



FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

FACT SHEET

Legal costs in family law matters

This fact sheet answers frequently asked questions about legal costs in family law matters in the Federal Circuit and Family Court of Australia (**the Court**).

Usually, parties who are involved in family law proceedings pay their own legal costs. However, there are exceptions to this. The Court may order one party to pay the legal costs of another.

How does the Court make a costs order?

The rules about costs are set out in Part 12 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (**Family Law Rules**).

Unless the Court otherwise orders, the amounts payable for a costs order are set out in Schedule 3 of the Family Law Rules. The Court may depart from this scale. Sometimes, the Court may order that a specific amount of costs be paid, or may apply another method for determining the amount of costs.

Where costs are ordered according to the scale, this is known as party-party costs. In exceptional circumstances, the Court may depart from the scale and order that another party pay all of a party's costs reasonably and properly incurred. This is called indemnity costs.

Costs in contravention proceedings

Division 13A of the *Family Law Act 1975* sets out how costs are awarded in contravention proceedings that affect children.

If the Court decides that a 'more serious' breach of an order has occurred, it must order costs against the person breaching the order, unless it would not be in the child's best interests. If the Court dismisses a contravention application, or finds that no action is required, and such a finding has been made previously, it must consider ordering costs against the person who filed the contravention application.

Taxation of costs

Where costs have been ordered to be paid in accordance with scale, the party who is entitled to the costs being paid must serve an Itemised Costs Account on the party liable to pay the costs. If there is no dispute, the party liable then pays the amount as ordered.

If the party liable to pay costs disputes the Itemised Costs Account, they may file a *Notice Disputing Itemised Costs Account*. The parties must then make a reasonable and genuine attempt to resolve the dispute over costs.

If the parties can't resolve their dispute, either party may file the Itemised Costs Account and the *Notice Disputing Itemised Costs Account* with the Court. The Court will then fix the first court date for the costs dispute.

The first court date could be a settlement conference, where the parties are given an opportunity to resolve the matter; a preliminary assessment, where a registrar of the Court will give a preliminary assessment of the amount of costs to be paid; or an assessment hearing. If the parties are unable to resolve the matter at the settlement conference or preliminary assessment, the dispute will proceed to an assessment hearing.

At the assessment hearing, a judicial registrar of the Court will determine the amount payable pursuant to the costs order, and also for the costs of the assessment. At the end of the hearing, the Judicial Registrar must make a costs assessment order and give a copy to each party. At an assessment hearing, the Judicial Registrar may do a range of things including hear from witnesses, receive affidavits, and order a document be produced.

This process is known as taxation of costs.

What are indemnity costs?

Where the conduct of a party warrants it (and only in exceptional circumstances), the Court can award all costs that a party reasonably and properly incurred. These costs are known as indemnity costs.

How do I apply for costs?

You can file an application with the Court seeking a costs order. In some situations you can make an oral application for costs on the day of your court hearing. For more information about applying for a costs order speak to court staff or obtain advice from a lawyer.

How can I dispute the fees charged by my lawyer?

If you are not happy with the fees charged by your lawyer, you should first explain your concerns to your lawyer and attempt to resolve the dispute.

The Court is not responsible for overseeing private fee arrangements between a lawyer and client. These are known as solicitor-client costs.

If you wish to dispute the fees charged by your lawyer, you need to contact the law society or institute in your state or territory.

Schedule 3: Scale of costs in family law and child support matters

Part 1 – Costs allowable for lawyer’s work done and services performed

Costs – lawyer’s work		
Item	Matter for which charge may be made	Amount (including GST)
101	Drafting a document (other than a letter)	\$22.09 per 100 words
102	Producing a document (other than a letter) in printed form	\$7.53 per 100 words
103	Drafting and producing a letter (including a fax or an email)	\$25.36 per 100 words
104	Reading a document	\$10.33 per 100 words
105	Scanning a document (if reading is not necessary)	\$4.05 per 100 words
106	For a document or letter referred to in item 101, 102, 103, 104 or 105 containing more than 3,000 words	The amount allowed by the Registrar
107	Photocopy or other reproduction of a document	86 cents per page
108	Time reasonably spent by a lawyer on work requiring the skill of a lawyer (other than work to which any other item in this Part applies)	\$259.22 per hour
109	Time reasonably spent by a lawyer, or by a clerk of a lawyer, on work (other than work to which any other item in this Part applies)	\$168.05 per hour

Note: See rule 12.23 in relation to item 104.

Part 2 – Costs allowable for counsel’s work done and services performed

Costs—counsel’s work			
Item	Matter for which charge may be made	Amount (including GST)	Amount (including GST)
		Senior counsel	Junior counsel
201	Chamber work (including preparing or settling any necessary document, opinion, advice or evidence, and any reading fee (if allowed))	\$498.54–\$854.67 per hour	\$297.62–\$424.49 per hour
202	Attendance at a conference (including a court-appointed conference), if necessary	\$498.54–\$854.67 per hour	\$297.62–\$424.49 per hour
203	Attendance of less than 3 hours (for example, a procedural hearing or a summary hearing)	\$498.54–\$3,560.98	\$266.27–\$1,247.74
204	A hearing or trial taking at least 3 hours but not more than 1 day	\$925.85–\$7,122.64	\$882.79–\$2,040.64
205	Other hearings or trials	\$2,350.35–\$7,122.64 per day	\$2,103.90–\$3,092.44 per day
206	Reserved judgment	\$498.54–\$854.67 per hour	\$297.62–\$424.49 per hour

Part 3 – Basic composite amount for undefended divorce

Costs—undefended divorce		
Item	Matter for which charge may be made	Amount (including GST)
301	If the lawyer employed another lawyer to attend at court for the applicant and there is a child of the marriage under 18	\$1,094.88
302	If the lawyer employed another lawyer to attend at court for the applicant and there is no child of the marriage under 18	\$814.59
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	\$1,027.92
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	\$769.16
305	If the lawyer did not attend at court for the hearing under section 98A of the Act	\$661.79

Part 4 – Basic composite amount for request for Enforcement Warrant or Third Party Debt Notice

Costs—Enforcement Warrant or Third Party Debt Notice		
Item	Matter for which charge may be made	Amount (including GST)
401	An Enforcement Warrant under rule 11.16	\$661.79
402	A Third Party Debt Notice under rule 11.34	\$661.79

This fact sheet 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.