# Snapshot – seeking costs in family law proceedings

## Why seek costs?

You should apply for costs wherever appropriate in legally aided matters, so that the funds can be used for other client matters. Costs orders also work as a deterrent in vexatious and/or unwarranted litigation.

## What does the Family Law Act say about costs?

See *Family Law Act 1975* (Cth):

* [Section 117 Costs](http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s117.html)
* Section [117AA Costs in](http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s117aa.html) [proceedings](http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s102q.html#proceedings) relating to overseas enforcement and international Conventions
* Section [117AC Securit](http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s117ac.html)y for costs
* Section [117A Reparation](http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s117a.html) for certain losses and expenses relating to [children](http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s4.html#child)
* Section [117B Interest](http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/cth/consol_act/fla1975114/s117b.html?stem=0&synonyms=0&query=Family%20Law%20Act) on moneys ordered to be paid
* Section [117C Offers](http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s117c.html) of settlement on [costs](http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/cth/consol_act/fla1975114/s117b.html?stem=0&synonyms=0&query=Family%20Law%20Act).

## What are the common scenarios where costs can be sought?

* **In applications where you seek a bond or security for costs** – eg to secure the return of children from overseas travel, ensure your estimate includes costs of a grant of legal assistance for the client.
* **Where trial doesn’t proceed** – the cost of trial preparation and/or instructing counsel to prepare and appear in trials which are aborted due to the other party not being ready to proceed.
* **Adjournments** – where the cost of court adjournment is caused due to the other party’s fault/delay.
* **Medical report costs** – where paid for by legal aid incurred due to unreasonable claims/allegations made by the other party.
* **Hopeless applications** – Interim or final hearing applications made without merit or hope of success.
* **Recovery orders for children** – where there was no merit in the child being withheld from the applicant parent.
* **Appeals** **and final hearings** – where the other party is wholly unsuccessful.
* **Hungerfords letter** – where one is served on the other party during negotiations and a trial proceeds; in such a case the other party must obtain a less desirable result than exchanged during the final negotiation.

## Considerations in seeking costs

* What is the likelihood of recovery of costs from the other party?
* Is the costs order worth pursuing or is the other party unable to pay?
* Is the other party legally aided also?
* Is there a need for a separate court date to argue costs which then adds to the costs (which may not be recoverable)?
* It takes time to prepare the costs application affidavit. VLA may not fund the costs application/hearing because costs do not follow the event under the Family Law Act.

## How do I make the application for costs?

1. During the course of litigation, where appropriate, in interim court appearances, ensure that at the end of a hearing you or counsel is briefed to seek costs be reserved; or such an order is included in any minutes tendered, so as to preserve a future costs claim. Keep a contemporaneous note of the basis that justifies your claim and the amount of your claim for that day. Check the [VLA Handbook](http://handbook.vla.vic.gov.au/) if you are unsure of the costs to be claimed.
2. After judgement in a trial, give active consideration as to whether it is possible to seek a costs order against the other party, in whole or in part. Raise the issue with the trial judge once reasons for judgement and final orders are handed down.
3. The court may make a standard order for costs as agreed, and failing agreement by the parties, costs will need to be taxed.

## What do I do when I have the order for costs?

* Notify Grants and Quality Assurance that an order for costs have been made by uploading a copy on the ATLAS file.
* Write a letter of demand to the other party; specify a fixed time for compliance with the order to pay (note: VLA does not fund the writing of a letter of demand).
* Diarise the final date for payment. If the other party fails to comply, then notify Grants and Quality Assurance.
* Load any additional documents into ATLAS. Provide all the relevant information regarding the orders eg the name and address of the party against whom the costs were awarded etc. Grants and Quality Assurance can then make payment arrangements with the other side.

## If you need help

Contact Grants and Quality Assurance by email [Grants@vla.vic.gov.au](mailto:Grants@vla.vic.gov.au) or phone (03) 9269 0600.