

What are the costs of taking your family law matter to Court?

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One of the most common questions people have when speaking with a family lawyer about their separation is “how much will this cost?”

Unfortunately, there is rarely a simple answer as all family law matters are different. The total costs will depend on a number of factors, including the types of issues, how many issues are in dispute, the level of conflict between the parties and the steps required to resolve the dispute.

Understanding the difference between your own legal fees and the disbursements you may incur can help you make informed decisions throughout your matter.

In this blog, we explore the costs that may be incurred if your matter is litigated and you are required to go through the Court process in the Federal Circuit and Family Court of Australia**.** If you are interested in the specific costs and disbursements you may incur in relation to your parenting matter or property matter, you can read our blogs on these topics.

This is intended to be a general guide only, and the estimates herein are subject to change.

Legal fees if your matter goes to Court

Your legal costs for your family law matter are the fees charged by your lawyer for the work undertaken on your matter on your behalf. Depending on the circumstances of your matter, this could include:

- providing legal advice;
- reviewing documents and correspondence;
- negotiating with the other party or their lawyer;
- preparing letters and legal documents;
- drafting applications, affidavits and supporting documents;
- attending mediations or family dispute resolution;
- appearing at Court; and
- briefing and working with a barrister.

The amount you spend will depend significantly on how your matter progresses. For example, a relatively straightforward family law matter resolved by consent of the parties through early negotiation will cost much less than a matter that proceeds through the Court system and is determined at a trial.

Court proceedings usually involve preparing and filing documents, attending several Court events and, if your matter does not settle, preparing for a final hearing. The more steps your matter goes through, the higher your legal fees are likely to be.

At Smith Family Law, we are transparent and upfront about how we charge, and provide our first appointment free of charge so that we can obtain an overview of your situation, the issues in dispute, and provide an estimate of costs.

What disbursements can I expect if my matter goes to Court?

Legal fees are not the only costs that might be incurred in your family law matter.

You will most likely also incur ‘disbursements’ – disbursements are expenses or costs that your lawyer attends to on your behalf during the course of your matter (generally they are paid from funds you have paid into the lawyer’s trust account on retainer). They are not ‘legal fees’ for work done, but third-party payments required to progress your matter.

It’s important that you understand what disbursements you are likely to incur and at what stage in your matter, as together with legal fees your costs can quickly increase. Knowing what to expect at each stage helps you plan ahead.

The most common types of disbursements you can incur if your family law matters proceeds to litigation include the following (noting this is not an exhaustive list, and should be read in conjunction with our other blogs about costs in parenting matters and property matters):

Court Fees/related Court costs

Filing Fees

Depending on how you resolve your matter, you may need to pay Court filing fees. The Court filing fees update yearly and are different depending on what kind of application is being filed. Currently, the filing fees range between $155 to $1,775.

For example, if you are filing an Application for Consent Orders, the fee is generally lower than if you are filing a contested application, or an 'Application for Final Orders'. If you are not sure what application is appropriate or likely in your matter, it is a good idea to seek legal advice so that you are aware of what fee/s you are likely to incur. For a summary of the latest changes, read our blog on Family Court filing fees.

Some reduced fees or exemptions may be available in certain circumstances, including for eligible concession card holders or people experiencing financial hardship. Currently, the reduced filing fees range between NIL to $550.

Subpoena conduct money

A subpoena is a legal document issued by the Court that compels a person to produce documents or give evidence. In parenting matters, this could be a subpoena to a child's school to obtain information about their attendance and progression, or a child's doctor to obtain evidence about their medical history. In property matters, this could be a subpoena to a bank to obtain financial statements.

If your matter is in Court and you want to issue a subpoena, there is a filing fee payable in relation to each and every subpoena issued (currently $70 per subpoena, unless an exemption is obtained).

The party subject to a subpoena to produce documents may also require what is known as 'conduct money'. This is money to meet the reasonable expenses the party will incur through complying with the subpoena; for example, the time it takes for them to identify, copy and collate the requested documents.

Conduct money for a subpoena for production will usually be at least $25 (but may be more). Fee exemptions/reductions for conduct money can only be obtained by consent of the subpoenaed party, and are not usual.

The party subject to a subpoena to give evidence may also require 'witness fees'. This is a fee payable to the witness who has to appear in Court. This is usually $75 for each day, or part of a day, that the witness is absent from their place of employment or residence, in order to meet the requirements of the subpoena (but the fee may be more). Fee exemptions/reductions for a subpoenaed party to give evidence can only be obtained by consent of the subpoenaed party, and is not usual.

Generally speaking, the party who issued the subpoena (that is, the party who is wanting the documents or evidence to be given to the Court) will be solely responsible for the relevant fees.

Process server fees

If your matter has proceeded to Court, and your former partner will not accept or acknowledge service of your Court application, you may be required to engage a process server to show the Court that you have attempted to notify them about the Court proceedings.

