

PRACTICE NOTE 2
COSTS IN THE EMPLOYMENT RELATIONS AUTHORITY
TE RATONGA AHUMANA TAIMAHI¹

1. The Authority has the power to order any party to pay any other party in the matter the costs and expenses that the Authority thinks reasonable.²
2. Where an applicant or a respondent party has incurred costs for representation by a lawyer or other advocate, the Authority may order whichever party is unsuccessful to contribute a specified amount towards the reasonably incurred costs of the other party. And, whether or not any legal costs were incurred, reimbursement of some expenses may also be ordered (such as the Authority lodgement fee, printing and some travel).
3. The Authority uses a notional daily tariff as the starting point for assessing costs. The tariff is based on the length of the investigation meeting held in each matter. This tariff may then be adjusted upwards or downwards according to the circumstances of each case.
4. The current tariff is \$4,500 for the first day of any matter and \$3,500 for any subsequent day of the same matter.
5. From 2 May 2022 the Authority’s discretion regarding costs is generally to be exercised on a presumption that the following categories of matter are not subject to a daily tariff and that parties bear their own costs:
 - (i) referrals for bargaining facilitation;³
 - (ii) disputes about the application, interpretation or operation of a collective agreement;
 - (iii) pay equity processes;
 - (iv) screen industry processes;
 - (v) fair pay agreement processes;
 - (vi) collective bargaining disputes;
 - (vii) disputes about access to workplaces; and
 - (viii) fixing of the terms of a collective agreement.
6. For all other matters that the Authority may investigate (such as personal grievances and breaches of employment agreements) parties should evaluate what they do in those proceedings on the understanding that, if unsuccessful, they will usually have to contribute to the costs of the successful party, as well as meeting their own costs.
7. The Authority will typically not consider an assessment of costs and expenses until the substantive determination has been made.

¹ This Practice Note replaces “Practice Note 2: Costs in Employment Relations Authority” issued on 30 June 2016.

² Employment Relations Act 2000, Schedule 2 clause 15.

³ Unless the Authority finds the application for referral was frivolous or vexatious.

8. Parties are encouraged to first try to solve costs on their own terms. If they cannot agree, the Authority will set a timetable for assessing costs. Usually the Member will require the successful party to lodge any claim for costs in writing, providing a copy of that document to the other party. The other party will then have the right of reply.
9. The daily tariff applied by the Authority is a starting point for assessing the successful party's entitlement to costs. More information about factors and principles guiding any upward or downward adjustment of the amount to be awarded is available on the Authority's website: www.era.govt.nz/determinations/awarding-costs-remedies/
10. For instance, where a successful party's behaviour unnecessarily increased its costs, the Authority may reduce the daily tariff amount. Conversely, if an unsuccessful party turned down an effective settlement offer, the Authority may increase the costs above the daily tariff.⁴
11. When the parties cannot agree costs and an Authority determination is needed, a party seeking costs must clearly set out in its submission what amount is claimed and the reasons for that position. The claim should be supported by copies of invoices for any fees or other expenses incurred, the time taken by the practitioner or advocate and the relevant hourly rate.
12. Costs associated with preparation for and attendance at mediation, whether by agreement of the parties or at the direction of the Authority, are not typically included in costs awarded (unless some particular or unusual circumstance of the case makes it appropriate to do so).
13. If parties wish to obtain further information about how the Authority sets costs, they may ask the Member during the case management conference.

Andrew Dallas
Chief of the Authority
29 April 2022

⁴ An effective settlement offer is one where a party offered to accept a particular sum of money or terms that would have provided an outcome better than later achieved in the Authority's determination, so the parties could have saved the costs incurred of having to go ahead with preparing for and attending an investigation meeting. Information about that offer may be put before the Authority when costs are being assessed to show a reasonable offer to resolve the matter was not accepted and any amount in costs should take this into account.