

THE FAMILY LAW JOURNEY

From first steps to resolution

LANDER
& ROGERS

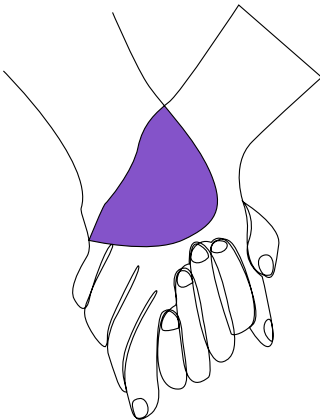


USING THIS GUIDE



Key terms

Further reading



THE FAMILY LAW JOURNEY

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Phase 1
First steps



Phase 2
Dispute resolution



Phase 3
Pre-action procedures



Phase 4
Preparation for court



Phase 5
Implementation



Ongoing
Disclosure



Financial
planning



From start to finish, this journey can take two years or longer.

PHASE ONE

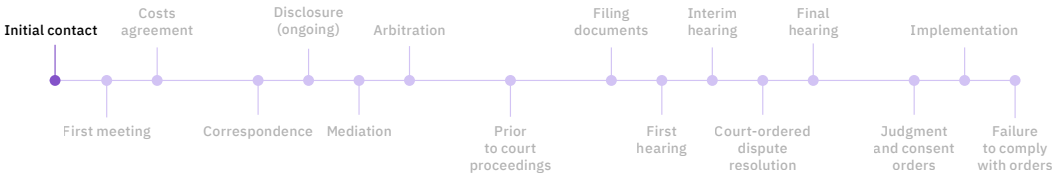
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FIRST STEPS

Initial contact

The first step of your family law journey with us is the information gathering stage. Before we meet with you, we may invite you to complete (via an online form) an intake form with relevant information. This allows you to:

- provide details of your circumstances in a quick, easy and secure way
- save on time and costs
- choose how much detail you'd like to provide.



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FIRST STEPS

First meeting

We offer a fixed fee for our initial consultation, which will be communicated to you in advance of the meeting. Most initial conferences last approximately one hour.

This meeting is your opportunity to:

- ask specific questions so that we can better understand your legal issues and how we can assist you
- receive advice about your rights, responsibilities and entitlements and agree on next steps.

You will learn about the following family law principles, should they be relevant to your circumstances:

Financial matters

- Whether a property settlement with your former partner is necessary
- How your assets and liabilities will be identified and valued
- How the contributions of each party are assessed
- How your future financial needs may affect your entitlement to a property settlement
- Whether any proposed settlement is likely to be accepted as just and equitable.

Parenting matters

The factors considered by the court when making orders relating to children include the following.

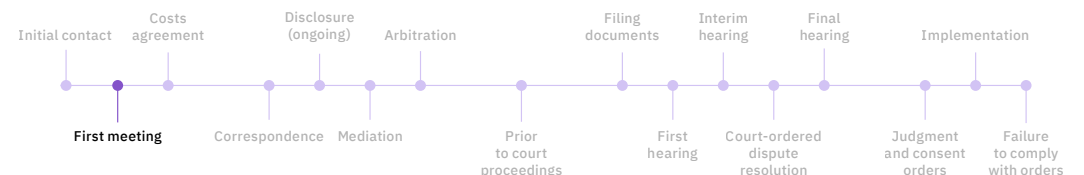
- The “primary considerations” of the court, including the benefit to your child in having a meaningful relationship with each of their parents and the need to protect them from family violence
- “Additional considerations”, which include your child or children’s relationship with you and your spouse; their age, maturity and background.

Family violence

Family violence includes physical, sexual, emotional, psychological, and financial abuse as well as threatening, controlling and coercive behaviour. A family violence order can help protect those affected by family violence and those who are at risk, including children. We help clients apply for family violence orders and arrange for their representation at court hearings. We also assist individuals who seek to oppose family violence orders.

Family violence hearings take place in the Local Court or Magistrates’ Court, not the Family Court. However, the proceedings are relevant to any family law litigation and are taken into consideration by the family courts when determining parenting, and sometimes property, matters.

Given the impact of family violence on family law matters, it is important that any historical or current family violence issues are conveyed to your lawyer at the initial conference.



