# Snapshot – appeal costs certificates in civil proceedings

[Appeal Costs Act 1998 (Vic) Part 2](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf/95c43dd4eac71a68ca256dde00056e7b/8a9071534a6a7155ca25833000139a91!OpenDocument)

An appeal costs certificate (referred to in the Act as an ‘indemnity certificate’) allows you to apply to the Appeal Costs Board to recover appeal costs reasonably incurred as a result of a proceeding being appealed or discontinued. The final decision about whether to pay the costs or not, is made by the Board (s.35; [Van Phuc Diep v Appeal Costs Board [2003] VSC 386](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2003/386.html)).

## Principle

You should apply for an appeal costs certificate wherever possible.

References in this document to section numbers are references to the Appeal Costs Act unless otherwise indicated.

## Refusal to grant a certificate

There are no appeal rights against a decision to refuse to issue a certificate (s. 37).

## When can certificates be issued?

In civil matters, indemnity certificates for reimbursement of costs from the Board can be made for appeals and discontinued trials (not adjournments) for the following:

* **An unsuccessful respondent in respect of an appeal on a question of law to the Supreme Court, Court of Appeal or the High Court from the Supreme Court (s. 4).**
* **An appellant, where the respondent was granted an indemnity certificate under s. 4 but cannot pay (s. 6).**
* **A successful appellant in the Supreme Court on a question of law who cannot recover costs from the other party (s. 7).**
* **A new trial and the appellant is ordered to pay the respondent’s costs (s. 8).**
* **A respondent where the appellant was granted an indemnity certificate under s. 8 but cannot pay (s. 9).**
* **Where civil proceedings are discontinued (s. 10).**The reason for the discontinuance must not be attributed in any way to the act, neglect or fault of any parties to that proceeding or their legal practitioners; in respect of the party’s own costs of the proceedings.
* **Where a plaintiff has a disability or is a minor when an offer of compromise is not approved by the court (s. 11).**
* **Application by a defendant where the plaintiff was granted an indemnity certificate under s. 11 but cannot pay (s. 13).**

## State matters only

The Act does not apply to state courts exercising federal jurisdiction. The equivalent Commonwealth legislation applies to proceedings in federal courts and the Administrative Appeals Tribunal (s. 3 [*Federal Proceedings (Costs) Act 1981*](https://www.legislation.gov.au/Current/C2016C00787)).

## Third parties

Third parties cannot apply for indemnity for costs.

## Applicable fees

The maximum amounts payable in civil matters are set out in the sections under Part 2, Appeal Costs Act.

[Fee Schedule 2](http://handbook.vla.vic.gov.au/handbook/24-payments-to-lawyers-and-service-providers/costs-payable-in-civil-law-matters/fee-schedule-2-professional-costs-lump-sum-and-other-fees-in-civil-law-matters) of the *VLA Handbook for Lawyers* sets out the fees payable by Victoria Legal Aid in matters if an Appeal Costs Certificate has been granted.

Witness expenses and interpreter fees can also be claimed but not loss of wages.

## Applying for the payment of costs

### Time limits apply

Applications must be made within 12 months of the final determination of the matter, or the certificate will expire. The Board can extend the time limit if it considers that it is in the interests of justice to do so (s. 35D, 35E).

You must lodge the application as soon as possible after the hearing has occurred.

No reimbursements are made if proceedings are withdrawn or cases settled before the next hearing.

### Assessment of fees

Fees which may be recoverable from the Board include counsel’s fees, solicitor’s fees, interpreters’ costs and witness expenses (including nature of evidence provided and which capacity they appeared in). Loss of wages is not covered.

### Forms and supporting material required

There is a different form for certificates under each section of the Act. The forms set out additional information needed for that type of application.

Most applications in civil matters arise under s. 4(1) which allows an unsuccessful respondent to an appeal on a question of law to claim reimbursement from the Board for both the respondent’s and the appellant’s costs in relation to the appeal. Maximum amount payable is $50,000.

All applications must include:

* a signed copy of the certificate or an authenticated order of the court provided by the court
* the appropriate accounts or Victoria Legal Aid fee forms for both the certificate date(s) and the re-hearing date.

### Submitting the application

All applications to the Board must be made online via the [ACB Portal](https://justice.service-now.com/acb?id=home). Applications cannot be made by post, fax or email. You can monitor the progress of your application via the portal.

For guidance on making an application, read the ‘Online Application Service User Manual’ available on the Department of Justice and Community Safety website: [How to apply to the Appeal Costs Board](https://www.justice.vic.gov.au/justice-system/laws-and-regulation/how-to-apply-to-the-appeal-costs-board).

### If you need help with the application

Contact VLA’s Legal Recovery Officer, Chris Carlson by email [chris.carlson@vla.vic.gov.au](mailto:chris.carlson@vla.vic.gov.au) or phone (03) 9606 5260.

Contact the Appeal Costs Board on (03) 8684 0884.