

INTRODUCTION

1. This practice note provides guidance in respect of:
 - (a) parties seeking to claim costs of a proceeding; and
 - (b) the procedure for claiming costs of a proceeding.
2. In any proceeding, having regard to the rules of natural justice, the Board may at its discretion vary the operation of a practice note by direction or order.
3. This practice note has been approved by the Chairperson of the Board.

CLAIM FOR COSTS OF THE PROCEEDING

4. The Building Appeals Board (**the Board**) can order that one party pay another party's costs of and incidental to a proceeding before the Board.¹
5. 'Costs of and incidental to a proceeding' usually means money paid or liabilities incurred for professional legal services and out-of-pocket disbursements or expenses, such as filing fees, expert witness fees, et cetera, where directly related to the proceeding before the Board.
6. However, the general rule is that **parties must bear their own costs of the proceeding.**
7. This means that circumstances must be established to override the general rule and that means something more than simply being a successful party.² Unlike proceedings in the courts, there is no presumption that the successful party will be entitled to an order for costs.
8. Whilst the Board does not have to follow its prior determinations, prior determinations of the Board can be found on [Austlii](#) and may provide some guidance as to what circumstances justify overriding the general rule.

PROCEDURE FOR CLAIMING COSTS OF THE PROCEEDING

9. At the conclusion of a proceeding an order may be made which gives the parties the right to make a claim for costs, usually to be exercised within a specific period.
10. To make application for costs you should complete an [Application for Orders in the Proceeding](#) form (**the form**) which can be downloaded from the Board's website. A completed copy of the form must be filed with the Board and a copy sent to the other parties in the proceeding.
11. After the Board receives the form (or other correspondence indicating that you are seeking an order for costs), direction orders may be made by the Board setting out a timetable for the filing and exchange of written submissions, affidavits or other material that the Board considers appropriate.
12. A sample of orders is set out below:
 1. By **[date due]** any party making an application for an order that another party or parties pay their costs of the proceeding must file with the Board and serve on the other parties a document entitled *Costs Claim*, which must set out:
 - (a) The party or parties against whom costs are claimed;

¹ Clause 16(2) and 17 of schedule 3 to the *Building Act 1993*.

² [Stewart v Building Practitioners Board and Anor \[2001\] VSC 349](#).

- (b) The amount claimed and how that amount has been calculated or derived (including any reference to a court scale, if applicable); and
 - (c) The grounds relied upon in support of the application for costs.
 - 2. By **[date due]**, a party served with a *Costs Claim* must file with the Board and serve on the parties a document entitled *Defence to Costs Claim*, which must set out that party's response to the claim made against it.
 - 3. By **[date due]**, a party served with a *Defence to Costs Claim* may file a reply.
 - 4. **Subject to any party requesting an oral hearing, the application for costs will be determined 'on the papers' (without the parties present) after receipt and consideration of any written submissions filed in accordance with these orders.**
 - 5. Liberty to apply for further directions or to apply for an extension of time to comply with these directions.
13. A [template for a costs claim](#) is available from the Board's website, or parties may use their own template. However, you should ensure that you provide adequate detail and provide all of the information required by the directions orders.
14. Once all documents have been filed in accordance with the directions orders, the Board will make a determination as to costs either 'on the papers' (without the need for a hearing) or via an oral hearing (where requested).

EVIDENCE REQUIRED

15. When making a claim for costs of the proceeding you must provide evidence of the costs incurred.
16. Any invoices should itemise each cost claimed, including, but not limited to the following:
- (a) How the amount claimed was calculated or derived. This should address how any hourly work or billing rate was applied;
 - (b) The reason why (for what purpose) the costs were incurred; and
 - (c) Identify any material in support of the amount claimed, such as emails or reports.
17. A lump sum account that simply states fees from 1 January 2022 – 1 February 2022 for \$x may not assist the Board in making a determination as there may not be enough detail to determine whether the costs relate to a cost of the proceeding.
18. Even if the Board determines that costs should be paid by one party to the other, it may find that some or all of the costs claimed are unreasonable or excessive and determine to reduce the amount claimed. By providing detail, that assists the Board to determine whether the costs claimed are unreasonable or excessive.