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FIRST STEPS

Your legal costs

At Lander & Rogers, we are upfront about costs at the outset. We provide ongoing cost updates and estimates to our clients, which means you can make informed and strategic decisions at each stage of your matter.

As the largest family law firm in Australia, our resources mean that we can match each client with a suitable lawyer based on the complexity of the matter, the financial position of the client, and the level of expertise a matter will require. Our costs are comparable to boutique family law firms; however, our clients benefit from our firm's reputation and our long-standing relationships with the family law profession. We are consistently recognised by our peers as leading family lawyers and have the highest number of accredited family law specialists of all firms in Australia.

Our lawyers' hourly rates are based on the breadth and depth of their experience.

We have a comprehensive, structured supervision and mentoring model which means that all of our lawyers have a supervising partner or special counsel looking after each client. Partners and special counsel make strategic decisions, and settle and approve any work before it is released. As a client, you therefore have the benefit of a lower charge-out rate with the experience and supervision of one of the most experienced family lawyers in Australia. We also appreciate that this model may not be for everyone, and we are more than happy to tailor our clients' experience and our service offering based on your preference.

We also offer a **fixed priced solution** for the following services, which vary based on office location:

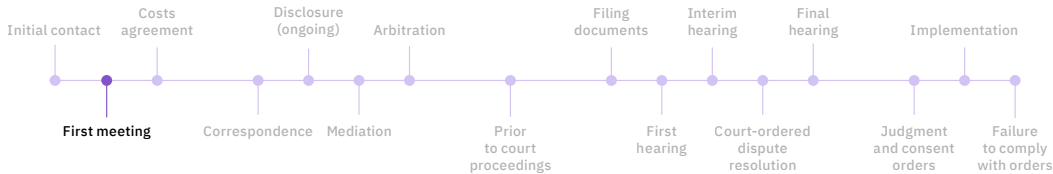
- Divorce: \$2,200 to \$2,800
- Applications for consent orders: \$5,500 to \$8,800
- Prenuptial financial agreements \$7,700 to \$12,650

Our fixed price offering provides our clients with certainty and transparency about the costs of the matter, which are agreed upfront.

Every matter is different, and there are factors that can increase legal costs for clients, including the attitude adopted by the parties, the complexity of the issues in the case, court delays and the engagement of third parties such as expert witnesses or valuers. When we first meet with our clients, we typically provide an estimate of legal spend for three different scenarios: if you were to reach a negotiated settlement with your partner; if you

were required to attend a mediation, and if your matter was to proceed to court. This provides our clients with an understanding of their estimated legal costs and settlement options from the start.

We pride ourselves on our openness about costs, so please do not hesitate to contact one of our lawyers for further information about our fee model.



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FIRST STEPS

Costs agreement

Shortly after your first consultation, you will receive a costs agreement from us. This will outline our anticipated legal costs if:

- you and the other party come to an agreement
- you and the other party settle at mediation
- your matter proceeds to court.



Additional support

Separation can be one of the most challenging times in a person's life and can impact them in many ways. Our aim is to assist you to navigate your way through this family separation journey so you can live your life and plan for your and your children's future. While we pride ourselves as expert family lawyers, it is important that our clients are supported by a network of other professionals to guide them through their family law journey. With over 35 years in practice, we have developed close working relationships with mental health and financial experts throughout Australia, with whom we regularly connect our clients.

If you or your family would like a referral to a psychologist, counsellor, accountant or financial advisor, please ensure you request this of your lawyer, at any stage of your engagement with us.

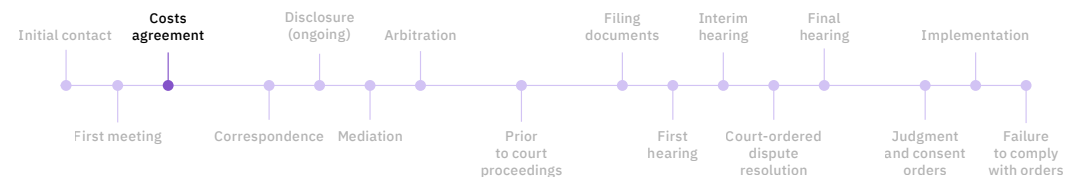
Your options

At this stage in the process, you will have been presented with your options, and it's time to decide how you'd like to proceed with your matter. Broadly, your options are:

1. negotiation (direct or lawyer-assisted)
2. mediation/arbitration
3. court.

