# *PS LA 2007/1 (Withdrawn) - Costs awarded by the courts*

This cover sheet is provided for information only. It does not form part of *PS LA 2007/1 (Withdrawn) - Costs awarded by the courts*

This practice statement is withdrawn with effect from 20 November 2009 and has been replaced by PSLA 2009/9

This document has changed over time. This version was published on *20 November 2009*

Generated on: 4 November 2026, 07:33:41 AM

Australian Government
Australian Taxation Office

# Practice Statement Law Administration

## PS LA 2007/1

This practice statement is withdrawn with effect from 20 November 2009 and has been replaced by PSLA 2009/9.

**FOI status: may be released**

*This practice statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by Tax Office staff unless doing so creates unintended consequences or is considered incorrect. Where this occurs Tax Office staff must follow their business line's escalation process.*

**SUBJECT:** **Costs awarded by the courts**

**PURPOSE:** **To advise staff on the processes when courts award costs**

**Table of contents** **Paragraphs**


| | |
|---|---|
| Scope | 1 |
| Statement | 2 |
| Who does this practice statement apply to in the Tax Office? | 3 |
| Costs awarded against the Commissioner | 9 |
| When the Commissioner is awarded costs | 15 |
| Costs can be negotiated between the parties | 19 |
| Engaging a cost consultant | 25 |
| Assessment or taxation of costs | 27 |
| Matters to be considered by cost assessor or on taxation | 30 |
| Split Orders | 31 |
| Where the Commissioner is joined with another party | 32 |
| Duty under the *Financial Management and Accountability Act 1997* | 35 |
| The Tax Office must be the 'model taxpayer' and 'model litigant' | 36 |
| Who the cheque for costs is made out to | 40 |
| Explanation | 42 |
| Discretion to award costs | 46 |

## SCOPE

1. This practice statement should be read in conjunction with PS LA 2008/16 on the goods and services tax (GST) implications on the recovery of legal costs (professional fees and disbursements) awarded by the court or settled by agreement between the parties.

## STATEMENT

2. In any legal proceedings where the Commissioner is a party and a court orders costs but the court does not specify what amount of costs are to be paid, then staff must follow the procedures detailed in this practice statement.

## WHO DOES THIS PRACTICE STATEMENT APPLY TO IN THE TAX OFFICE?

3. There are various areas in the Tax Office that may have direct involvement in dealing with legal costs orders, including:

   - Legal Services Branch (LSB);
   - Business Line officers involved in litigation;
   - Business line officers involved in negotiating settlement of disputes;
   - Debt; and
   - In-house prosecutions.

4. There are also areas of the Tax Office that provide advice in litigation and settlement matters such as:

   - Tax Counsel Network;
   - Business Line Technical Advisors; and
   - Centres of Expertise.

5. All staff in areas mentioned in paragraphs 3 and 4 should be aware of and understand this policy and these procedures. Where other Tax Office employees encounter legal cost payment issues, they must contact the LSB in their respective region for advice on the application of the Tax Office policy and procedures.

6. Legal costs are the costs for professional work and disbursements in relation to legal work or litigation. These include fees, charges, expenses, disbursements and remuneration for work done by a person in the capacity of a barrister or a solicitor. Disbursements are those payments which have been made in pursuance of the professional duty undertaken by the solicitor, which he or she is bound to perform, or which has been sanctioned as professional payments by the general practice and custom of the profession.

7. Costs generally fall into one of five categories:

   (i) Fees paid to the instructing solicitor;

(ii) Fees of counsel;

(iii) Court fees;

(iv) Disbursements (for example stamp duties); and

(v) Witnesses expenses.

8. The general rule is that 'costs follow the event' – that is a successful party is entitled to recover costs. However, this is always discretionary so that a court may decide not to allow the successful party to recover costs. If the court decides not to award costs to the successful party it may refuse them in part or totally, depending on the circumstances of the case.

## COSTS AWARDED AGAINST THE COMMISSIONER

9. When a contracted legal service provider has acted on behalf of the Commissioner, they will provide their advice on whether the costs being sought by the other party against the Commissioner are, in their view, reasonable. If the costs are considered to be unreasonable, the LSB case officer, after consultation with the business line, may instruct the contracted legal service provider to act on the Commissioner's behalf in challenging and resolving the costs dispute.

