

Tabled  
18 FEB 08



You are here: Home » Legal services to Government » Guidance Notes » Guidance Note 6 2006

## Guidance Note 6 2006

### Guidance Note 6 of 2006: Recovery of costs

Office of Legal Services Coordination  
Guidance Note No 6 of 2006  
20 June 2006

*The Office of Legal Services Coordination issues Guidance Notes in order to assist Australian Government Departments and Agencies to comply with the Legal Services Directions 2005 (the Directions), procure legal services, and deal with legal issues in an efficient and effective manner. OLSC welcomes feedback on this Guidance Note.*

#### Recovery of costs

##### Legislation

Section 47 of the *Financial Management and Accountability Act 1997* creates an obligation on chief executives to actively pursue debts.

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'.

##### Criteria

There is a general presumption in favour of the Commonwealth seeking costs where this is legally merited and in favour of the Commonwealth enforcing any costs order in its favour. A range of factors is to be taken into account in deciding whether to do either of these things. Factors that would tend to support seeking or enforcing costs include:

- that the other party caused unnecessary expense and delay in the proceedings
- that there is an apparent need to deter vexatious litigation in the future
- that the debtor is apparently able to pay, and
- that the anticipated expense in recovering costs does not outweigh the recoverable or potentially recoverable costs.

In some cases, it may be appropriate to seek a costs order but to defer a decision on enforcing the order (for example, where a person's financial circumstances are unclear or as a deterrent to future vexatious litigation).

##### Costs for in-house counsel

The Commonwealth is entitled to claim costs for its use of in-house lawyers (*Lenthall v Hillson* [1933] SASR 31). However, these costs are limited to the portion of the counsel's or solicitor's salary that was expended on the proceedings, in addition to overheads for the costs of maintenance of premises, legal support staff, photocopying and the like (*Environment Protection Authority v Taylor Woodrow (Aust) Pty Ltd (No2)* (1997) 97 LGERA 368 (Land and Environment Court of NSW)).

##### Solicitor-General's costs

If the Commonwealth is seeking costs and the Solicitor-General has acted for the Commonwealth, costs should be sought for the Solicitor-General's time. OLSC must be contacted if this situation arises.

If you have any comments or questions on this Guidance Note, please contact [olsc@ag.gov.au](mailto:olsc@ag.gov.au), (02) 6250 6599.

Karl Alderson  
Assistant Secretary  
Office of Legal Services Coordination

Telephone: (02) 6250 6611  
Facsimile: (02) 6250 5968  
E-mail: [olsc@ag.gov.au](mailto:olsc@ag.gov.au)

---

Date Created: Monday, 6 November 2006  
Last Modified: Tuesday, 7 November 2006  
Authorised By: Branch Head, Office of Legal Services Coordination  
Maintainer: Office of Legal Services Coordination