Except in limited circumstances, for example matters of urgency or those involving family violence, you will need to proceed through negotiation and mediation to demonstrate that you've made a genuine effort to resolve your dispute, before going to court.

[▼ Click to learn more](#)



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DISPUTE RESOLUTION

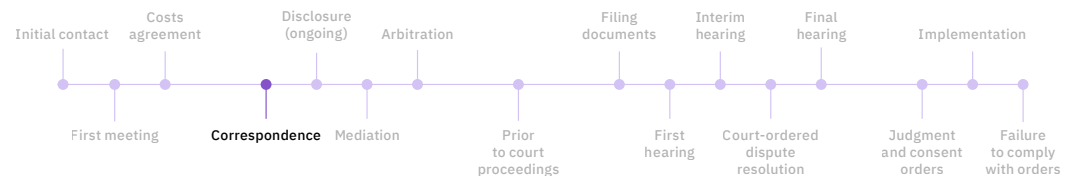
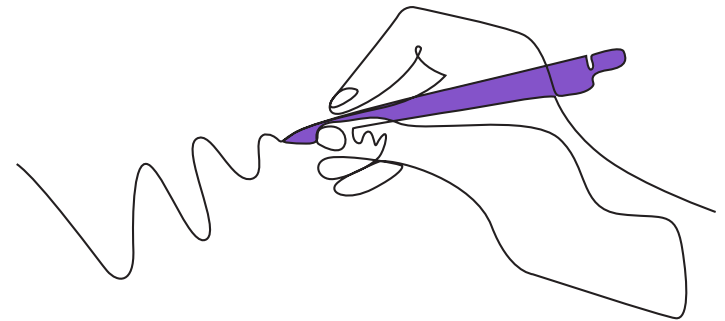
Correspondence with the other party

Your lawyer will engage in communication with the other party or their legal representative. Correspondence can address procedural matters, such as interim arrangements for children and requesting information, as well as negotiations and settlement offers. Sending and receiving correspondence between parties can take a considerable amount of time, especially if amendments to settlement documents are needed.

During this time, you and your former partner will need to provide disclosure. The disclosure process is addressed in further detail on the next page. You will be notified of all correspondence received from or on behalf of your former partner and asked to give us your instructions in reply.

If an agreement is reached through negotiation at this stage, it can be formalised in consent orders that are filed with the court. Once accepted by the court, the orders become legally binding and have the same effect as if your matter was determined by a trial judge. We can take care of this process for you, including the [implementation of the orders](#).

In our communications with you and your former partner we follow the Best Practice Guidelines, published by the Family Law Council and Family Law Section of the Law Council of Australia. We take a constructive and conciliatory approach to the resolution of your matter.



DISCLOSURE

Disclosure is a mandatory process in family law litigation, in which parties have a duty to the court, and to each other, to provide information relevant to their matter. The duty is ongoing and you will be asked to disclose different documents depending on the nature of your matter.

The purpose of disclosure in financial matters is to ascertain the pool of assets available for division between the parties. It is also an opportunity for the parties to provide information about any contributions they have made to their wealth position both prior to, and during, their relationship and post-separation.

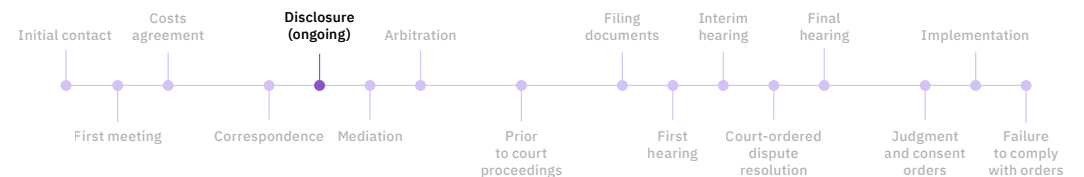
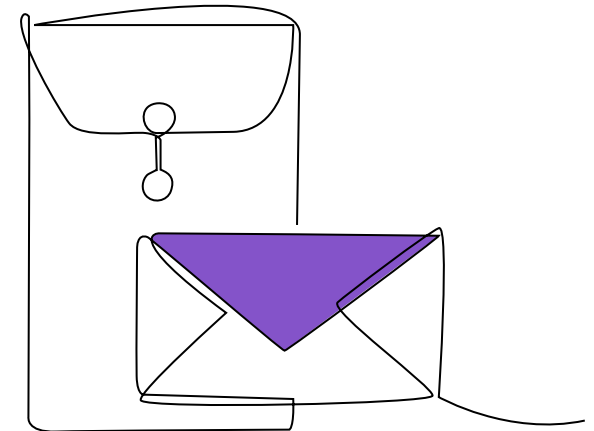
In financial matters, you will usually be asked to provide:

