

KEEPING LEGAL COSTS DOWN

Usually, not all legal costs that you incur in the course of litigation can be recovered even if you are successful with your claim. For this reason, it is important that costs are only incurred when they are absolutely necessary so that you obtain the highest possible return. You play an important role in keeping the legal costs down.

The following guide has been prepared to provide general information on how you can minimise legal costs.

1. Do the necessary work and provide all the available information to the lawyer at the beginning of the case.

This is probably the most important factor in keeping legal costs down. Clients are keen to get recovery action started and get the money in their bank but are not always prepared to spend the time and effort required to give their lawyer all the available information.

Make sure that you give your lawyer all available information and be sure to include information that might not assist your case. Your lawyer will advise you on how best to deal with the case in total.

Without all the available information, the lawyer's advice may be inaccurate and may not draft the claim completely. This can lead to the court documents needing to be changed later in the court process which involves additional cost.

Without all the available information, the defendant may raise issues that are not relevant or could be explained had the available information been provided. Dealing with this situation involves additional cost.

If all the available information is provided, this demonstrates to the defendant that we have a strong case and are ready to proceed from the outset. Often, the presentation of a complete case at the beginning will have the effect of changing the defendants view about whether or not a defence will be successful. It makes defendants more likely to settle at an earlier stage thus saving our client costs.

2. Give the lawyer the documents and information in a format that can be easily reviewed.

Not only is it important to provide all the available information but provided that information in a way that suits your lawyer.

Time spent by your lawyer in organising documents, getting copies that are legible from you, transcribing your handwritten notes into electronic format etc will all add cost to the process.

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Accurately labelled and dated PDF documents is the best way to organise your documentation.

3. Respond quickly to requests for action.

In litigation, the perception of a party as being well organised, well financed and keen to take the litigation through to an end plays a big role in obtaining a good settlement outcome.

Further, if your lawyer has to chase you more than once, this will add cost to the process.

4. Be wary about general discussions. Concentrate on the next step of the litigation.

Litigation is a very uncertain process. It is only natural that clients (who are generally unfamiliar with the process) want to understand what is about to happen and what might happen in the future. Discussions with your lawyer that look too far into the future can be wasted time. Because of the uncertain nature of the litigation process, it is very difficult for lawyers to know what is likely to happen past the next step or two in the litigation process. Often the direction to be taken will depend on the response by the other party to the step in the litigation process currently being taken.

For example, you may want to have a discussion with your lawyer at the beginning of a matter about the various options available if you have a court order in your favour but the defendant does not pay. You might find (to your surprise) that the defendant does pay at an earlier stage and therefore the time spent in such a discussion is completely wasted.

Discussions with your lawyer will usually be at a cost to you and you need to find a balance between getting all the appropriate information to make a decision in the case and spending unnecessary time in discussions about possible circumstances – especially where those circumstances are unlikely to arise or far in the distance. Striking this balance is not always easy and you need to be guided by your lawyer as to what considerations are important.

Especially with debt recovery litigation where the claim does not have an apparent defence, it is often less expensive to take the initial step in the litigation by issuing the claim in an appropriate court than it is to discuss what might happen if you do this.

As a general recommendation, for debt recovery litigation, E C Legal prefers that there is a general consideration of the ability of the defendant to pay the amount of the likely court order at the beginning of the claim. If the defendant appears to be able to pay the likely court order (and this is often little more than an educated guess) then the discussions on the course of the litigation should be kept to the next step and its cost.

5. Have trading terms that allow recovery of solicitor / client costs.

If your litigation concerns the claim by your business against one of your customers, it is possible to include a term in your standard trading terms and conditions that allow you to recover all your costs from your customer who is now the defendant in the litigation. Without such a term in the trading terms and conditions, you will be usually be limited to recovery of legal costs.

If you need your current trading terms and conditions checked or new standard trading terms and conditions created specifically for your business, please contact our office.

6. Instruct the lawyer to make formal offers for settlement at the earliest possible opportunity.

One of the important facts that a court will take into account when considering how to exercise its discretion on the question of costs is whether or not a party has accepted a reasonable offer during the litigation process.

There are a few different ways that a lawyer can make a formal offer of settlement that creates a risk to the party receiving the settlement offer of an adverse costs outcome if the offer is not accepted.

In general terms, E C Legal recommends making a good offer early in the process using one of the formal methods.