

GUIDELINES TO HIGH COURT OF AUSTRALIA COSTS PROCEDURES

Costs in the High Court of Australia are regulated with legal practitioners' fees set out in the High Court scale of costs - Schedule 2 to the *High Court Rules 2004*. This Schedule was substantially revised effective 1 January 2015. Higher fees are generally not allowed. (Rule 52.02 *High Court Rules*).

All Court fees, counsel's fees and other fees and payments, to the extent to which they have been properly and reasonably incurred and paid, shall be allowed (r 55.01).

It can be expected that the costs allowed on the scale in Schedule 2 are less than the costs charged by a law practice and the difference between law practice/client costs and party/party costs may be great.

The rules applying to assessment and taxation of costs in the High Court are found in Parts 53-58 of the *High Court Rules 2004*.

Taxation procedure

The standard procedure requires that:

1. An itemised Bill of Costs is prepared in Form 28 (r 54.02.1):
 - Professional charges to be entered in a separate column from disbursements (r 54.02.2)
 - At the end of the Bill there must be a summary showing the total of the costs claimed and the total of each column of the professional charges and disbursements. (r 54.02.3)
 - Proof of payment of all disbursements claimed (r 54.02.4)
 - The name and address of the solicitor by whom it is filed (r 54.02.5)

NB: No disbursement, whether a fee to counsel or otherwise, shall be allowed unless

- (a) it has been paid before the filing of the Bill of Costs; and
- (b) unconditional payment of the disbursements is proved to the satisfaction of the Taxing Office (r 56.09.3).

The exception to this is r 56.09.5 which states:

"Where a party is represented by counsel appearing without fee, and the party is unable to vouch payment of a fee to counsel, the Taxing Officer may, in cases where a fee would have been allowed to counsel, allow to the party such sum as counsel's fee for drawing or settling any document or for appearing as counsel as the Taxing Officer considers reasonable in the circumstances."

2. The Bill of Costs is filed at the High Court Registry. In accordance with r 1.07.01, unless the Registrar otherwise directs, the bill is lodged with the Court by being sent electronically using the Court's Digital Lodgment System Portal. (No filing fee is payable at this stage.)
 - A request may be endorsed on the Bill that a Taxing Officer, in the absence of the parties and without making any determination of any individual item in the Bill, estimates the approximate total for which the Certificate of Taxation would be likely to issue if the Bill of Costs were to be taxed. (r 57.01.1)
 - A certificate is endorsed on the Bill verifying the additions in it.
 - The person who sends the document must:
 - (a) keep a paper or electronic copy of the document; and
 - (b) if directed to do so by the Court, a Justice or the Registrar, produce a hard copy of the document. (r 1.07.03)
3. Service of the Bill and legible copies of accounts or receipts for disbursements must be effected on the other party not less than 7 days before the date endorsed. (r 57.01.2(a)).
4. An affidavit of service of the Bill must be filed before the matter can proceed (r 57.01.2(b)).

5. The Taxing Officer must not make the estimate requested until at least 14 days after the bill is filed (r 57.01.2(c)).
6. The Taxing Officer notifies each of the parties in writing of the estimate made. (r 57.01.3)
7. If there is no objection then there shall be no taxation of the Bill and a Certificate of Taxation shall be issued for the amount of the estimate. (r 57.01.4)
8. No notice of objection may be filed until after the estimate has been made. (r57.01.5)

In most instances only points 1 - 7 above will apply. Should the matter proceed further, see notes below on costs of taxation.