- bank statements
- superannuation statements
- tax returns
- business tax returns or statements
- any other documents relevant to the financial circumstances of either party.

In parenting matters, you may be required to provide:

- documents relevant to the health and wellbeing of your child/ren
- any relevant communications with the other party
- recordings of significant events, which can be in various forms - eg text messages and emails.

Throughout the disclosure process, your lawyer will advise you on the documents you are required to disclose and provide you with an electronic link for uploading those documents.



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DISPUTE RESOLUTION - MEDIATION

Preparing for mediation

Mediation can occur at various times during the family law process and it is often the preferred way to resolve a family law dispute. Parties can agree to mediate their matter prior to, or without ever, making an application to the court. Alternatively, parties involved in court proceedings can agree to mediate their matter outside of court.

Mediation will usually be booked around four weeks in advance, to allow for preparation. It's important that your lawyer has all the relevant information in advance of the mediation. This usually involves the exchange of further disclosure with the other party.

Financial matters often involve the engagement of experts to provide property or business valuations. You may be required to provide further documents to the valuer, as well as organise time for a valuation to be performed.

Prior to a mediation, the parties each prepare and exchange a position statement that they also share with the mediator. This document sets out the background to the matter, the assets available for division and the party's desired outcome.

Mediation

The purpose of mediation is for the parties to reach an agreement without the intervention and expense of court-based litigation. At a mediation, a third-party mediator facilitates discussions between you and the other party. This is a compulsory step in parenting and property matters before filing an application for orders.

On the day of mediation, you will first meet with your lawyer and your barrister (if counsel is briefed) to discuss any pertinent matters and your desired outcome.

What happens in a mediation?

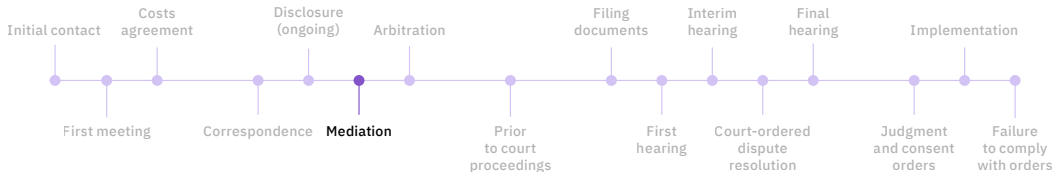
The mediator will introduce themselves and there will be an overview of the major issues in the matter. The mediator will meet with the lawyers of both parties to discuss the relevant issues. The parties (usually through your lawyer) will exchange settlement offers. This process is repetitive and concludes either when the parties agree to a settlement, or when the mediator finds that further negotiations will not result in settlement.

During the mediation, the mediator may address you personally to discuss settlement options. You will also be expected to provide instructions to your lawyer regarding the offers made.

If an agreement is reached at mediation, we will document the terms of your settlement in consent orders which are then filed with the court, or a [financial agreement](#). Once accepted by the court, your agreement will be legally binding. We also can assist with the [implementation and enforcement of your settlement](#).

If mediation is unsuccessful, you may continue to negotiate an agreement with your former partner through correspondence, you may attempt mediation again, or you may seek a judicial determination by the court.

▼ [Click to learn more](#)



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DISPUTE RESOLUTION - ARBITRATION

Arbitration

Arbitration is an alternative to mediation and a judge-determined outcome. An independent third party is appointed as an arbitrator to make a decision on a discrete issue or a final determination of a matter.

Arbitration is only available in financial matters; parenting matters are unable to be arbitrated at this stage.

▼ Click to learn more



Understanding arbitration

Arbitration is an increasingly popular alternative to traditional court proceedings. Unlike litigation through the court system, parties choose their own arbitrator and the process is typically conducted privately.

