



Chapter 19 Costs Notice

Party and party costs, for fresh cases
FAMILY COURT OF WESTERN AUSTRALIA

Is this brochure for me?

Use this brochure for information about legal costs to which Chapter 19 of the *Family Law Rules 2004* applies. It provides information about:

- party and party costs – what a person entitled to costs may recover; and
- disputing an account – the process

for “fresh applications” in the Family Court of Western Australia.

What is a “fresh application”?

Fresh applications are any of the following applications, including compliance with pre-action procedures associated with them, made after 30 June 2008:

- (a) an Application for Final Orders;
- (b) an application that includes an Application for Final Orders;
- (c) an Application in a Case filed in connection with a fresh application;
- (d) an Application for Divorce;
- (e) an Application for Consent Orders;
- (f) a contempt, contravention or enforcement application, unless an allegation of the contempt, contravention or breach relates to an interim or interlocutory order made in a pending or ongoing Application for Final Orders filed before 1 July 2008;
- (g) an application relating to contempt in the face of the court arising from an event occurring after 30 June 2008;
- (h) an appeal, and a re-hearing following an appeal; or
- (i) an application for review of final orders made by a Registrar.

What are 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 may be recovered are generally costs for the professional time of a lawyer or for work done in a lawyer’s office and the costs (referred to as disbursements) paid out for work done in association with a case eg. the costs of a process server. The costs that a lawyer may charge must be calculated in accordance with the Scale of Costs in Schedule 3 of the Family Law Rules 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.

You should read Schedule 3 of the Family Law Rules by visiting the legislation section of the Family Court of WA website www.familycourt.wa.gov.au.

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

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 person who is liable to pay the costs, an itemised account and a copy of this Costs Notice.

The process to dispute that account is the process detailed on the last page of this brochure ‘Disputing the itemised costs account – Step by Step’.

Disputing an itemised costs account

It is your right to receive from the party entitled to costs, 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 are entitled to make a request for it.

You have the right to dispute any part of the itemised costs account. There are strict time limits for taking action to dispute the itemised costs 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 Court's registry. The relevant time limits are set out on the next page.

Seek legal advice

You should get legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case. A lawyer can also help you reach an agreement with the other party without going to court.

You can get legal advice from a:

- Legal Aid Office;
- Community Legal Centre; or
- Private law firm.

Court staff can help you with questions about court forms and the court process, but cannot give you legal advice.

Personal safety

If you have any concerns about your safety while attending court, please call 08 9224 8222 before your court appointment or hearing. Options for your safety at court will be discussed and arrangements put in place. By law, people must inform a court if there is an existing or pending family violence order involving themselves or their children.

Who else can help?

- **Legal Aid WA**
www.legalaid.wa.gov.au
1300 650 579
- **Community Legal Centres Association of Western Australia**
www.communitylaw.net
08 9221 9322
- **Law Society of Western Australia**
www.lawsocietywa.asn.au
08 9322 7877
- **Aboriginal Legal Service of Western Australia Family Law Unit**
www.als.org.au
08 9265 6666 or 1800 019 900
- **Law Council of Australia – Family Law Section**
www.familylawsection.org.au
02 6246 3788

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. The Family Court respects your right to privacy and the security of your information.
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Disputing the Costs Account – Step by Step

Step	Action	Time limit
Step 1	Inform the party seeking payment of the costs that you dispute the itemised costs account by serving a Notice Disputing Itemised Costs Account on the lawyer (Rule 19.23).	Within 28 days of receiving the itemised costs account.
Step 2	Contact the party seeking payment of the costs 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 party seeking payment of the costs 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	When the Notice Disputing Itemised Costs Account (Form 15) is filed, the Court will fix a date for: <ul style="list-style-type: none"> ▪ a settlement conference ▪ a preliminary assessment, or ▪ an assessment hearing (see Rule 19.26). You will receive a Notice from the Court with the Court date. You must, as soon as practicable, serve that document on the party seeking payment of the costs to advise them of the date.	Date allocated will be at least 21 days after the Notice Disputing Itemised Costs Account is filed with the Court.
Step 5	SETTLEMENT CONFERENCE Both parties must attend or be represented by a lawyer. The registrar will: <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 items or issues in dispute. If the dispute is not settled the registrar will make procedural orders for the management of the costs dispute (Rule 19.28).	Date fixed by the Court.
Step 6	PRELIMINARY ASSESSMENT The parties do not attend. <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. ▪ All parties 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. Note: There can be significant costs consequences for a party who objects to a preliminary assessment amount and does not succeed in changing the assessment by at least 20 per cent in that party's favour (see rule 19.30).	Date fixed by the Court.
Step 7	ASSESSMENT HEARING Both parties must attend or be represented by a lawyer. The registrar will: <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. The party seeking payment of the costs 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). 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.	Date fixed by court