If a party elects to file a Notice of Objection:

9. If a party is dissatisfied with the estimate then within 14 days of the date of its issue, the party files and serves a Notice of Objection to the estimate made under r 57.01.1 thus requiring a taxation of the Bill. (r 57.01.4)
10. A fee is paid, into the High Court of Australia Suitors' Fund, as security for the costs of the taxation. At the conclusion of the taxation, and after the expiration of the time limited for the taking of steps for hearing and determination of any application for reconsideration of a taxation, and any review of the taxation, this fee is paid out as the Taxation Officer sees fit. (r 58.02.2)
11. Once a Notice of Objection is filed, the Taxing Officer will appoint a time and place for the taxation of the Bill. (r 57.01.6) The Taxing Officer may direct which parties are to attend the taxation. (r 53.05)
12. A party on whom a Bill of Costs is served may by notice object to any item in the Bill. (r 57.02.1)
 - A Notice of Objection requiring taxation will state each item to which the party objects, the grounds of objection and the amount which the party contends should be allowed for the item (r 57.02.2)
 - The Notice of Objection must be filed and served not less than 3 days before the time appointed for taxation on the party seeking taxation of the Bill (r 57.02.2)
13. A taxing fee is payable and is fixed by the Taxing Officer (r 58.01).
14. At the conclusion of each taxation of costs (r 57.04.1):
 - (a) the Taxing Officer shall state the total amount allowed on the taxation;
 - (b) the taxing fee shall be due and payable
15. The Taxing Officer shall not sign a Certificate of Taxation until at least 14 days after the conclusion of the taxation. (r 57.04.2). A Certificate of Taxation shall not be signed until the taxing fee has been paid. (r 57.04.4)

Further Review

- A Reconsideration of Taxation (r 57.03)
 - Application for reconsideration of an item(s) of a Bill of Costs by the Taxing Officer is made at any time before the Certificate is signed by the Taxing Officer by:
 - (a) Filing and delivering to the other party, a notice in writing specifying the item(s) to which the objection is made (r 57.03.2(a)); and
 - (b) applying to the Taxing Officer to reconsider the taxation. (r 57.03.2(b))

B Review of Taxation (r 57.05)

- If you object to the certificate of the Taxing Officer then you may, within 14 days from the date of the Certificate, apply to a Justice for an order to review the Taxation. (r 57.05.1)

Costs of Taxation

The Taxing Officer shall fix the costs of preparing and taxing a bill of costs. (r 58.01). However, the following additional rules apply:

r 58.02.1A

The party filing the Notice of Objection is likely to bear the costs of and incidental to the taxation of all parties unless, after taxation of the Bill, the amount on the Certificate of Taxation is adjusted by one-sixth or more of the estimate.

r 58.02.2

An amount paid into the High Court of Australia Suitors' Fund as security for the costs of the taxation shall be paid out, after the hearing and determination of any application for reconsideration of a taxation and any review of the taxation, or where no reconsideration or review is sought, after the expiration of the time limited for the taking of those steps as the Taxation Officer sees fit.

r 58.04

A paying party may be relieved of the consequences of rule 58.02.1A, if it makes an offer in writing (before the Taxing Officer certifies the total amount of the costs allowed on a taxation) to pay a stated amount for costs, and the amount certified by the Taxing Officer is less than the amount offered. In this situation:

- (a) no costs shall be allowed to the party entitled to the costs for any step in the taxation taken after the date on which the offer was made; and
- (b) the Taxing Officer may order the party entitled to the costs or the solicitor who prepared the bill to pay some or all of the costs of and incidental to the taxation which were incurred by the party liable to pay the costs

Fees payable

Filing of Bill of Costs to obtain an estimate	- Nil
Filing a Notice of Objection to the estimate of costs (requiring a taxation)	- \$1,250.00 (into the High Court of Australia Suitors' Fund, as security for the costs of the taxation) (r 57.01.5)
Taxing Fee	- \$20 for every \$100, or part of \$100

Enforcement

Once a Certificate of Taxation has issued it should be taken out in a court of competent jurisdiction; it is not a matter for the High Court of Australia (see s105 of the *Service and Execution of Process Act 1992*).

Delay

r 4.03.1 Where a year or more has elapsed since any party has taken any step in a proceeding, any party desiring the proceeding to continue shall give every other party not less than 1 month's notice in writing of the party's intention to proceed.

r 4.03.2 Where 3 years or more has elapsed since any party has taken any step in a proceeding, no step shall be taken in the proceeding without the leave of the Court or a Justice.