10. If a contracted legal service provider does not act on behalf of the Commissioner, LSB will advise as to whether the costs are reasonable and appropriate.

11. When costs are awarded against the Commissioner, the other party (the receiving party) must forward details of the legal expenses it has incurred and is claiming for payment prior to the Tax Office making a payment for those legal costs.

12. Before Tax Office staff make a payment for legal costs, they must obtain a schedule of costs:

- detailing the legal fees and disbursements that the receiving party's solicitor has incurred on behalf of his or her client and is claiming as costs against the other party in accordance with the applicable court rules and any court order(s) made with respect to costs,
- with sufficient detail to identify:
  - how the amounts were determined and whether the legal costs are legal fees or disbursements;
  - whether GST has been applied; and
  - if GST applied, whether the other party was entitled to claim an input tax credit and if so, to what extent.

13. If the schedule of costs does not give sufficient detail, the receiving party's solicitor should be queried and further details requested in respect of the GST application and payment. In some cases, it may be appropriate, to request the invoices with respect to the legal fees and disbursements to verify the payments.

14. The payment of legal costs should then be made when the:

- legal costs claimed are reasonable given the nature and complexity of the matter; and

- GST amount is properly accounted for as provided in PS LA 2008/16 for reimbursing the GST component in circumstances that the receiving party is entitled to an input tax credit.[1]

## WHEN THE COMMISSIONER IS AWARDED COSTS

15. When the Commissioner is awarded legal costs, a schedule of legal expenses incurred is to be prepared to enable determination of the amount of legal costs to be paid by the other party. This will ordinarily be done by the Commissioner's solicitor when the Commissioner is represented by an external solicitor. When the Commissioner is represented by an employee, schedules will need to be prepared by LSB.

16. Before LSB staff formulate a schedule for legal costs to receive payment, they must obtain a schedule of costs:

    - detailing the legal fees and disbursements that the Commissioner's solicitor has incurred on behalf of the Commissioner and is claiming as costs against the other party according to the applicable court rules and any court order(s) made with respect to costs,
    - with sufficient detail to identify:
        - how the amounts were determined and whether the legal costs are legal fees or disbursements;
        - whether GST applied; and
        - if GST applied, whether the other party was entitled to claim an input tax credit and if so, to what extent.

17. The claim for payment of legal costs should then be made when the:

    - legal costs claimed are reasonable given the nature and complexity of the matter; and
    - GST amount is properly accounted for as provided in PSLA 2008/16 for reimbursing the GST component in circumstances that the receiving party is entitled to an input tax credit.

18. There are also less complex proceedings where there may be no need to prepare a schedule of legal expenses, but nevertheless, the same policy applies. For example, where a default judgment is obtained on a Summons or Statement of Claim issued for a tax liability, the only legal expenses likely to be incurred by the Tax Office would be filing fees (where no GST is applied) and service fees (which is a disbursement and will have GST applied). In this situation the Tax Office should seek from the court an order for costs for the filing fee and the service fee exclusive of the GST amount.

## COSTS CAN BE NEGOTIATED BETWEEN THE PARTIES

19. A negotiated settlement of legal costs of a matter generally occurs on settlement of a dispute and can occur prior to, during or after litigation. In any negotiated settlement of the legal cost issues, the party to receive the payment must prepare a schedule of legal expenses incurred to that point.

[1] PS LA 2008/16 deals in detail with the GST implications on the recovery of legal costs (professional fees and disbursements) awarded by the court or settled by agreement between the parties.

20. Before Tax Office staff make a payment for legal costs or formulate a schedule for legal costs to receive payment, they must ascertain a schedule of costs:

- detailing the legal fees and disbursements that the receiving party's solicitor has incurred on behalf of his or her client and is claiming as costs against the other party according to the applicable court rules and any court order(s) made with respect to costs;
- with sufficient detail to identify:
  - how the amounts were determined and whether the legal costs are legal fees or disbursements;
  - whether GST applied; and
  - if GST applied, whether the other party was entitled to claim an input tax credit and if so, to what extent.

21. If the schedule of costs does not give sufficient detail, the receiving party's solicitor should be queried and further details requested in respect of the GST application and payment. In some cases, it may be appropriate, to request the invoices with respect to the legal fees and disbursements to verify the payments.

