



## LEGAL COSTS IN FAMILY LAW MATTERS

### WHAT IS THE COURT'S ROLE IN RELATION TO LEGAL COSTS?

In family law and child support proceedings parties normally bear their own legal costs. The Federal Magistrates Court may however order one party to pay legal costs to another. These are referred to as *party-party costs*. Costs may be awarded before a final hearing; for example if a party has not complied with a timetable and the other party brings the matter back to court for further directions.

*Indemnity costs* – the court can award all costs reasonably and properly incurred where the conduct of a party warrants such an order being made. These costs are most frequently awarded when a party has declined an offer of settlement and has been awarded a sum less than that offered.

The court is not responsible for overseeing private fee arrangements between a lawyer and client - refer to rule 21.09(3) of the *Federal Magistrates Court Rules 2001* (the FMC Rules). These are referred to 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.

### HOW DOES THE COURT MAKE A PARTY-PARTY COSTS ORDER?

The rules in relation to party-party costs are found in Part 21 of the FMC Rules.

Unless the court otherwise orders, the appropriate scale for a party-party costs order is the *event-based scale* in Schedule 1 of the FMC Rules.

The *Family Law Rules 2004* (applied in the Family Court) do not apply to family law matters in Federal Magistrates Court unless a federal magistrate makes a cost order which specifically adopts these rules. **Note** - Section 117 of the *Family Law Act 1975* applies to proceedings in the Federal Magistrates Court.

The court has a general discretion to depart from the fixed event-based scale. Sometimes the court may order that a specific amount of costs be paid. In these situations, the federal magistrate may assess the costs by using:

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

Taxation of costs in the Federal Magistrates Court is only possible when costs are fixed according to the Family Court scales. There is no provision for taxation of costs if they are fixed according to Schedule 1. Federal magistrates will determine disputes about the calculation of costs under Schedule 1.

### 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.

If you are unable to resolve the dispute directly with your lawyer, contact the law society or institute in your State or Territory. Each law society or institute has different procedures and timeframes in place for challenging the fees charged by your lawyer.

For a list of law societies and institutes in your State or Territory, visit the court's website at [www.fmc.gov.au/html/complaints.html](http://www.fmc.gov.au/html/complaints.html)

## SCHEDULE 1: PARTY-PARTY COSTS

(the amounts in this schedule are inclusive of GST)

<b>Work performed</b>	<b>Family law</b>
<b>Stage 1: Stage 1: Initiating or opposing application up to completion on 1<sup>st</sup> court day</b> Lump sum Plus court attendance	\$1500.00 Daily hearing fee
<b>Stage 1A: Initiating or opposing application which includes interim orders (other than procedural orders) up to completion of 1<sup>st</sup> court day</b> Lump sum Plus court attendance	\$1875.00 Daily hearing fee
<b>Stage 2: Interim or summary hearing – as a discrete event</b> (does not include Stage 1 or 1A component) Lump sum Plus court attendance	\$1250.00 Daily hearing fee
<b>Stage 3: Up to and including conciliation conference</b> Lump sum	\$1250.00
<b>Stage 4: PDR litigation intervention</b> Lump sum	\$1250.00
<b>Stage 5: Preparation for final hearing</b> <b>For a 1 day matter</b> Lump sum <b>For a 2 day matter</b> Lump sum <b>Preparation each additional hearing day</b>	\$3195.00 \$3965.00 \$850.00
<b>Stage 6: Final hearing costs for solicitor</b> Attendance at hearing To take judgement and explain orders	Daily hearing fee \$205.00
<b>Stage 7: Application for family law location, recovery or enforcement of an order</b> (this stage applies to an application where there is an existing court order) Lump sum Court attendance	\$635.00 Daily hearing fee
<b>Advocacy loading</b> Increase relevant daily hearing fee	50%
<b>Daily hearing fee</b> Short mention Half-day hearing Full-day hearing	\$205.00 \$750.00 \$1500.00
<b>Disbursements</b> Court fees and other fees and payments, to the extent that they have been reasonably incurred Photocopying per page	\$0.57
<b>Agents fees/travelling costs</b> Increase lump sum fee by 2 hours travel is the benchmark. There is no entitlement to an increase in lump sum for under 2 hours travel time.	\$420.00