



# Schedule 6 Cost Notice

## FAMILY COURT OF WESTERN AUSTRALIA

### Is this brochure for me?

Use this brochure for information about legal costs to which Schedule 6 of the *Family Law Rules* 2004 applies. It provides information about:

- lawyer and client costs – rights, duties and responsibilities
- party and party costs – what a person entitled to costs may recover, and
- disputing an account – the process

for those cases that are already before the Family Court of Western Australia as at 30 June 2008, that are and remain regulated by Schedule 6 of the Family Law Rules.

### Schedule 6 does not cover

**Party and party costs** for those new cases following 1 July 2008 - called “fresh applications”. Refer to Chapter 19 of the *Family Law Rules* 2004 and read the brochure “Chapter 19 Cost Notice”.

**Lawyer and client costs** for;

1. fresh applications;
2. a new lawyer/firm that begins acting in a matter after 30 June 2008; and
3. a new agreement entered into by an existing lawyer and client after 30 June 2008,

(Refer to the State or Territory legislation governing the legal profession in your State or Territory for the applicable requirements in these situations.)

Costs under the *Bankruptcy Act* 1966. (Refer to Rule 26.30 of the Family Law Rules.)

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; and
- (i) an application for review of final orders made by a Registrar.

### Lawyer and client costs under Schedule 6

#### Your rights as a client and your lawyer’s duty to disclose

When you first instructed your lawyer to act in your case, they should have advised you in writing of:

- the basis on which costs would be calculated;
- an estimate of the total costs of the case or if this was not practicable, a range of estimates;
- the circumstances under which the Court may make an order requiring you to pay the other party’s costs and how much these might total, and
- whether any other lawyer or an expert witness would be retained and, if so, the estimated costs involved.

You should also have received a Costs Notice similar to this one.

During a case, your lawyer must:

- keep you properly informed about costs (see clauses 6.03 and 6.04 in Schedule 6);
- if an offer to settle is made during a property case, advise you of the:
  - (a) actual costs you have paid and costs you still owe up to that stage, and
  - (b) estimated future costs to complete the case.

This is so that you can estimate (where appropriate) the amount you will receive, or pay (taking into account these costs), if the case is settled in accordance with the offer to settle.

## **What your lawyer can charge**

The maximum amount of costs that a lawyer may charge and recover from you for work done is:

- an amount calculated in accordance with a written and signed costs agreement between you and the lawyer that complies with the Rules concerning costs agreements. (See Part 6.4 of Schedule 6 of the Family Law Rules); or
- if you do not have a costs agreement with the lawyer - an amount calculated in accordance with the Scale of Costs in Schedule 3 of the Family Law Rules.

**NOTE:** If you have a written costs agreement, your rights may differ from those set out in this brochure. You should read your costs agreement and obtain independent legal advice.

## **Party and party costs under Schedule 6**

Party and party costs are the costs payable by one person to another person under the Family Law Rules or by Court order.

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 orders that costs are to be assessed on a special basis, or
- costs are an entitlement under the Family Law Rules.

You can 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](http://www.familycourt.wa.gov.au).

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

## **Your entitlement to an itemised account**

You are entitled to an itemised account, both of lawyers costs and or party/party costs.

A lawyer, or a party, entitled to payment of costs by you may present an account that summarises the work done and claims a lump sum for costs. If you are obliged to pay costs, whether to your own lawyer or to another person, it is your right to receive:

- an itemised costs account that:
  - lists each item and the cost payable by date, description and amount;
  - states any amount received or credited for the costs; and
- a copy of this notice.

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 must ask the lawyer or the person seeking the costs for an itemised costs account within 28 days of receiving the account. The lawyer or person seeking the costs must then serve the itemised costs account within 28 days of receiving your request.

You have the right to dispute any part of the itemised costs account. There are strict time limits for taking action to dispute an 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. You should seek legal advice about the time limits.