22. The payment of legal costs should then be made when the:

- legal costs claimed are reasonable given the nature and complexity of the matter; and
- GST amount is properly accounted for as provided in the PS LA 2008/16 for reimbursing the GST component in circumstances that the receiving party is entitled to an input tax credit.

23. A settlement under the Code of Settlement may include settlement of the legal costs. The same principles apply to a settlement of legal costs under the Code of Settlement as any settlement outside the Code of Settlement. Any costs settled under a Code of Settlement must be identified as either being inclusive or exclusive of GST.

24. Responsibility for the legal budget rests with LSB. The LSB case officer will discuss any agreement as to costs with the relevant business line in accordance with the relevant business line service agreement. In considering whether the costs are unreasonable, regard should be had to the matters outlined in paragraph 30 of this practice statement.

## ENGAGING A COST CONSULTANT

25. In certain circumstances it would be appropriate to engage a cost consultant for advice.

26. A cost consultant assists a party to determine what are appropriate legal costs to be claimed in their particular case, either for the costs being claimed by the Commissioner, or for costs being claimed against the Commissioner. If the consultant is engaged by the Tax Office directly (that is, not via the Australian Government Solicitor (AGS) or some other external legal provider), it is regarded as a complex procurement. Tax Office employees wanting to engage consultancy services must contact Corporate Procurement, who undertake, manage and supervise all complex procurements (see PS CM 2005/19). In addition to giving the usual undertakings under the secrecy provisions, the cost consultant should also be advised of the need to act in accordance with the Taxpayers' Charter and

the model litigant obligation at all times if they represent the Tax Office in the course of their consultancy. The cost consultant should be advised to consider the GST implications of the costs issues and to refer to GST Rulings GSTR 2001/4 and GSTR 2000/37, and PS LA 2008/16.

## ASSESSMENT OR TAXATION OF COSTS

27. In the absence of agreement being reached on the amount, the costs will be assessed or taxed in accordance with the rules of the particular court. Proceeding to the process of taxation can be time consuming and expensive. An alternative is to engage an independent costs assessor as a means of arbitrating a costs dispute. The decision to use a cost assessor or have the costs taxed should be considered having regard to the degree of disparity in what is being sought and the amount that is considered reasonable by the litigator. Use of a cost assessor must be approved by the appropriate LSB manager and will also require the involvement of Corporate Procurement

28. Having costs assessed or taxed are expensive procedures and should not be undertaken without due consideration.

29. Where the Tax Office has queried costs and it would appear that an amount will not be agreed through negotiation, then the matter should be escalated to the relevant LSB manager as soon as possible for advice.

## MATTERS TO BE CONSIDERED BY COST ASSESSOR OR ON TAXATION

30. A cost assessor is bound by the relevant legal professional legislation and court Rules which apply in the particular jurisdiction. A cost assessor determines what is fair and reasonable, and the assessor will have regard to the following matters:

- the skill, labour and responsibility displayed on the part of the barrister or solicitor responsible for the matter;
- the complexity, novelty or difficulty of the matter;
- the quality of the work done and whether the level of expertise was appropriate to the nature of the work done;
- the place and circumstances where the legal services were provided;
- the timeframe within which the work was required to be done; and
- the outcome of the matter.

Some costs may be disallowed or partly disallowed, for example:

- costs incurred before the issue of the originating process and after judgment is obtained;
- charges incurred for convenience only of the legal provider;
- costs beyond what is necessary for the proper conduct and understanding of the case;
- unnecessary costs, for example more than one attendance to issue a subpoena or instruct a process server;
- extra work due to lack of knowledge;

- over-preparation of a case;
- extraneous matters included in Counsel's brief;
- repetitive observations or undue verbosity in the Counsel's brief; or
- redundant photocopies.

## SPLIT ORDERS

31. The courts may order that costs be split between two parties, that is, two or more defendants. When this situation occurs the negotiations can be difficult. Engaging a cost assessor may be appropriate for the negotiations depending on the amount of costs involved.

