an order I would have made such an order in favour of the defendant.

Dated at

This .....day of ..... 2012

.....  
JUDGE

**NOTICE OF ASSIGNMENT PURSUANT TO SECTION 45  
OF THE LEGAL AID COMMISSION ACT 1979**

To: GRANTS DIVISION  
Legal Aid Commission of NSW  
PO BOX K847  
HAYMARKET NSW 1238

From:

Legal Aid File Ref:

Court:

Date:

In accordance with Section 45 of the Legal Aid Commission Act 1979, I hereby assign to the Legal Aid Commission of NSW the right to recover monies ordered by way of costs in my favour in the above proceedings.

Dated.....day of.....2012

\_\_\_\_\_  
Client:

\_\_\_\_\_  
Witness

*Note:* Under Section 45(2) of the Legal Aid Commission Act, 1979, if you do not sign and return this notice within 21 days you will be deemed to have assigned the right to recover monies.