



Disputing legal costs in family law matters

You may be able to dispute the legal costs that you have been charged in your family law matter.

Legal costs in family law matters are complex and you should get advice from a solicitor before commencing proceedings.

Your options will depend on:

- Whether your matter was heard in the Family Court or the Federal Magistrates Court,
- If your matter was heard in the Family Court, the date that your solicitor first made an application to the Family Court,
- If your matter was heard in the Family Court, whether a new application was made in the matter, and
- Whether the costs are the costs of your solicitor ('solicitor-client costs') or the costs of the other side's solicitor ('party-party costs').

Legal costs in family law matters generally

Generally, each side pays their own legal costs in family law matters. These costs are called 'solicitor-client costs'. However, the Court may order that one side pay the legal costs of the other side in some circumstances. These costs are called 'party-party costs'.

If your matter was heard in the Family Court and was commenced prior to 1 July 2008

If your matter was heard in the Family Court, and was commenced prior to 1 July 2008, you may be able to challenge both solicitor-client and party-party costs in the Family Court.

Your solicitor-client costs will be calculated according to any valid costs agreement that you

have entered into. If there is no valid costs agreement, the Family Law Rules set out the costs that your solicitor can charge for a range of items. Your solicitor should also have given you an estimate of the legal costs that you will have to pay at other events during the trial, such as when an offer to settle was made.

When you asked your solicitor to act for you, they should have given you estimates of how much you will have to pay your solicitor and the other side's solicitor in your family law matter.

To dispute solicitor-client costs or party-party costs, you should first ask the solicitor who says you owe them costs for an Itemised Costs Account. The solicitor must send you an Itemised Costs Account **within 28 days** of your request.

If you still dispute the costs after receiving the Itemised Costs Account, you can serve a Notice Disputing Itemised Costs Account on the solicitor who sent you the Itemised Costs Account. You must do this **within 28 days** of receiving the Account. This will stop the solicitor from enforcing the costs until the dispute is resolved.

Once you serve the Notice Disputing Itemised Costs Account, you and the solicitor must make a reasonable and genuine attempt to resolve the dispute.

If the parties are unable to resolve the dispute, either party may file with the Family Court the Itemised Costs Account and the Notice Disputing Itemised Costs Account **within 42 days** of receiving the Notice. The Court will then attempt to resolve the dispute.

The Court will consider any valid costs agreement

and whether the costs are proportionate, proper, necessary and reasonable.

Additional rules which may be relevant to your matter

If your matter was heard in the Family Court, and was commenced prior to 1 July 2008, and the costs you are disputing are **not** for either:

- a fresh application that was commenced after 30 June 2008, or
- a lawyer that you first retained after 30 June 2008, or
- a matter in which you made a written agreement, free from undue influence, with your solicitor that the Family Law Rules would not apply

then there are some extra rules that limit what your solicitor can charge you.

If you **are** disputing costs in one of the above circumstances, the costs that your solicitor has charged you are governed by the laws of your State or Territory. In New South Wales, the Office of the Legal Services Commissioner can accept complaints and attempt to resolve disputes about legal costs.

The extra rules include:

- When you ask your solicitor to act for you, they may make a costs agreement with you, which must include some information and must not include other clauses.
- In most cases, you cannot be charged for costs improperly, unreasonably or negligently incurred by the solicitor, and you cannot be charged for your solicitor's administrative costs.
- Your solicitor can only recover legal costs from you if they have given you a costs account and allowed you to follow the Itemised Costs Account process set out above.
- You can apply to the Court to set aside a costs agreement in some circumstances.

If your matter was heard in the Family Court and was commenced after 1 July 2008

If your matter was heard in the Family Court and was commenced after 1 July 2008, then the Family Court can only deal with disputes about party-party costs and costs disclosure.

The costs that your solicitor has charged you are governed by the laws of your State or Territory. In New South Wales, the Office of the Legal Services Commissioner can accept complaints and attempt to resolve disputes about legal costs.

Your solicitor should have disclosed some information about costs to you at certain court events. In particular, your solicitor should have told you your actual costs up to the date of an offer to settle in a property matter, and provided you with an estimate of your costs for the rest of the matter. Similarly, they should have given you information about your costs at conciliation conferences and at certain points during the trial.

As mentioned above, the Court can order that you pay the other party's legal costs. If this happens, the person to whom you must pay costs must give you an Itemised Costs Account **within 28 days** of the end of the case.

You can dispute an Itemised Costs Account by serving a Notice Disputing Itemised Costs Account on the other person **within 28 days** of receiving the Itemised Costs Account. Both sides must then make a reasonable and genuine attempt to resolve the dispute.

If the parties are unable to resolve the dispute, either party may file with the Family Court the Itemised Costs Account and the Notice Disputing Itemised Costs Account **within 42 days** of receiving the Notice. The Court will then attempt to resolve the dispute.

The Court will consider whether the costs are proportionate, proper, necessary and reasonable.

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If your matter was heard by the Federal Magistrates Court

If your matter was heard by the Federal Magistrates Court, the legal costs that your solicitor charges you are governed by the laws of your State or Territory. In New South Wales, the Office of the Legal Services Commissioner can accept complaints and attempt to resolve disputes about legal costs.

The Federal Magistrates Court can order one party to pay the legal costs of another party in a family law matter. There is a list of the amounts that a party can recover from another party for various work performed on a case. The Court can set the costs to be paid in a particular matter, instead of using the list.

The Office of the Legal Services Commissioner

The Office of the Legal Services Commissioner has further information on its website about costs disputes and making complaints about a solicitor. Their fact sheets can be found at http://www.lawlink.nsw.gov.au/lawlink/olsc/ll_olsc.nsf/pages/OLSC_factsheets

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