## WHERE THE COMMISSIONER IS JOINED WITH ANOTHER PARTY

32. There will be some matters where the Commissioner is joined in a matter with a third party. In these instances any negotiation undertaken to settle costs on behalf of the Commissioner either for the costs being claimed by the Commissioner or for costs being claimed against the Commissioner must be strictly to settle the Commissioner's share of the costs only. Negotiations will not be undertaken for or on behalf of the third party.

33. Where the Commissioner intends to query the costs claimed against the Commissioner and the third party jointly, it is appropriate that the third party be advised that the Commissioner intends to query the costs and the third party should be given an opportunity to negotiate jointly or agree to use a cost consultant who will act on behalf of both parties. The third party needs to be advised that the Commissioner acts in accordance with the Taxpayers' Charter and the model litigant obligation at all times.

34. In cases where directors are liable to indemnify the Commissioner pursuant to section 588FGA of the *Corporations Act 2001*, only the costs applicable to the indemnity action against the directors can be claimed from the directors. The Commissioner cannot claim costs from the director in respect of expenses incurred by him or her in the conduct of the case defending the claim made by the liquidator.[2] However, the director may still be required by the Court to pay a portion of the liquidator's costs in certain situations.[3]

## DUTY UNDER THE *FINANCIAL MANAGEMENT AND ACCOUNTABILITY ACT 1997*

35. Where the Commissioner is awarded legal costs against another party he has a duty under the *Financial Management and Accountability Act 1997* (FMA Act) to seek to recover those legal costs, subject to the principles of good management. Where AGS or another external legal service provider or external counsel are engaged and are acting in the matter they should be clearly instructed in respect of this obligation to seek to recover the legal costs. Regardless of whether the costs are recovered within the same financial year that they were expended or are recovered outside that financial year, in all cases they must be returned to Consolidated Revenue.

[2] *Sims v. Deputy Commissioner of Taxation* (2006) 57 ACSR 249.
[3] *Noxequin Pty Ltd v Deputy Commissioner of Taxation* [2007] NSWSC 87.

## THE TAX OFFICE MUST BE THE 'MODEL TAXPAYER' AND 'MODEL LITIGANT'

36. The Tax Office as the administrator of the Commonwealth taxation laws must act in accordance with the Taxpayer's Charter and the model litigant obligation and must be seen to be fully compliant with all aspects of taxation law.

37. Section 47 of the FMA Act creates an obligation on chief executives to actively pursue debts. The Tax Office must also act as a 'model litigant' in accordance with the Legal Services Directions 2005 of the Attorney-General, Department of the Commonwealth. Appendix B Note 5 of the Directions explains that the Commonwealth's obligation to act as a model litigant 'does not prevent it from enforcing costs orders or seeking to recover its costs'.

38. To overclaim or overpay legal costs through the misapplication of the GST law or any other processes would adversely affect the integrity and public confidence of the Tax Office's administration of taxation laws. It would also be contrary to the FMA Act. It is therefore imperative that the Tax Office correctly applies the law, court rules and GST laws to legal costs that consist of proper calculations for payment and recovery, either by court order or settled by agreement between the parties.

39. The Tax Office as either a receiving or reimbursing party of legal costs will apply the same practice as described in this statement. This is in circumstances that the Tax Office is entitled to an input tax credit for its creditable acquisitions.

## WHO THE CHEQUE FOR COSTS IS MADE OUT TO

40. Generally, the payment of costs is determined by the order made however practices vary from state to state, as shown in the table below:

| ***State*** | ***Normal practice (as advised by the relevant Law Society or Supreme Court)*** |
|---|---|
| Australian Capital Territory | Normal practice is for the cheque to be made out to the solicitor but a signed authority from the client is required. |
| New South Wales | The *Legal Profession Act 2004 (NSW)* relevantly states in subsection 246(4) that:<br>> Money received in the course of or in connection with the provision of legal services by a law practice for or on behalf of another person for the payment of costs due to the practice (**including costs that have been awarded by a court**, tribunal or other body that has power to award costs), is not trust money for the purposes of this Act. *(emphasis added)*<br>On this basis, the Law Society of New South Wales advised that costs ordered by the court are 'due to the practice' and can be made payable to the solicitor's firm. |
| Northern Territory | Payment can be made either to the client or into the solicitor's trust account. If, however, payment of costs is requested to be made to the solicitor's trust account, an authority should be obtained from the client. |
| Queensland | Normal practice is for the cheque for costs to be made out to the solicitor's trust account. |
| South Australia | Ordinarily, payment should be made to the client. If, however, payment of costs is requested to be made to the solicitor's trust account, an authority should be obtained from the client. |

