



Recovering your legal costs in criminal law matters

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One of the first questions we're often asked by new clients is 'Will our legal costs be reimbursed if we win?' A large percentage of the population is ineligible for Legal Aid funding. Being a defendant in the criminal justice system can, therefore, be a costly process and people can feel especially aggrieved if they are found not guilty.

It's not uncommon to read media articles or watch television shows depicting judges ordering the unsuccessful litigant in a civil matter to make payment of the other party's substantial legal costs. But how does this work in criminal proceedings?

What types of costs are incurred in criminal matters?

The typical costs incurred by defendants in criminal proceedings are the fees charged by lawyers and barristers. Most lawyers and barristers charge an hourly rate and they do their best to estimate the likely costs involved in a client's matter.

However, there can be many variables and unexpected twists and turns in criminal matters which make costs difficult to predict, and which can result in a matter being more costly than originally anticipated.

If I'm the successful party in a criminal matter, can my legal costs be reimbursed?

A successful defendant is not automatically entitled to costs.

However, in Magistrates Court proceedings, the court has the discretion (pursuant to s158 of the *Justices Act 1886*) to award costs to the extent that incurring the costs was necessary or proper to achieve justice or defend the rights of the party, or the costs were not incurred by over-caution, negligence, mistake or merely at the wish of the party.

In deciding whether to award costs, the magistrate must take into account 'all relevant circumstances'.

Such considerations can include:

- whether the investigation into the offence was conducted in an appropriate way;
- whether the proceeding was brought and continued in good faith; and
- whether the defendant conducted the defence in a way that unreasonably prolonged the proceedings.

The list of considerations for the court is not exhaustive, and courts will consider costs applications on a case by case basis.

There is no power in the Supreme or District Court for a judge to order costs to a person who successfully defends criminal charges. The reasoning behind this is that it is thought that to compensate parties found to be not guilty would act as a deterrent to police in charging people and would hinder the execution of the criminal justice system.

Likewise, a defendant does not have to pay court costs or the prosecution's legal fees if they are convicted.

How much money can I be awarded?

It is not the case that all legal costs incurred by a defendant will be reimbursed.

In Magistrates Court criminal proceedings, unless the successful party can demonstrate that the proceedings were of special difficulty, complexity or importance, the amount of costs that can be awarded is dictated by the scale provided for in Schedule 2 of the *Justices Regulation 2014*.

That scale allows for payment of \$1500.00 for hearing preparation and day one of the hearing, \$857.00 for each hearing day thereafter, and \$250.00 for each other court attendance (usually mentions). Disbursements (such as payments to witnesses, interpreter fees, and travel expenses) can also be paid.

How do I apply for costs?

If the charge against a defendant has been dismissed (including if there has been an acquittal), and the defendant wishes to apply for costs, a formal application to the court will need to be made. Ordinarily, the application is made orally, and the judge or magistrate decides the application immediately. The costs application must be heard before the conclusion of the proceedings (usually at the same time as the court's delivery of its decision).

Can I be ordered to pay the State's legal costs if I'm convicted?

People have a right to defend themselves in criminal proceedings, and they should not be dissuaded from doing so at the risk of costs orders being made against them.

Whilst the *Justices Act* does allow costs to be awarded following a conviction in the Magistrates Court, in our experience the position typically adopted by the police or DPP in prosecuting criminal matters is that neither agency applies for costs.

The situation may, however, differ in respect of interlocutory applications and appeals, and also complaints and charges laid by government agencies other than the police or DPP.

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