



Migration and Refugee Division

Guidelines on costs arising from applications for review

From 20 December 2017 all references to:

- *the Department of Immigration and Border Protection (DIBP) should be read as references to the Department of Home Affairs (Home Affairs); and*
- *the Minister for Immigration and Border Protection (MIBP) should be read as references to the Minister for Home Affairs*

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Purpose

1. This guideline provides advice in relation to the types of costs arising from applications for review which may be paid in part or in full by us or the review applicant.

Costs paid by us

Hearings

2. All costs associated with holding a hearing (e.g. the hearing room, video or telephone link, the provision of a qualified interpreter, hearing attendants and audio recording of the hearing) are covered by us.

Competency to give evidence

3. There may be information before us that suggests an applicant has a condition which affects their competency to give evidence. In such cases we may decide to obtain a medical report or assessment by arranging for the applicant to attend a specialist under s.363(1)(d), s.427(1)(d) or s.60 of the Migration Act 1958 (the Act). If we request such a medical report or assessment, it will be at our cost¹. Members who consider that a medical report or assessment may be required should first discuss the case with their Senior Member.

Summons

4. Where we have summoned a person to give evidence we must pay any fees and allowances for that person's expenses in accordance with Migration Act².
5. For migration review the presiding Member determines any fees and allowances payable to a person summoned. For refugee reviews the Division Head determines the fees and allowances payable. The amount of any fees or allowances is determined according to the scale provided in Schedule 2 to the *Administrative Appeals Tribunal Regulations 1976* as required by the Migration Regulations.³ The presiding Member or Division Head will advise the relevant District Registrar of the cost to be paid.

¹ Regard should be had to the procurement policy available on the intranet when requesting a medical report or assessment.

² ss.374(2)(b) [MRT] and 436(2)(b) [RRT]

³ r.4.20 [MRT] and r.4.37 [RRT].

Costs paid by the applicant

Fee for a further Medical Officer of the Commonwealth opinion

6. Regulation 2.25A of the Migration Regulations sets out the circumstances where an opinion from a Medical Officer of the Commonwealth (MOC)⁴ must be obtained in order for an applicant to satisfy the health criteria. Regulation 5.41 specifies that there is a fee payable.
7. Visa applicants pay a visa application charge when lodging a visa application. No further fee is charged for the initial MOC opinion. However, visa applicants pay the cost of medical examinations, x-rays or tests direct to doctors or clinics which undertake examinations, and for any further examinations, tests or specialist reports that a MOC may require.
8. There is a fee payable where a further MOC opinion is obtained during reviews.⁵ Generally, we will not pay the fee for a further MOC opinion nor any costs associated with MOC related medical examinations, x-rays and tests.
9. If we:
 - agree to a request from an applicant to seek a further MOC opinion; or
 - considers that a further MOC opinion is necessarythe applicant will need to pay for a further MOC opinion and to cooperate with any requirements that the MOC has for further examinations, tests or specialist reports. The applicant should provide us with the Department of Immigration and Border Protection receipt as proof of payment
10. Where we decide that the existing MOC opinion was never validly made (i.e. not made in accordance with the Migration Regulations) there is no fee payable to obtain another MOC opinion. A question about the validity of an existing MOC opinion is not regarded as a request for a further opinion.

Other costs

11. Generally, the applicant is required to pay for the following costs:
 - travel, accommodation or other costs relating to a person's attendance at a hearing where the applicant has requested that the person give evidence at the hearing;
 - translation of documents;
 - DNA testing;

⁴ A medical practitioner appointed by the Minister under regulation 1.16AA.

⁵ Regulation 5.41.

- transcription of the hearing;
- any other miscellaneous expenses associated with their review application.

Exceptions

12. The Division Head or Division Registrar can consider whether we will pay part or all of any of the costs outlined in the section above in exceptional circumstances. Members who consider that exceptional circumstances exist should first discuss the case with their Senior Member and with their recommendation submit a request to the Division Head or Division Registrar.

Payment arrangements

13. If payment is required in advance, the relevant District Registrar will need to arrange for payment to be made with our Finance section.