

What does the AAT consider to be reasonable costs for compliance with a summons to produce documents?

Key Points

- When a party is summonsed to produce documents they are entitled to recover reasonable costs for the production of those documents.
- What is the process when parties cannot agree on what is considered reasonable?
- The Administrative Appeals Tribunal provides an avenue for parties to have their reasonable costs determined.

Background

The Tribunal issued a summons to Dr L (General Practitioner) at the request of TNT Australia Pty Ltd (**TNT**) for the production of documents, specifically the medical records of the applicant.

Documents were produced to the Tribunal and Dr L issued an invoice to TNT for the amount of \$1,066.04. Dr L produced approximately 750 pages of material in electronic format. Discussions ensued, but the parties were unable to reach an agreement as to Dr L's reasonable costs.

The Law

A summonsed party is entitled to recover reasonable costs for the production of the thing they are summonsed to produce, pursuant to regulation 13(6) of the *Administrative Appeals Tribunal Regulations 2015* (Cth) (**the Regulations**).

Because TNT and Dr L could not come to an agreement as to reasonable costs, TNT recommended to Dr L that he contact the Tribunal to request that an assessment of reasonable costs be undertaken pursuant to regulation 13(7) of the Regulations, which provide:

“If a person was summoned at the request of a party to the proceeding, the person may apply to the Tribunal for a determination of the amount of fees or allowances payable under subsection (3), (4) or (6) in relation to compliance with the summons, if the person and the payer cannot agree on the amount.”

On 17 March 2016, Dr L requested that the Tribunal undertake an assessment of his invoice pursuant to regulation 13(7). The Tribunal advised that this was the first use of the costs assessment provisions relating to summonses in the Regulations.



The Decision

The Tribunal issued its determination on 18 April 2016, making reference to its own Practice Direction in respect of the Taxation of Costs. The Practice Direction provides at clause 3.1 that reasonable and proper disbursements are payable. There is no definition of “reasonable” within the Practice Direction.

In determining costs, the Tribunal had regard to Schedule 3 of the *Federal Court Rules* 2011 (Cth) (**the Rules**), which the Practice Direction provides may be used for determining professional costs.

Rule 24.22 of the Rules provides that the Court may order the issuing party to pay the amount of any reasonable loss or expense incurred in complying with the summons, the procedure of which is contained within Schedule 3 of the Rules. The Tribunal assessed costs as being payable under the following items in Schedule 3:

- Item 6 – Electronic Document Management

Expenses under this item are in relation to the imaging of documents, including rendering to PDF, and are payable at the rate of \$11 per 6 minute unit. The Tribunal allowed one hour under item 6, being \$110 inclusive of GST.

- Item 8 – Collation, Pagination and Indexing

Expenses under this item, including the ordering or assembling of documents, are also payable at the rate of \$11 per 6 minute unit. The Tribunal allowed two hours for collation, being a total of \$220 inclusive of GST, with no allowance made for pagination or indexing.

- Item 9 – Copying

Expenses under this item are discretionary. Given the documents were produced electronically, no allowance was made for copying.

Conclusion

In accordance with Regulation 13(7), and having regard to the Regulations, the Practice Direction and the Rules, the Tribunal determined that Dr L’s reasonable expenses for complying with the summons to produce were \$330.00 inclusive of GST.

Lessons Learnt

Overall, the process was quick and inexpensive, and the result much more reasonable than the original invoice.

As Item 9 (copying) of Schedule 3 was not applicable in the circumstances, it will be of interest to see what the Tribunal considers a reasonable rate per page for copying, where physical documents are produced.



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