

## Legal costs in family law matters

This fact sheet answers frequently asked questions about legal costs in family law matters in the Federal Magistrates 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. These are known as party-party costs.

### How does the Court make a party-party costs order?

The rules about party-party costs are set out in *Part 21* of the *Federal Magistrates Court Rules 2001* (the Rules). The *Family Law Rules 2004* (applied in the Family Court) do not apply to family law matters in the Federal Magistrates Court unless ordered by a federal magistrate.

Unless the court otherwise orders, the amounts payable for a party-party costs order are set out in Schedule 1 of the Rules. The Court may depart from this scale. Sometimes, the Court may order that a specific amount of costs be paid, or may apply:

- the costs rules of the Family Court, or
- another method for determining the amount of 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

Taxation of costs in the Federal Magistrates Court is only possible when costs are fixed according to the Family Court scale of costs.

There is no provision for taxation of costs if they are fixed according to Schedule 1 of the Rules. Federal magistrates will determine disputes about the calculation of costs under Schedule 1.

### What are indemnity costs?

Where the conduct of a party warrants it, 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 registry 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 1: Party-party costs

(the amounts in this schedule are inclusive of GST)

| Work performed  | Family law amount |
|---|-------------------|
| <b>Stage 1</b> Initiating or opposing application up to completion of first court day   |                   |
| Lump sum  | \$1760            |
| Plus: Court attendance  | Daily hearing fee |
| <b>Stage 1A</b> Initiating or opposing application which includes interim orders (other than procedural orders) up to completion of first court day                               |                   |
| Lump sum  | \$2200            |
| Plus: Court attendance  | Daily hearing fee |
| <b>Stage 2</b> Interim or summary hearing – as a discrete event   |                   |
| (This stage applies to an interim application, or a summary proceeding of a type not otherwise addressed in this fee structure. It does not include the stage 1 or 1A component.) |                   |
| Lump sum  | \$1465            |
| Plus: Court attendance  | Daily hearing fee |
| <b>Stage 3</b> Up to and including conciliation conference  |                   |
| Lump sum  | \$1465            |
| <b>Stage 4</b> Dispute resolution litigation intervention   |                   |
| Lump sum  | \$1465            |
| <b>Stage 5</b> Preparation for final hearing  |                   |
| <b>For a 1 day matter:</b>  |                   |
| Lump sum  | \$3750            |
| <b>For a 2 day matter:</b>  |                   |
| Lump sum  | \$4650            |
| Preparation each additional hearing day   | \$995             |
| <b>Stage 6</b> Final hearing costs for solicitor  |                   |
| Attendance at hearing   | Daily hearing fee |
| To take judgement and explain orders  | \$240             |
| <b>ADDITIONAL EVENTS</b>  |                   |
| <b>Stage 7</b> Application for family law location, recovery or enforcement of an order   |                   |
| (This stage applies to an application where there is an existing court order.)  |                   |
| Lump sum  | \$745             |
| Court attendance  | Daily hearing fee |
| <b>Advocacy loading</b>   |                   |
| Increase relevant daily hearing fee   | 50%               |
| <b>Daily Hearing Fee</b>  |                   |
| Short mention   | \$240             |
| Half-day hearing  | \$880             |
| Full-day hearing  | \$1760            |
| <b>Disbursements</b>  |                   |
| Court fees and other fees and payments, to the extent that they have been reasonably incurred   |                   |
| Photocopying per page   | \$0.67            |
| <b>Agents fees/travelling costs</b>   |                   |
| Increase lump sum fee by  | \$495             |
| 2 hours travel is the benchmark. There is no entitlement to an increase in lump sum for under 2 hours travel time.  |                   |