



Costs Notice

FAMILY COURT OF WESTERN AUSTRALIA

This brochure will tell you

This brochure provides information about the costs lawyers may charge for work done in Family Court cases, as set out in Chapter 19 of the *Family Law Rules 2004*.

This brochure includes information about:

- lawyer and client costs – rights, duties and responsibilities
- party and party costs – what a lawyer may charge
- disputing an account – the process, and
- general information.

Lawyer and client costs

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

A lawyer must provide this Costs Notice brochure to a person when:

- receiving instructions to act
- making a costs agreement, and
- sending an account to a client if the lawyer has not already done so. If the lawyer has already provided the client with a Costs Notice, the account must also include a note referring to the Costs Notice.

When you first instruct a lawyer to act in your case, they must advise you in writing of:

- 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)
- if an offer to settle is made during a property case, advise you of the:
 - (a) actual costs you have paid and costs you still owe up to that stage, and
 - (b) estimated future costs to complete the caseso that you can estimate (where appropriate) the amount you will receive, or pay (taking into account these costs), if the case is settled in accordance with the offer to settle.

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 page 5 of this Costs Notice*, or
- an amount calculated in accordance with a written and signed costs agreement between you and the lawyer that complies with the Rules concerning costs agreements. (See Part 19.4 of the Family Law Rules).

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

Party and party costs

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

The costs that a lawyer may charge must be calculated in accordance with the Scale of Costs (Schedule 3 of the Family Law Rules), published on page 5 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 Family Law Rules.

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

** Scale of Costs (Schedule 3 of the Family Law Rules) current as at 1 July 2006.*

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 under 'Disputing an itemised costs account'.

Disputing an itemised costs account

Many lawyers present an account that summarises the work done and claims a lump sum for costs. It is your right to receive from your lawyer, 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 states only a summary of work done and 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 then serve the itemised account within 28 days of receiving your request.

You have the right to dispute any part of a lawyer's itemised costs account. There are strict time limits for taking action to dispute a lawyer's account. 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 the family court registry. You should seek legal advice about the time limits.

Step	Action	Time limit
Step 1	Inform the lawyer that you dispute the itemised costs account by serving a Notice Disputing Itemised Costs Account (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 Itemised Costs Account (Form 15) and the itemised costs account with the Court. (Rule 19.24)	Not later than 42 days after the date you served the Notice Disputing Itemised Costs Account (Form 15) on the lawyer.
Step 4	<p>When the Notice Disputing Itemised Costs Account (Form 15) is filed, the Court will fix a date for:</p> <ul style="list-style-type: none"> ■ a settlement conference ■ a preliminary assessment, or ■ an assessment hearing (see Rule 19.26). <p>You will receive a Notice from the Court with the Court date. You must, as soon as practicable, serve that document on the lawyer to advise them of the date.</p>	Date allocated will be at least 21 days after the Notice Disputing Itemised Costs Account (Form 15) is filed with the Court.
Step 5	<p>SETTLEMENT CONFERENCE Both parties must attend. The registrar will:</p> <ul style="list-style-type: none"> ■ give the parties an opportunity to agree about the amount for which a costs assessment order should be issued, or ■ identify the issues in dispute. <p>If the dispute is not settled the registrar will make procedural orders for the management of the costs dispute (Rule 19.28).</p>	Date fixed by the Court
Step 6	<p>PRELIMINARY ASSESSMENT The parties do not attend.</p> <ul style="list-style-type: none"> ■ The registrar will calculate the preliminary assessment amount for which, if the costs were to be assessed, the costs assessment order would be likely to be made 	Date fixed by the Court

	<ul style="list-style-type: none"> ■ You and the lawyer are notified of the preliminary assessment amount ■ Either of you may object to the preliminary assessment amount by filing a written notice of objection and paying into the Court five per cent of the total amount claimed in the itemised cost account within 21 days after receiving notice of the preliminary assessment (see rule 19.30). The costs dispute will then be listed for an assessment hearing ■ If neither party objects to the preliminary assessment amount, the registrar will make a cost assessment order for the preliminary assessment amount. <p>Note: There can be significant costs consequences for a party who objects to a preliminary assessment amount and, for example, does not succeed in changing the assessment by at least 20 per cent in that party's favour (see rule 19.30).</p>	
Step 7	<p>ASSESSMENT HEARING Both parties must attend. The registrar will:</p> <ul style="list-style-type: none"> ■ examine the itemised costs account ■ determine how much is properly payable, and ■ 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. ■ make a costs assessment order. <p>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).</p> <p>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.</p>	Date fixed by court

Schedule 3 – Itemised scale of costs (Rule 19.18)

Current as at 1 July 2006. The amounts in this schedule include GST.

Part 1 Fees for lawyer's work done

ITEM	MATTER FOR WHICH CHARGE IS MADE	CHARGE
101	Drafting documents (other than letters)	\$16.50 per 100 words
102	Producing documents in printed form (other than letters)	\$5.65 per 100 words
103	Drafting and producing letters (including fax or email transmissions)	\$18.90 per 100 words
104	Reading documents	\$7.70 per 100 words
105	Scanning of documents (where reading is not necessary)	\$3.05 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)	\$192.90 per hour
109	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)	\$125.10 per hour

Part 2 Fees for counsel's work done

ITEM	MATTER FOR WHICH CHARGE IS MADE	CHARGE Senior counsel	CHARGE Junior counsel
201	Chamber work (including preparing or settling any necessary document, opinion, advice or evidence, and any reading fee, if allowed)	\$371-\$636 per hour	\$221.55-\$315.90 per hour
202	Conferences (including court appointed conferences), if necessary	\$371-\$636 per hour	\$221.55-\$315.90 per hour
203	Short attendances (for example, procedural hearings, summary hearings taking less than three hours)	\$371-\$2650	\$198.20-\$928.55
204	A hearing or trial taking at least three hours but not more than one day	\$689-\$5300	\$677.35-\$1565.60
205	Other hearings or trials	\$1 749-\$5300 per day	\$1565.60-\$2 301.25 per day
206	Reserved judgment	\$371-\$636 per hour	\$221.55-\$315.90 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	\$840.60
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	\$625.40
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	\$788.65
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	\$590.40
305	If the lawyer did not attend at court for the hearing under section 98A of the Act	\$507.75

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	\$507.75
402	A Third Party Debt Notice under rule 20.32	\$507.75

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 costs 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 Itemised Costs Account (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.

Further information

For more information, including access to the *Family Law Act 1975*, *Family Court Act 1997*, the Rules of the Court and any of the forms or publications listed in this brochure:

- go to www.familycourt.wa.gov.au
- call **08 9224 8222** or **1800 199 228**, or
- visit the Family Court of Western Australia registry.

Legal Advice

If you want more information about your legal rights or obligations, or you wish to obtain independent legal advice, you need to contact a lawyer.

You can get legal advice from a:

- legal aid office
- community legal centre, or
- private law firm.

BRCOST. 231106 V1 DISTRIBUTED IN ACCORDANCE WITH CHAPTER 19 OF THE FAMILY LAW RULES 2004 APPROVED BY THE PRINCIPAL REGISTRAR IN ACCORDANCE WITH THE FAMILY LAW RULES ON 01/07/06

The Family Court respect your right to privacy and the security of your information.

This brochure provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Family Court cannot provide legal advice.