## **Lawyer and client costs - recovery of costs by a lawyer**

If:

- (a) you have received an itemised costs account and a copy of a Costs Notice brochure, and
- (b) you do not serve a Notice Disputing Itemised Costs Account (Form 15) and do not pay the account,

the lawyer may apply to the court for a Costs Assessment Order to be issued, and may proceed to sue you to recover the amount of the Costs Assessment Order (Clause 6.14 of Schedule 6).

You may obtain a copy of a Notice Disputing Itemised Costs Account (Form 15) from the Court's registry or by downloading a copy from the Family Court of WA website [www.familycourt.wa.gov.au](http://www.familycourt.wa.gov.au).

- While an account that has been disputed is undergoing the determination process described above, the lawyer may not sue for the costs set out in that account (see clause 6.14 of Schedule 6).
- Once the process determining the costs payable is complete, the amount specified in the Costs Assessment Order is immediately due and payable and the lawyer may sue you to recover the amount of the Costs Assessment Order.

## 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.**

## Need more information?

For more information about the Family Court of Western Australia, including access to the legislation, forms or publications listed in this brochure:

- go to [www.familycourt.wa.gov.au](http://www.familycourt.wa.gov.au);
- call 08 9224 8222 or 1800 199 228; or
- visit the Family Court of Western Australia registry.

## Who else can help?

- **Legal Aid WA**  
[www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au)  
1300 650 579
- **Community Legal Centres Association of Western Australia**  
[www.naclc.org.au](http://www.naclc.org.au)  
08 9221 9322
- **Law Society of Western Australia**  
[www.lawsocietywa.asn.au](http://www.lawsocietywa.asn.au)  
08 9322 7877
- **Aboriginal Legal Services of Western Australia Family Law Unit**  
[www.als.org.au](http://www.als.org.au)  
08 9265 6666 or 1800 019 900
- **Law Council of Australia – Family Law Section**  
[www.familylawsection.org.au](http://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 lawyer or the party seeking payment of the costs that you dispute the itemised costs account	Within 28 days of

	by serving a Notice Disputing Itemised Costs Account (Form 15) on the lawyer (Clause 6.24 of Schedule 6).	receiving the itemised costs account.
Step 2	Contact the lawyer or the party seeking payment of the costs to discuss options for resolving the dispute, including submitting the dispute to a costs assessor (Clause 6.25 of Schedule 6).	
Step 3	If the dispute is not resolved, either you, the lawyer 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. (Clause 6.25 of Schedule 6).	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"> <li>▪ a settlement conference</li> <li>▪ a preliminary assessment, or</li> <li>▪ an assessment hearing (Clause 6.27 of Schedule 6).</li> </ul> You will receive a Notice from the Court with the Court date. You must, as soon as practicable, serve that document on the lawyer or 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 (Form 15) is filed with the Court.
Step 5	<b>SETTLEMENT CONFERENCE Both parties must attend or be represented by a lawyer.</b> The registrar will: <ul style="list-style-type: none"> <li>▪ give the parties an opportunity to agree about the amount for which a costs assessment order should be issued, or</li> <li>▪ identify the items or issues in dispute.</li> </ul> If the dispute is not settled the registrar will make procedural orders for the management of the costs dispute (Clause 6.29 of Schedule 6).	Date fixed by the Court.
Step 6	<b>PRELIMINARY ASSESSMENT The parties do not attend.</b> <ul style="list-style-type: none"> <li>▪ 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.</li> <li>▪ You, the lawyer or the party seeking payment of the costs are notified of the preliminary assessment amount.</li> <li>▪ 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 Clause 6.31 of Schedule 6). The costs dispute will then be listed for an assessment hearing.</li> <li>▪ If neither party objects to the preliminary assessment amount, the registrar will make a cost assessment order for the preliminary assessment amount.</li> </ul> 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 Clause 6.31 of Schedule 6).	Date fixed by the Court.
Step 7	<b>ASSESSMENT HEARING Both parties must attend or be represented by a lawyer.</b> The registrar will: <ul style="list-style-type: none"> <li>▪ examine the itemised costs account;</li> <li>▪ determine how much is properly payable, and</li> <li>▪ 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.</li> <li>▪ make a costs assessment order.</li> </ul> The lawyer or 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 Clause 6.26 of Schedule 6). 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