| ***State*** | ***Normal practice (as advised by the relevant Law Society or Supreme Court)*** |
|---|---|
| Tasmania | Normal practice is for the cheque to be made out to the solicitor.[4] |
| Victoria | Normal practice is for the cheque for costs to be made out to the solicitor without obtaining an authority. NB: The only matters in which costs are required to be paid directly to the client are Workcover matters. |
| Western Australia | Normal practice is for the cheque for costs to be made out to the solicitor. |

41. Where the Commissioner is awarded costs the cheque should be made out to the Commissioner of Taxation.

**EXPLANATION**

42. This practice statement covers party/party, solicitor/client and indemnity costs. The courts have the discretion to award costs (which also includes disbursements) to be paid to a party to proceedings by another party. Depending on the Rules of the particular court, and the specific circumstances of the outcome, the order to pay costs may only be for a portion of the total costs or a specific aspect of the case. Some lower courts and Tribunals may not have the power to award costs, in which case each party must pay their own.

43. There are provisions in all court Rules and in relevant legal practitioners' legislation to allow for costs to be assessed or taxed by the courts. For example, Order 62 Rule 4 of the Federal Court Rules provides:

> 4(1) Subject to this Order, where by or under these Rules or any order of the Court costs are to be paid to any person, that person shall be entitled to his taxed costs.

44. The term 'costs' is used to describe the remuneration and expenses incurred in relation to legal work. The two broad headings of costs are remuneration and disbursements. Costs can be agreed between solicitor and client or, failing agreement, scale costs are applied. Disbursements are those payments which have been made in pursuance of the professional duty undertaken by the solicitor which he or she is bound to perform, or have been sanctioned as professional payments by the general practice and custom of the profession.

45. The ordinary Rules in relation to costs are provided by various Acts, Rules and Orders. As an example, subsection 40(1) of the *Supreme Court Act 1935 (SA)* provides:

[4] Section 101 *Legal Profession Act 1993 (TAS).*

**Power of Court with regard to costs**

- Subject to the express provisions of this Act, and the Rules of Court, and the express provisions of any other Act whenever passed, the costs of and incidental to all proceedings in the Court, including the administration of Estates and Trusts, shall be in the discretion of the Court or Judge, and the Court or Judge shall have full power to determine by whom and to what extent such costs are to be paid.

Similarly, section 43 of the *Federal Court of Australia Act 1976* provides:

**Costs**

(1) Subject to subsection (1A), the Court or a Judge has jurisdiction to award costs in all proceedings before the Court (including proceedings dismissed for want of jurisdiction) other than proceedings in respect of which any other Act provides that costs shall not be awarded.

(1A) In a representative proceeding commenced under Part IVA or a proceeding of a representative character commenced under any other Act that authorises the commencement of a proceeding of that character, the Court or Judge may not award costs against a person on whose behalf the proceeding has been commenced (other than a party to the proceeding who is representing such a person) except as authorised by:

(a) in the case of a representative proceeding commenced under Part IVA – section 33Q or 33R; or

(b) in the case of a proceeding of a representative character commenced under another Act – any provision in that Act.

(2) Except as provided by any other Act, the award of costs is in the discretion of the Court or Judge.

The general rule is that, in the normal course, a successful party should have its costs.[5] The court's discretion in awarding costs is unfettered except that the discretion must be exercised judicially.[6] Generally, the court will not exercise discretion against a successful party unless there is material upon which that discretion may be exercised.

## DISCRETION TO AWARD COSTS

46. Within the exercise of the discretion to award costs under the courts' statutory powers and specific rules, courts are not usually limited to making an order for costs on any particular basis. This is subject to the requirement that costs recovered from another party cannot be greater than the amount payable by the client to the client's own solicitor under the original agreement entered into between solicitor and client. The usual order for costs is that the unsuccessful party pay the successful party's costs on a party and party basis which rarely covers the actual costs incurred. However, the courts have the power to award costs against parties (and solicitors) on an indemnity basis or solicitor and client basis where there is some special or unusual feature to justify departing from the usual orders.[7]

[5] *Ritter v. Godfrey* [1920] 2 KB 47, *Hughes v. Western Australian Cricket Association (Inc)* (1986) ATPR 40-748 at 48,136.
[6] *Trade Practices Commission v. Nicholas Enterprises Pty Ltd & Ors* (1979) 28 ALR 201 at 207.
[7] *Colgate Palmolive Co v. Cussons Pty Ltd* (1993) 118 ALR 248.

