



Taxation of Costs

This Direction is made under subsections 18B(1) of the *Administrative Appeals Tribunal Act 1975* (AAT Act).

1. About this Direction

Application

- 1.1 This Direction applies to any application for the taxation of costs lodged with the AAT.
- 1.2 This Direction has effect from 1 July 2015.

2. Introduction

- 2.1 In certain circumstances, the AAT may order that a party to a proceeding pay the costs incurred by another party.¹
- 2.2 If the parties cannot agree on the amount of the costs, a party can apply to the AAT for the costs to be taxed. The AAT's Taxing Officer will determine the amount of costs payable by one party to another.
- 2.3 This Direction sets out the procedures that will be adopted in relation to applications for taxation of costs. In summary, the Taxing Officer will first give an estimate of the costs likely to be payable. If the estimate is not accepted, a conference will be held with the parties to attempt to settle the dispute. If the parties do not reach agreement at or following the conference, the Taxing Officer will conduct a taxation.
- 2.4 The procedures set out in this Direction may be varied in a particular case by the Taxing Officer.
- 2.5 In this Direction, 'working day' means a day on which the registry dealing with the application is open for business.

¹ The AAT may order that costs be paid in accordance with section 69B of the *Administrative Appeals Tribunal Act 1975*, section 357 of the *Military Rehabilitation and Compensation Act 2004*, section 67 of the *Safety, Rehabilitation and Compensation Act 1988* and section 92 of the *Seafarers Rehabilitation and Compensation Act 1992*.

3. What costs will be allowed?

3.1 Subject to any legislative requirements and the order made by the AAT:

- (a) costs will be assessed on a party and party basis;
- (b) the costs payable may include:
 - (i) witness expenses at the prescribed rate;
 - (ii) all reasonable and proper disbursements, such as counsel's fees, fees for reports by doctors or other experts, and photocopying;
 - (iii) professional costs determined as follows in accordance with the scale of costs set out in the *Federal Court Rules 2011*:
 - (A) for items with non-discretionary amounts – 75 per cent of the costs which would be allowable under those items; and
 - (B) for discretionary items – the amount which would be allowable under those items having regard to any matters set out in those items.

4. Who may apply?

4.1 Either party may apply to have a bill of costs taxed. Usually, the application is made by the party who is entitled to receive payment. However, if a party liable to pay costs has received a bill of costs from the other party and the parties have been unable to reach agreement, the party who has received the bill may make the application.

5. How to apply

5.1 The party applying to have the costs taxed must lodge the disputed bill with the AAT and give a copy of the bill to the other party. The bill must be in taxable form: that is, it must be itemised.

5.2 The bill must be accompanied by a covering sheet setting out:

- (a) the name and contact details of the party lodging the bill; and
- (b) the date of the AAT order in relation to which the bill has been prepared.

6. Procedure once the application has been made

6.1 A Taxing Officer will be appointed by the AAT.

6.2 Within 5 working days after receiving the bill, the AAT will acknowledge receipt of the application and notify the parties of the name of the Taxing Officer.

6.3 Within 5 working days after being given a copy of the disputed bill, the party given the bill must:

- (a) lodge with the AAT a written summary, not exceeding 2 pages, of its reasons for objecting to the bill; and
- (b) give to the party that lodged the bill a copy of the summary.

7. Preliminary estimate

- 7.1 Within 15 working days after receiving the bill of costs, the Taxing Officer will give the parties a written estimate of the costs likely to be payable if the taxation was to take place. The estimate will be made in the absence of the parties and without any determination in relation to specific items in the bill.
- 7.2 If a party does not agree with the Taxing Officer's estimate, the party must notify the AAT and the other party of this in writing within 10 working days after receiving the estimate.
- 7.3 If the parties notify the Taxing Officer in writing within 10 working days after receiving the estimate that the estimate is acceptable, the Taxing Officer will issue a certificate of taxation for the amount of the estimate.
- 7.4 If no notice is received, no further action will be taken by the AAT.

8. Conference

- 8.1 If a notice is given under section 7.2, the AAT will, within 5 working days, notify the parties in writing of the date and time of a conference to try to settle the dispute as to the estimate.
- 8.2 The conference will normally be conducted by the Taxing Officer who made the estimate.
- 8.3 The Taxing Officer may issue directions as to the procedure to be followed at the conference and as to the provision of any further information or documents. These will be issued at least 5 working days before the conference.
- 8.4 The Taxing Officer may revise the estimate after taking into account any submissions made by the parties before or at the conference. The Taxing Officer will advise the parties of any revised estimate at the conference.

9. Following the conference

- 9.1 If agreement is reached at or after the conference, the Taxing Officer will issue a certificate of taxation for the amount of costs agreed.
- 9.2 If the parties are unable to reach agreement at or after the conference, a party may notify the AAT and the other party in writing that the taxation is required. Notice must be given within 10 working days after the conference.
- 9.3 If no notice is received, no further action will be taken by the AAT.

10. Taxation of the bill

- 10.1 If a notice is given under section 9.2, the AAT will, within 5 working days, notify the parties in writing of the date and time of the taxation.
- 10.2 The Taxing Officer who was originally appointed will usually conduct the taxation. However, either party may, at least 5 working days before the taxation is to take place, request that another Taxing Officer be appointed.

11. Objecting to items in the bill of costs prior to taxation

- 11.1 If the party liable to pay costs wants to object to any items claimed in the bill, the party must, at least 10 working days before the taxation is to take place, lodge with the AAT a notice of objection and give a copy to the other party.
- 11.2 The notice of objection must state:
- (a) the number of each item objected to;
 - (b) the ground of the objection; and
 - (c) the amount (if any) which the party is prepared to accept for the item.
- 11.3 If the party receiving the notice of objection wants to respond to the objection, the party must, within 5 working days after receiving the notice, lodge with the AAT the response and give a copy to the other party.

12. Request for directions

- 12.1 At any stage of the process set out in this Direction, the Taxing Officer may refer any question related to the taxation to the AAT for directions.

13. After the taxation

- 13.1 Following the completion of the taxation, the Taxing Officer will issue a certificate of taxation.
- 13.2 The Taxing Officer will only give written reasons if, within 28 days after receiving the certificate of taxation, either or both of the parties makes a request for written reasons.

Justice Duncan Kerr
President

30 June 2015