

27 January 2017

Katie Ell

Fyi-request-5187-49a698cd@requests.fyi.org.nz

Dear Ms Ell

Official Information Act 1982 request: Private Prosecutions reimbursement of expenses

Thank you for your email of 8 January 2017 requesting the following information under the Official Information Act 1982 (“the Act”):

“I would like to know whether private prosecutors are reimbursed by the government for expenses such as witness fees if they win their case, and which piece of NZ legislation is relevant to this matter?”

It is not our role to provide members of the public with legal advice. Nevertheless, I can offer the following comments.

Witness and Interpreter Fees

The Witness and Interpreters Fees Regulations 1974, governs the provision of witness fees, allowances and expenses, and who is responsible for the payments of those fees. The regulations are available online at www.legislation.govt.nz.

Regulation 4 of the Witness and Interpreters Fees Regulations 1974 provides the circumstances in which witness fees, allowances, and expenses are payable by the Crown. Regulation 4(2) relates to private prosecutors and provides:

“Any witness or interpreter for the prosecution at the trial of a criminal case in the High Court, when the trial is conducted by or on behalf of a private prosecutor, may, if so allowed by the court, be paid fees, allowances, and expenses in accordance with the scales prescribed by these regulations.”

In all other cases the party calling the witness will be responsible to pay the fees, allowance and expenses of the witness in accordance with the schedules of the Witness and Interpreters Fees Regulations 1974 in the usual manner prescribed by regulation 5.

Other expenses

There is no requirement for the Crown to reimburse a successful private prosecutor for any other costs incurred in undertaking a private prosecution. A successful private prosecutor

may, however, apply for costs under the Costs in Criminal Cases Act 1967. Section 4(1) of that Act provides:

“Where any defendant is convicted by any court of any offence, the court may, subject to any regulations made under this Act, order him to pay such sum as it thinks just and reasonable towards the costs of the prosecution.”

The Costs in Criminal Cases Regulations 1987 provides that an award of costs and expenses under the Costs in Criminal Cases Act 1967 can include the fees, allowances and expenses paid to witnesses as provided by Part 2, Subpart C of Schedule 1 of those Regulations.

I trust this information is of assistance.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Edrick Child', with a stylized flourish at the end.

Edrick Child
Deputy Chief Legal Counsel