47. In all instances when seeking costs, recourse should be made to the particular court rules of the relevant jurisdiction as the rules vary from court to court. Brief descriptions of each of the more common forms of costs orders are set out below.

**Party and party basis**

48. Costs awarded on a party and party basis are all such costs as are necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed.

49. Entitlement to costs on a party and party basis does not entitle the successful party to a complete indemnity for his or her costs against the other party. The costs are those that were necessary to enable the successful party to conduct the litigation and no more. That is, costs which appear to the court's taxing officer to have been incurred through over-caution, negligence, mistake or merely at the desire of the party are not allowed on a party and party basis.

50. Costs which are necessary or proper include costs incurred in obtaining the assistance of solicitors and counsel, witnesses and experts, the costs of interlocutory proceedings and expenses of the various steps in the proceedings.

**Solicitor and client basis**

51. Costs ordered on a solicitor and client basis provide for costs to be paid on a more generous scale than party and party costs.

52. Solicitor and (own) client costs are not the same as costs on a solicitor and client basis.[8]

53. Solicitor and client costs are the costs payable by the client to the solicitor on an assessment between them.

54. Costs awarded on a solicitor and client basis are the costs payable by one party to another on an assessment between the parties on that basis.[9]

55. Solicitor and own client costs has been equated with an indemnity.[10]

56. Costs on a solicitor and client basis have been described as 'substantially a party and party taxation on a more generous scale',[11] although a lesser scale than solicitor and own client costs.

57. An order for solicitor and client costs is made in special circumstances, which may include costs being awarded against an unsuccessful plaintiff:

- where the court's process has been used for an ulterior purpose;
- on a contempt application;
- where an unusual or special feature in the case justifies the court awarding on this basis;

[8] *Bouras v. Grandelis* 2005 NSWCA 463.
[9] See for example Saddington G A, *Taxation of Costs Between Parties* (1919) Sydney, Law Book Co pp 31-3, *Milosevic v. Government Insurance Office of New South Wales* 31 NSWLR 323 at 340-1 per Mahoney JA and *re Public Trustee Act* (2000) 1 Qd R 409 at [56] – [63].
[10] *Gibbs v. Gibbs* [1952] 1 All ER 942 at 949 and *re Public Trustee Act* (2000) 1 Qd R 409 at [66].
[11] *Giles v. Randall*, (1915) 1 KB 290 per Buckley LJ at 295.

- where knowingly false or irrelevant allegations of fraud have been made;
- where it appears that a plaintiff properly advised should have known they had no chance of success; or
- where an adjournment is caused by granting leave to file pleadings out of time.

58. Costs on an indemnity basis have been more or less equated with orders for costs as between solicitor and own client.[12]

59. The various descriptions of bases of costs in the rules of the different courts has complicated the general concepts, and for that reason costs should be determined having regard to the rules of the court.

**Indemnity basis**

60. Costs ordered on an indemnity basis includes all costs incurred by a party to litigation in undertaking proceedings, provided they have not been unreasonably incurred or are not of an unreasonable amount. The conduct of a party as a litigant will be relevant in determining if costs should be awarded on an indemnity basis.[13] Indemnity costs may, for example, be awarded in the following circumstances:

- where a party may have maintained a cause of action with no real prospect of success;
- where a party has maintained an action for some ulterior purpose or with wilful disregard for known facts or clearly established law;
- where deliberately false allegations of fact have been made; or
- where a party's conduct resulted in significantly prolonging the trial.

61. On the other hand, an order for costs on an indemnity basis may be made in exceptional cases, such as 'test cases', where a party has performed a significant public service by bringing the proceedings.

