

# Costs Notice

This brochure summarises Chapter 19 of the Family Law Rules, which regulates the costs lawyers may charge for work done in cases in the Family Court.

A lawyer must provide this Costs Notice to a person in the following situations:

- when receiving instructions to act for a person;
- when making a costs agreement with a person.

When sending an account to a client, a lawyer must, if they have not already done so, also send a Costs Notice. If they have already provided the client with a Costs Notice, the account must include a notice referring to the Costs Notice.

The information in this brochure is set out in the following parts:

- PART 1 Lawyer and client costs rights, duties and responsibilities.
- **PART 2** Party and party costs what a lawyer may charge.
- **PART 3** Disputing an account the process.
- **PART 4** General information.

## Part 1 Lawyer and client costs

## Your rights as a client - your lawyer's duty to disclose

When you first instruct a lawyer to act for you in a case, the lawyer must advise you in writing of the following:

- the basis on which costs will be calculated;
- an estimate of the total costs of the case or if this is not practicable, a range of estimates;
- the circumstances under which the Court may make an order requiring you to pay the other party's costs and how much these might total; and
- whether any other lawyer or an expert witness will be retained and, if so, the estimated costs involved.

#### During a case, your lawyer must:

■ keep you properly informed about costs (see Rules 19.03 and 19.04);

## please Note

There are strict time limits for taking action to dispute a lawyer's account. You should seek legal advice about these limits.

## What a lawyer may charge

The maximum amount of costs that a lawyer may charge and recover from you for work done is:

- if you do not have a cost agreement with the lawyer an amount calculated in accordance with the Scale of Costs (Schedule 3 of the Family Law Rules), published on the back page of this Notice; or
- an amount calculated in accordance with a costs agreement between you and the lawyer.

Some lawyers ask their clients to pay costs in an amount different from the costs fixed by the Scale of Costs. This can be done by signing a written costs agreement provided that the Rules concerning costs agreements are fully complied with (see Part 19.4 of the Family Law Rules).

**PLEASE NOTE:** If you have a written costs agreement, your rights may be different from those set out in this brochure. You should read your costs agreement and obtain independent legal advice.

## Part 2 Party and party costs

## What are party and party costs?

Party and party costs are the costs payable by one party to another party under the rules or by court order.

## What a lawyer may charge

Costs must be calculated in accordance with the Scale of Costs (Schedule 3 of the Family Law Rules), published on the back of this *Costs Notice* if:

- the Court orders that costs are to be paid and does not fix the amount; or
- costs are an entitlement under the Rules.

The Court may order that the Scale of Costs does not apply.

## How to dispute an itemised account for party and party costs

A person entitled to costs where the amount has not been fixed must serve on the party who is to pay the costs an itemised account and a copy of this Costs Notice.

The process to dispute that account is the process detailed in Part 3 under "Disputing the itemised account".

## **Part 3** Disputing an itemised costs account – the process

## A lawyer's account

Many lawyers present their clients with an account that summarises the work done and claims a lump sum for costs. However, it is your right to receive an itemised costs account that:

- lists each item and the cost payable by date, description and amount; and
- states any amount received or credited for the costs.

If you receive an account that claims a lump sum and you want an itemised costs account, you must ask the lawyer for it within 28 days of receiving the account. The lawyer must serve the itemised account within 28 days of receiving your request.

## Disputing the itemised account

You have the right to dispute a lawyer's itemised costs account or any part of it, subject to the time limits and other matters mentioned below. While an account is being disputed according to the procedures set out in this brochure, the lawyer cannot sue for those costs (see Rule 19.13).

If you dispute an itemised costs account, you must take the following steps:

	Action	Time limit
Step 1	Inform the lawyer that you dispute the itemised costs account by serving a Notice Disputing Costs (Form 15) on the lawyer (Rule 19.23).	Within 28 days of receiving the itemised costs account
Step 2	Contact the lawyer to discuss options for resolving the dispute including submitting the dispute to a costs assessor (Rule 19.24).	
Step 3	If the dispute is not resolved, either you or the lawyer can ask the Court to rule on the dispute. This is done by filing the Notice Disputing Costs (Form 15) and the itemised costs account (Rule 19.24).	Not later than 42 days after the date you served the Notice Disputing the Bill of Costs on the lawyer
Step 4	<ul> <li>When the Notice Disputing Costs Account (Form 15) is filed the Court will fix a date for:</li> <li>a settlement conference;</li> <li>a preliminary assessment; or</li> <li>an assessment hearing (see Rule 19.26).</li> <li>When you receive the Notice containing the Court day from the Court you must, as soon as practicable, serve that document on the lawyer to advise them of the date.</li> </ul>	Date allocated before Registrar will be at least 21 days after the Notice Disputing Costs Account is filed
Step 5	<ul> <li>At a settlement conference the Registrar must:</li> <li>give the parties an opportunity to agree about the amount for which a costs assessment order should be issued; or</li> <li>identify the issues in dispute.</li> <li>If the dispute is not settled the Registrar will make procedural orders for the management of the costs dispute (Rule 19.28).</li> <li>Both parties must attend a settlement conference.</li> </ul>	Date fixed by the Court
Step 6	<ul> <li>PRELIMINARY ASSESSMENT ~ The parties do not attend.</li> <li>The Registrar calculates the amount (the preliminary assessment amount) for which, if the costs were to be assessed, the costs assessment order would be likely to be made.</li> <li>You and the lawyer are notified of the preliminary assessment amount. Either of you may object by lodging a written notice of objection and paying into the Court 5 per cent of the total amount objected to within 21 days after receiving notice of the preliminary assessment (see rule 19. 30).</li> <li>The costs dispute will then be listed for an assessment hearing.</li> <li>If neither party objects to the preliminary assessment amount, the Registrar will make a cost assessment order for the amount of the preliminary assessment amount.</li> <li>Note: There can be significant costs consequences for a party who objects to a preliminary assessment amount and, for example does not succeed in</li> </ul>	Date fixed by the Court
	changing the assessment by at least 20 per cent in that party's favour (see rule 19.30).	CONTINUED PAGE

3

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	Action	Time limit
Step 7	<ul> <li>ASSESSMENT HEARING</li> <li>If a costs dispute is listed for an assessment hearing both parties must attend the hearing with the Registrar who will:</li> <li>examine the itemised costs account;</li> <li>determine how much is properly payable;</li> <li>make a costs assessment order specifying the amount to be paid; and</li> </ul>	Date fixed by court
	<ul> <li>decide who will pay the costs of the dispute procedure, and how much will be paid. (This amount will be included in the costs assessment order.)</li> <li>make a costs assessment order.</li> <li>The lawyer may amend the itemised costs account up to 14 days before the assessment hearing starts and after that with your consent or the permission of the Court. You must be advised of any amendment (see rule 19.25).</li> <li>Depending on the outcome of the assessment hearing the Registrar will decide which party is to receive any money paid into Court at Step 6.</li> </ul>	

## Part 4 General Information

## Recovery of costs by a lawyer

- While an account is undergoing the dispute process the lawyer may not sue for those costs (Rule 19.13).
- The amount specified in a cost assessment order is immediately due and payable, and can be sued for in a court and attracts interest.
- If
  - (1) you have received an itemised costs account and a copy of this Costs Notice brochure; and
  - (2) you do not serve a Notice Disputing Costs (Form 15) and do not pay the account;

the lawyer may apply to the Court for a costs assessment order to be issued, and may proceed to sue you to recover the amount charged.

## **Time limits**

In special circumstances, time limits may be extended by making an application to the Court. You can obtain the documents you need to make this application by contacting a registry of the Court.

## **Further information**

If you want more information about the procedure for disputing lawyers costs you may telephone any registry of the Family Court. Contact numbers are on the back of this brochure. If you want more information on your legal rights or obligations or you wish to obtain independent legal advice, you need to contact a lawyer. If you have any difficulty obtaining independent legal advice, you might get assistance from a law society, a legal aid office or a community legal centre. Contact numbers for some of these can be found on the back of this brochure.

## SCHEDULE 3 Itemised scale of costs

(RULE 19.18) NOTE ~ THE AMOUNTS IN THIS SCHEDULE ARE INCLUSIVE OF GST.

Part 1 Fees for lawyer's work done

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ITEM	MATTER FOR WHICH CHARGE IS MADE	CHARGE
101	Drafting documents (other than letters)	\$15.55 per 100 words
102	Producing documents in printed form (other than letters)	\$5.35 per 100 words
103	Drafting and producing letters (including fax or e-mail transmissions)	\$17.85 per 100 words
104	Reading documents	\$7.25 per 100 words
105	Scanning of documents (where reading is not necessary)	\$2.90 per 100 words
106	For a document or letter mentioned in item 101, 102, 103, 104, or 105 containing more than 3000 words	The amount allowed by the Registrar
107	Photocopy or other reproduction of a document	50 cents per page
108	Time reasonably spent by a lawyer on work requiring the skill of a lawyer (except work to which any other item in this Part applies)	\$182 per hour
09	Time reasonably spent by a lawyer, or by a clerk of a lawyer, on work (except work to which any other item in this Part applies)	\$118 per hour
Part 2	Fees for counsel's work done	
ITEM	MATTER FOR WHICH CHARGE IS MADE	CHARGE
201	Chamber work (including preparing or settling any necessary document, opinion, advice or evidence, and any reading fee (if allowed))	\$209–\$298 per hour
202	Conferences (including Court appointed conferences), if necessary	\$209–\$298 per hour
203	Short attendances (for example, procedural hearings, interim or procedural hearings, summary hearings taking less than 3 hours)	\$187–\$876

