



Judicial
Commission
of Victoria

Guideline

Award of Costs

Section 134(1) of the *Judicial Commission of Victoria Act 2016*





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May 2023

1. Section 112 of the *Judicial Commission of Victoria Act 2016* (the **Act**) provides:

The Judicial Commission or an investigating panel may award the officer concerned in relation to a complaint or referral reasonable costs if the Judicial Commission or the investigating panel (as the case may be):

- a) dismisses the complaint or referral; or
- b) refers the complaint or referral to the nominated head of jurisdiction or nominated person; or
- c) considers it is otherwise appropriate to do so.

2. An award of costs is made at the discretion of the Commission or an investigating panel. There is no entitlement to an award of costs.

3. When considering whether to make an award of costs, the Commission will consider:

- a) whether the costs sought by an officer are of a reasonable amount. Generally, this consideration is referable to the Scale of Costs provided by the Supreme Court of Victoria;
- b) whether the costs sought by an officer were reasonably incurred; and
- c) whether it is appropriate to exercise the discretion to award costs.

4. Any application for costs must include a detailed itemised invoice from the officer's legal representative(s).

Matters relevant to the section 112 discretion

5. The section 112 discretion will be exercised having regard to the objects of the Act, including the need to maintain present and future public confidence in the Victorian courts and VCAT.

6. The factors relevant to the section 112 discretion may include the following:

- a) The stage of investigation. Absent compelling reasons, the Commission will not ordinarily award costs in respect of a Part 3 investigation.
- b) The outcome of the investigation. The Commission may take into account any findings relating to:
 - (i) the outcome of the investigation of a complaint or referral; and
 - (ii) misconduct or incapacity, including any infringement of the standards of conduct generally expected of judicial officers or non-judicial members of VCAT.
- c) The complexity and overall context of the matter, and the extent to which the legal work is proportionate in the circumstances.