You may also be required to pay process server fees to serve a subpoena, depending on who the subpoenaed party is, and if they refuse to acknowledge the subpoena.

The costs for a process server vary, but are generally between $100 to $250 depending on the location of service (i.e. if the process server is required to travel very far, the cost will increase) and the amount of attempts (i.e. if your former partner is evading service the process server has to try multiple times to serve, the cost will increase).

Counsel fees

If your matter proceeds through Court, it may be necessary to ‘brief’ (engage) a barrister, often known as ‘Counsel’ to appear on your behalf at your Court events.

A “solicitor” or "lawyer", is a general term for any qualified legal professional, while a "barrister" is a specialised type of lawyer who focuses on arguing cases in a courtroom. In family law, both roles work together to handle your divorce, property division, or parenting cases, but they do very different jobs.

In Victoria, your barrister will generally charge a fixed daily fee for their appearance at your Court event/s. Junior Counsel can cost anywhere from around $2,200, while the most Senior Counsel (sometimes referred to as ‘Silks’ or ‘Kings Counsel’) could be up to hundreds of thousands of dollars per day. Your lawyer will be able to recommend a suitable barrister taking into consideration your budget and the complexity of the issues in your matter. Counsel will usually also charge an ‘hourly fee’ for providing advice, or reviewing documents outside of their daily fee.

You are solely responsible for meeting your barrister’s fee, and so it is important that you are aware of their anticipated costs for their work.

Dispute resolution and ‘setting down’ fees

As part of the Court process, parties will usually need to engage in dispute resolution to try and resolve their matter before the Court will allocate them a trial date.

For parenting matters, parties who are permitted to utilise the Court-funded dispute resolution service will not incur additional fees for the Judicial Registrar to conduct a family dispute resolution conference (mediation). The Court-funded dispute resolution service is usually reserved for families in significant financial hardship.

For property matters, parties who are permitted to utilise the Court-funded Conciliation Conference service will incur an additional ‘setting down’ fee for the Judicial Registrar to conduct the Conciliation Conference (mediation). Conciliation Conferences are usually reserved for families in significant financial hardship, but still requires a ‘setting down’ fee for the day, currently $550 for both parties.

If parties do not qualify for a Court-funded dispute resolution service or Conciliation Conference, they will be required to engage in a private mediation. Private mediations are usually conducted by Counsel (or some other similar mediator). Counsel’s fees vary

depending on the practitioner appointed, and generally start at around $3,300 for the day. Depending on the matters in dispute, parties may be able to mediate both parenting and property matters at a one (1) day mediation, but usually will be required to attend two (2) separate mediations if there are both parenting and property matters in dispute.

Parties will generally meet a mediator's fee equally, unless there are extenuating circumstances or a party is experiencing significant financial hardship.

If your matter does not resolve, it will progress to a Final Hearing, or 'trial'. The Applicant is required to pay a 'setting down' fee for each day of Final Hearing (which could be anywhere from 1 day to over a month, depending on the issues in dispute and complexity of your matter).

Currently, the 'setting down' fee is $820 per day. The Applicant is solely responsible for meeting this fee.

Single expert witness fees

If your matter does proceed to a trial, it may be necessary for the 'single expert witnesses' in your matter to be called to give evidence. A 'single expert witness' is someone who has been appointed as part of your proceedings to prepare a report or give evidence (so, in parenting matters, this could be your family report writer, your family therapist, your private supervisor, or your risk assessment practitioner. In property matters, this could be your property or business valuer).

The single expert witness will charge a fee for their attendance at your trial to give evidence. The cost will vary between each practitioner (they usually give an indication of their fees when you first engage them for the preparation of their reports).

Generally, the party who wants to call the single expert witness will be solely responsible for their fees. If both parties want to call the single expert witness, they will equally share in their costs to attend Court.

The cost of going to Court

Court can be costly. It is important that you obtain experienced family law legal advice prior to initiating or responding to proceedings to ensure that your matter is set up properly and your costs mitigated where possible.

Depending on what steps are required to resolve your family law matter, there are a number of disbursements that may be incurred in addition to your legal costs. It is important that you are aware of and kept up to date about what each stage of your matter will likely cost you, both in terms of your legal fees and any likely disbursements.

While it is not likely that you will incur each and every kind of disbursement, it is important that you have a clear understanding both of what you are likely to incur, but also an 'up to' estimate of what you could incur in a worst case scenario.

Speak to a family lawyer before you go to Court

If you have questions or concerns about what steps/disbursements may be required in your matter, it is important to obtain legal advice and a costs estimate from an experienced family lawyer. It is just as important to stay informed about what costs you are incurring throughout the progression of your matter, as changes/updates in your matter may affect your costs estimate.

Our family lawyers can explain the likely costs at each stage before you commit to Court proceedings. Smith Family Law offers a free first appointment, with offices in Melbourne, Sunshine and Williamstown. If you would like to explore ways to resolve your matter without Court, read about our out of court settlements and mediation service.

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This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.