

COSTS DISPUTES - FAMILY LAW GUIDELINES

1. PARTY/PARTY COSTS DISPUTES

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 2021"**].

Unless the Court otherwise orders, the amounts payable for a costs order are set out in:

- in Division 1, the scale of costs in Schedule 3 to the *Family Law Rules 2021*; and
- in Division 2, the scale of costs in Schedule 1 to the *Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules 2021* or the scale of costs in Schedule 3 to the *Family Law Rules 2021*

Where costs are ordered according to the scale, this is known as party-party costs. The Court may depart from either scale; for example to order costs in a specific amount or for costs to be assessed on the indemnity basis.

The legal costs incurred in a proceeding must be fairly, reasonably and proportionately incurred and fair, reasonable and proportionate in amount, in the circumstances of the proceeding (r 12.08).

ASSESSMENT PROCESS

For a party/party costs order, the Itemised Costs Account must be served on the party liable to pay the costs **within 4 months after the end of the proceeding**. A Chapter 12 Costs Notice must also be served (r 12.34).

After an Itemised Costs Account is served on the party liable to pay then the procedure for recovery of costs is:

A. If the party liable to pay does not serve a Notice Disputing Costs (nor pay the account) then a party may apply to the Court for a Costs Assessment Order. (r 12.50); **OR**

B. If the party liable to pay disputes the costs then the following steps apply:

B.1 **Within 28 days** of receiving the itemised costs account the party liable to pay provides a Notice Disputing Itemised Costs Account (r 12.36). This Notice requires details of the grounds of dispute and the amount offered.

B.2 The parties must then make a reasonable and genuine attempt to resolve the dispute. (r 12.37(2)). There are costs consequences if this is not done.

B.3 If the dispute is not resolved then either party may file both the Notice Disputing Itemised Costs Account and the Itemised Costs Account. This must be done **not later than 42 days** after the date upon which the Notice Disputing Itemised Costs Account was served. (r 12.37(3))

B.4 A party may amend an Itemised Costs Account, by filing the amended document with amendments clearly marked, **up to 14 days** before the date fixed for an assessment hearing or after that with the other party's consent or the permission of the Court. (r 12.38).

B.5 The Court will then appoint a day and time for a settlement conference, preliminary assessment or assessment hearing. (r 12.39)

B.6 Notification of any court date must be provided by the disputing party to the party who served the Itemised Costs Account at least 14 days before the court date. (r 12.40)

B.7 A Settlement Conference provides an opportunity to define the issues in dispute and to negotiate a settlement and both parties must attend the Settlement Conference. If the

dispute is not settled the Registrar will make procedural orders for the future conduct of the costs dispute. (r 12.41)

B.8 At a Preliminary Assessment the Registrar, without the parties being present and generally in the absence of input from the parties, will calculate a likely amount for the costs assessment order. The parties will then be notified in writing of the preliminary assessment amount. (r 12.42)

B.9 If there is no objection to the preliminary assessment amount, the Registrar will make a costs assessment order in this amount. (r 12.44)

C. If a party elects to file objections to the Preliminary Assessment:

C.1 Either party may object to the preliminary assessment amount **within 21 days** after receiving notice of the preliminary assessment. Objection is made by lodging a written notice of objection and paying the Court 5% of the total amount objected to. (r 12.43)

NB: The party objecting may be ordered to pay the other party's costs of the assessment if that party does not succeed in improving the assessment by at least 20% in their favour. (r 12.43(3))

C.2 The costs dispute will then be listed for an assessment hearing (r 12.45). Both parties must attend the assessment hearing with the Registrar who will:

- Determine the amount (if any) to be deducted from each item included in the Notice Disputing Itemised Account;
- determine the total amount (if any) payable for the costs of the assessment;
- calculate the total amount payable for the costs allowed;
- deduct the total amount (if any) of costs paid or credited;
- calculate the total amount payable for costs.

C.3 Only issues in a Notice Disputing may be raised at hearing (r 12.45(2)). The onus of proof is on the party entitled to costs and all documents in support of the items claimed should be taken to Court (r 12.45(3)).

C.4 There may be costs consequences for delay or failure to comply with rules (r 12.49).

D. Further Review

D.1 **Within 14 days** after the costs assessment order is made, a party may apply to the Court to review the decision of the Registrar by filing an Application for Review supported by an Affidavit stating the item number(s), the reason(s) for objection and the decision(s) sought from the Court (r 12.52, 12.53).

2. LAW PRACTICE/CLIENT COSTS DISPUTES

A. Where instructions were given or a fresh application was made **on or after 1 July 2008 and before 30 June 2015**, in NSW these costs disputes are dealt with pursuant to the *Legal Profession Act 2004*. Please refer to *Guidelines – Legal Profession Act 2004*.

B. Where the client first instructed the Law Practice **on or after 1 July 2015** in NSW these costs disputes are dealt with pursuant to the *Legal Profession Uniform Law (NSW) No 16a*. See transitional provisions at Schedule 4 Clause 18. Please refer to *Guidelines – LPUL*.