

FEDERAL COURT - COSTS PROCEDURES

"Costs as between party and party" means only the costs that have been fairly and reasonably incurred by the party in the conduct of the litigation." (Dictionary: Schedule 1).

Taxation of Costs/Assessment procedure

The procedure for taxation of costs in the Federal Court is detailed in Division 40.2 of the *Federal Court Rules*. It is:

1. An itemised Bill of Costs ["bill"] is prepared - Form 127.
2. The bill is filed in the Federal Court with legible copies of receipts or accounts (if they are unpaid) for disbursements (Rule 40.18 (b)). The additions must be certified as correct - Form 127. From 1 July 2023 a filing fee of \$525.00 is payable in the Federal Court. (If the bill is filed in the Federal Circuit Court a filing fee of \$305.00 is payable.)
3. The Registrar will endorse on the cover page of the bill, the date on which the estimate is to be made (see note on Rule 40.18).
4. Service of the bill and receipts or accounts for disbursements must be effected on the other party at least 7 days before the date endorsed (Rule 40.19).
5. In the absence of the parties and without making a determination on individual items, the Taxing Officer estimates the approximate total for which the Certificate of Taxation would be likely to issue if the bill were to be taxed (Rules 40.20(1) and 40.20(2)). There is no provision in the Rules for objections to be raised prior to the estimate.
6. The Registrar notifies the parties of the estimate made; the estimate is uploaded onto the Court portal. (Rule 40.20(3)).
7. If there is no objection then the amount of the estimate is the amount for which the Certificate of Taxation will be issued (Rule 40.20(4)). The Certificate is an order of the court (Rule 40.32).

Certificate of Taxation:

8. The Taxing Officer will issue a Certificate of Taxation in accordance with Form 132 (Rule 40.27(6)). The Certificate of Taxation must be served by the party who filed the bill, on the paying party, within 14 days of the date of issue (Rule 40.32(1)). It has the force and effect of an order of the Court (Rule 40.32(2)).
9. Costs certified in the certificate of taxation accrue interest as calculated in rule 39.06 from the date the Certificate of taxation is served (Rule 40.32(3)).

In most instances only points 1 - 9 above will apply.

Costs Warning

10. If a party elects to object to the estimate it is important to understand that the party filing the Notice of Objection is likely to bear the costs of taxation of the parties from the date of filing the Notice of Objection to the estimate unless, on taxation, a variation of at least 15% of the estimate of taxed costs is obtained in that party's favour (Rule 40.33(1)). An order for payment of these costs is discretionary and is made with regard to the conduct of the parties (Rule 40.33(2)).
11. A party who has offered to compromise the costs on terms more favourable than the amount at which the costs were taxed can apply to be relieved of the consequences of Rule 40.33(1).

Objection:

12. A Notice of Objection to the estimate must be filed (e-filing is available) **within 21 days** of the date of the letter with the estimate. This is a formal document only and does not contain details of the objection. A fee of \$2,000 is payable as security for the costs of the taxation into the Litigant's Fund (Rule 40.21 (1)(b)).
13. On receipt of the Notice of Objection to the estimate and fee, the Registrar may direct the parties (Rule 40.21 (2)) to:
- attend a confidential conference (see Rule 40.22);
 - a provisional taxation (Rule 40.23) where the taxing officer will mark the items taxed off and provide a copy of the marked bill to each party; or
 - that the taxation of the bill proceed (Rule 40.24).
14. It is usual practice for a confidential conference to be ordered. If the costs are settled at a confidential conference, a sealed certificate of taxation will be issued (Rule 40.22(a)) and the security fee will be paid out (Rule 40.22(b)) in accordance with Consent Orders.
15. If the confidential conference does not result in the costs being settled, then a full taxation is ordered and the parties will be informed of the date for taxation. (Rule 40.24). A fee will be payable (depending on the quantum of the costs claimed it ranges from \$1,555.00 to \$6,835.00 - as of 1 July 2023).
16. A Notice of Objection must be prepared in accordance with Form 130 and the Objection will:
- Identify each item or part of an item to which objection is taken; and
 - State why the item or part of the item should be disallowed; and
 - The amount by which it is contended the item should be reduced; and
 - Any authority on which the party relies (Rule 40.25).
17. The Notice of Objection must be filed and served on the parties interested in the bill not later than 14 days before the date appointed for taxing the bill (Rule 40.25(2)).
18. A Response to the Notice of Objection is prepared in accordance with Form 131 and is to be filed and served within 5 days before the date appointed for taxing the bill (Rule 40.26).
19. On the appointed date the Taxing Officer will hear the taxation. The parties who may attend are:
- If no Rule 40.25 Objection has been filed, only the party filing the Bill can attend (Rule 40.27(1)); and
 - If a Rule 40.25 Notice has been filed,
 - o the party filing that notice can attend; and
 - o the party who filed the bill can attend if they have also filed a response to the Notice of Objection (Rule 40.27(2)).

Review by Court

20. A party may apply to the Court for a review of the taxation. An Application needs to be filed in accordance with Form 133 within 28 days after the issue of the Certificate of Taxation (Rule 40.34(4)). An application for review does not stay the execution of the Certificate of Taxation of costs. A party may apply for a stay (Rule 40.35).

Copyright is claimed in these guidelines. Apart from any use permitted under the Copyright Act 1968, no part may be reproduced by any process without prior permission from Costacomp Pty Ltd.