203	procedural hearings, summary hearings taking less than 3 hours)	\$107-\$070
204	Short defended hearings (taking at least 3 hours but not more than 1 day)	\$639–\$1,477
205	Other defended hearings	\$1,477–\$2,171 per day
206	Reserved judgment	\$209–\$298 per hour

#### Part 3 Basic composite amount for undefended divorce

ITEM	MATTER FOR WHICH CHARGE IS MADE	CHARGE
301	If the lawyer employed another lawyer to attend at court for the applicant and there is a child of the marriage under 18 years old	\$793
302	If the lawyer employed another lawyer to attend at court for the applicant and there is no child of the marriage under 18 years old	\$590
303	If the lawyer did not employ another lawyer to attend at court for the applicant and there is a child of the marriage under 18 years old	\$744
304	If the lawyer did not employ another lawyer to attend at court for the applicant and there is no child of the marriage under 18 years old	\$557
305	If the lawyer did not attend at court for the hearing pursuant to s 98A of the Act.	\$479

## Part 4 Basic composite amount for application for Enforcement Warrant

ITEM	MATTER FOR WHICH CHARGE IS MADE	CHARGE
401	An Enforcement Warrant under Rule 20.16	\$479
402	A Third Party Debt Notice under Rule 20.32	\$479

## About the words in this brochure

**Costs** - an amount paid or to be paid for work done by a lawyer and includes expenses.

**Cost assessment order** – order made by a Registrar as to the total amount of costs to be paid pursuant to Rule 19.31, 19.32(3) or 19.37.

**Costs notice** – this brochure. Approved by the Principal Registrar of the Court, it sets out the rights and responsibilities of clients and lawyers under Chapter 19 of the Family Law Rules.

**Itemised costs account** – for the requirements of an itemised costs account see Rule 19.22.

**Registrar** – a lawyer employed by the Court.

"The Rules" means the Family Law Rules.

"The Act" means the Family Law Act.

The Rules and the Act and the forms and brochures referred to in this brochure are available on the Family Court website at www.familycourt.wa.gov.au. The forms and brochures may also be obtained from any registry of the Family Court.

## CONTACT DETAILS

#### Registries

ALBURY 102) 6021 8944

ALICE SPRINGS (08) 8952 8222

ADELAIDE (08) 8205 2666

BRISBANE (07) 3248 2200

CAIRNS
(07) 4041 2377

CANBERRA (02) 6267 0511

COFFS HARBOUR Contact the Brisbane Registry (07) 3248 2200

DANDENONG
(03) 9767 6200

DARWIN (08) 8981 1488

DUBBO (02) 6841 5000

HOBART (03) 6232 1725

LISMORE (02) 6621 8977

MELBOURNE (03) 8600 3777

NEWCASTLE
(02) 4926 1255

PARRAMATTA (02) 9893 5555

ROCKHAMPTON (07) 4921 2939

SYDNEY (02) 9217 7111

TOWNSVILLE (07) 4722 9333

WOLLONGONG (02) 4226 8200

WESTERN AUSTRALIA Family Court of Western Australia (08) 9224 8222

#### Community advisory services LEGAL AID OFFICES AND

**COMMISSIONS** Adelaide

(08) 8463 3555

Alice Springs (08) 8951 5377

Brisbane 1300 651188

Burnie (03) 6434 6444

Canberra (02) 6243 3411

Darwin (08) 8999 3000 Hobart

**(**03) 6233 8383

Launceston
(03) 6336 2050

Melbourne
(03) 9269 0234

Perth
1300 650 579

Sydney (02) 9219 5000

#### **COMMUNITY LEGAL CENTRES**

ACT WOMEN'S LEGAL SERVICE (02) 6257 4499 OR toll free: 1800 634 669

 NSW
 Redfern

 ☎
 (02)
 9698
 7277

 Kingsford
 ☎
 (02)
 9398
 6366

 Marrickville
 ☎
 (02)
 9559
 2899

QLD Caxton ☎ (07) 3254 1811 WOMEN'S LEGAL SERVICE ☎ (07) 3392 0670

 TAS
 Hobart

 ☎ (03) 6223 2500
 Launceston

 ☎ (03) 6334 1577
 ☎

VIC Western Suburbs (03) 9391 2244 EASTERN COMMUNITY LEGAL CENTRE (03) 9877 5777

 WA
 Gosnells

 ☎
 (08) 9398 1455

 Northern Suburbs
 ☎

 ☎
 (08) 9440 1663

 Sussex Street
 ☎

 ☎
 (08) 9470 2676

#### LAW SOCIETIES

 ACT

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Approved by the Principal Registrar in accordance with the Family Law Rules on 17/12/04