62. Costs as between solicitor and own client have been regarded as providing an indemnity for reasonably incurred costs.[14] Care needs to be exercised, however, as the context of specific court rules may contemplate that these terms have different meanings. Generally however for practical purposes the distinction, if any, between solicitor and client costs and indemnity costs has been referred to as a '*rather murky issue*'.[15]

[12] *EMI Records Ltd v. Ian Cameron Wallace Ltd* (1983) 1 Ch 45 Megarry VC; (1982) 2 All ER 980.
[13] *NMFM Property Pty Ltd v. Citibank Ltd (No. 11)* [2001] FCA 480 at para 56.
[14] *Packer v. Meagher* (1984) 3 NSWLR 486, *Fountain Selected Meats (Sales) Pty Ltd v. International Produce Merchants Pty Ltd* (1988) 81 ALR 397, *Adams v. Kennedy* [2001] NSWCA 7, *Lee v. Kennedy* [2001] NSWCA 8, *Clark v. Tasmania (No. 2)* (1999) Tas SC 130 and *re Bond Corporation Holdings Ltd* (1989) 1 WAR 465.
[15] *Burnie Port Corp Pty Ltd v. Bank of Western Australia Ltd* [2003] TASSC 132 at 17.

| | |
|---|---|
| subject references | Costs<br>Party/party costs<br>Solicitor client costs<br>Indemnity costs |
| legislative references | Corporations Act 2001 588FGA<br>Financial Management and Accountability Act<br>Financial Management and Accountability Act 47<br>Legal Profession Act 2004 (NSW) 246(4)<br>Legal Profession Act 1993 (TAS)<br>Legal Practitioners Act (NT) 55(1)<br>Supreme Court Act 1935 (SA) 40(1)<br>Federal Court of Australia Act 1976 43 |
| related public rulings | GSTR 2001/4; GSTR 2000/37 |
| related practice statements | PS CM 2005/19; PS LA 2008/16 |
| case references | Adams v. Kennedy [2001] NSWCA 7, Lee v. Kennedy [2001] NSWCA 8<br>Re Bond Corporation Holdings Ltd (1989) 1 WAR 465<br>Bouras v. Grandelis 2005 NSWCA 463<br>Burnie Port Corp Pty Ltd v. Bank of Western Australia Ltd [2003] TASSC 132<br>Clark v. Tasmania (No 2) (1999) Tas SC 130<br>Colgate Palmolive Co v. Cussons Pty Ltd (1993) 118 ALR 248<br>EMI Records Ltd v. Ian Cameron Wallace Ltd (1983) 1 Ch 59 Megarry VC; (1982) 2 All ER 980<br>Fountain Selected Meats (Sales) Pty Ltd v. International Produce Merchants Pty Ltd (1988) 81 ALR 397<br>Gibbs v. Gibbs [1952] 1 All ER 942<br>Giles v. Randall (1915) 1 KB 290<br>Hughes v. Western Australian Cricket Association (Inc) (1986) ATPR 40-748<br>Lee v. Kennedy [2001] NSWCA 8<br>*Milosevic v. Government Insurance of New South Wales* (1993) 31 NSWLR 323<br>NMFM Property Pty Ltd v. Citibank Ltd (No 11) [2001] FCA 480<br>Noxequin Pty Ltd v Deputy Commissioner of Taxation [2007] NSWSC 87<br>Packer v. Meagher (1984) 3 NSWLR 486<br>Public Trustee Act (2000) 1 Qd R 409<br>Ritter v. Godfrey [1920] 2 KB 47<br>Sims v. Deputy Commissioner of Taxation (2006) 57 ACSR 249<br>Trade Practices Commission v. Nicholas Enterprises Pty Ltd & Ors (1979) 28 ALR 201 |
| Other references | Legal Services Directions 2005 of the Attorney-General, |

| | |
|---|---|
| | Department of the Commonwealth<br>Saddington, G A, *Taxation of Costs between Parties* (1919) Sydney, Law Book Co.<br>Taxpayers' Charter |
| File references | 07/1895 |
| Date issued: | 8 February 2007 |
| Date of effect: | 8 February 2007 |
| Other Business Lines consulted | Technet |
| Amendment history: | **12 November 2008**<br>New or substantially rewritten paragraphs 1, 6-8, 12, 16-17, 20-22, 28, 39-41; other minor amendments |