

Costs recovery in legally aided matters

For inhouse and private lawyers doing legal aid work

Introduction

Costs are generally not awarded in criminal law matters. There are however some exceptions covered by legislation including the *Costs in Criminal Cases Act 1967 (NSW)* and the *Criminal Procedure Act 1986 (NSW)*.

As well as awarding costs under the legislative provisions, a court can also make a “Mosely order”, which is an order temporarily staying criminal proceedings until the Crown pays the defence costs which have been “thrown away”. These orders are made when, for example, there is an adjournment of a trial at the instigation of the prosecution.

Application for costs in legally aided matters

In appropriate cases, and in accordance with the Legal Aid NSW Panel Service Agreement and clause 12.3 of the Legal Aid NSW Quality Standards, inhouse and private lawyers must make an application for costs in:

- Criminal matters
- High-Risk Offender matters, and
- Civil law matters.

An application for a Mosely Order

Where meritorious and appropriate, inhouse and private lawyers should seek a Mosely Order.

What costs can be sought where your client is legally aided

Under s42 of the *Legal Aid Commission Act 1979 (NSW)* (the Act), a court may make an order for costs in respect of a legally aided person. When costs are awarded by the Court, they are awarded in favour of the legally aided person. Where costs are recovered on behalf of the legally aided client, the quantum must reflect the obligation of the legally aided person.

The legally aided client’s liability to pay towards the costs of providing the legal service is under s 46 of the Act. Legal Aid NSW must make a s 46 determination at the end of every matter. The amount imposed under s 46 cannot exceed the costs of legal services provided including disbursements. This means where costs are awarded in favour of the legally aided person, the party/party costs are calculated using the published Fee Scale.

As a lawyer doing legal aid work, by accepting the assignment of the grant, you agree to the terms of the grant of aid. The grant letter sets out the terms and conditions of the grant which includes the work items and fees that will be paid.

The indemnity principle is intrinsic to the concept of costs and simply stated means that an award of costs should not exceed the amount of costs the receiving party is required to pay. This means that a party should not profit from a cost order and cost orders sought by practitioners on behalf of clients must be claimed at the rate agreed between the client and practitioner in the retainer.

Where a lawyer is seeking costs orders on behalf of legally aided clients, the lawyer must do so in accordance with the Legal Aid NSW fee rates, thereby satisfying the indemnity principle.

Who should receive the costs paid?

When costs are awarded in favour of the legally aided person, these costs must be paid into the Legal Aid Fund (s 63 (1)(h) of the Act).

What should I do if costs are awarded in favour of my client?

If costs are awarded in favour of your client in a legally aided matter, you must advise the Senior Solicitor, Legal Costs Recovery, In-house Counsel Unit at inhousecounselunit@legalaid.nsw.gov.au. The Senior Solicitor, Legal Costs Recovery, will contact the costs debtor to seek payment.

Fee scales that apply where costs are recovered

Where costs are awarded by a Court in criminal proceedings and a cost certificate issued, the Legal Aid NSW Board has approved that fees will be paid at 175% of the standard fee rate: [Legal Aid NSW Crime Fees](#).

In most Local Court summary matters, where costs are awarded, fees will be paid at 175% of the lump sum amount: [Legal Aid NSW Local Court Summary Fees](#).

Where costs are awarded in High-Risk Offender matters, the Board has approved that fees will be paid at 175% of the standard fee rate: [Legal Aid NSW High Risk Offender Fees](#)

Where a Mosely order is made the fees are paid at 100% of the standard fee rate: [Legal Aid NSW Crime Fees](#).

Where costs are awarded by the Court in civil law proceedings, the Board has approved that fees will be paid at 175% of the standard fee rate where those costs are recovered: [Legal Aid NSW Civil Fees](#).

Disbursements must also be included in costs applications.

What about GST?

The professional fees on our website are quoted exclusive of GST. When you are seeking costs, you must add GST to the published fee rates. Any disbursements must be claimed at the GST inclusive cost.

Do you require further information?

If you need further information about seeking costs orders in legally aided matters, you can contact: Senior Solicitor, Legal Costs Recovery, In-house Counsel Unit at inhousecounselunit@legalaid.nsw.gov.au