Parties cannot withdraw once the arbitration process has commenced and the outcome is legally binding.

Costs

Arbitration is typically a more cost-effective dispute resolution process than litigating through the court system, as matters can be actioned and heard sooner.

Cross-jurisdictional matters

Arbitration may be used domestically and internationally to deal with matters in a specific jurisdiction. Both parties must agree upon the jurisdiction under which the dispute will be arbitrated.

Choosing an arbitrator

An arbitrator is selected by agreement between disputing parties, or through an independent third party.

What are the benefits?

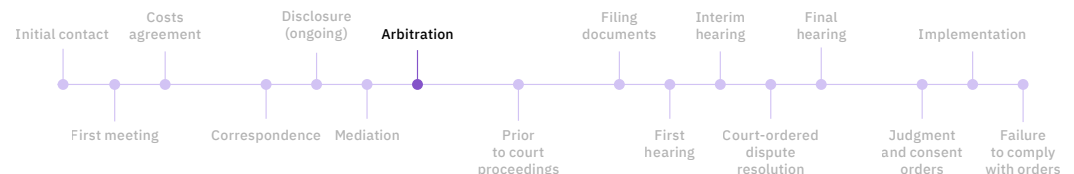
Arbitration offers greater privacy than litigation – the process is confidential, and disclosures made during the process can be protected. It is also often faster than going through the court system.

Parties can select their arbitrator as well as the specific issues they wish to resolve. Parties can also arbitrate a discrete issue, allowing their matter to return to the court for a final determination if they wish.

Arbitration can be conducted in person, by video conference, by written submission, or as agreed by both parties.

How does an arbitration end?

At the end of the process, the arbitrator makes an award. Once registered, the award can only be set aside on a question of law (similar to an Appeal) or on limited grounds.



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PRE-ACTION PROCEDURES

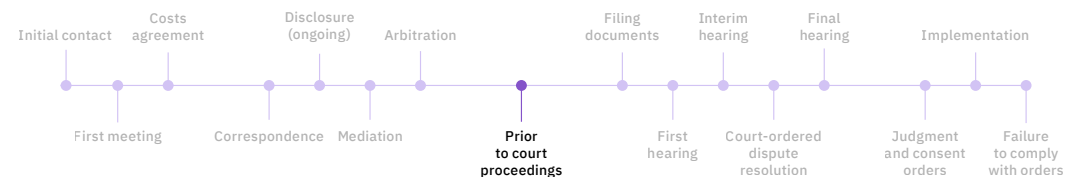
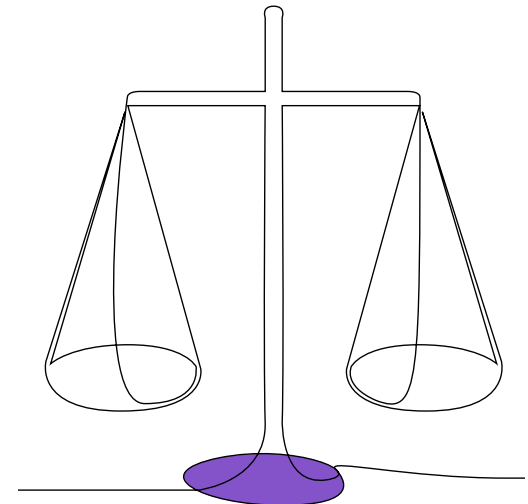
Prior to court proceedings

If your matter proceeds to court, there are court mandated pre-action procedures that you are required to comply with.

For example, unless exceptions apply, parties to a parenting matter must attend family dispute resolution (**FDR**) before filing a court application. FDR is a conference attended by both parties and convened by a family dispute resolution practitioner, aimed at encouraging the parties to negotiate a parenting agreement without going to court. There are government-funded FDR centres throughout Australia, as well as private mediators who facilitate FDR. We can assist by representing you at a private FDR and formalising any agreement reached at FDR into a parenting plan or consent orders. [Find out more here](#)

If an agreement cannot be reached at FDR, the mediator will issue the parties with a certificate, known as a section 60I certificate, which is required to be produced to the court when commencing proceedings in relation to parenting matters. There are some circumstances where the parties will be exempt from attending FDR and providing a certificate, for example where there are allegations of family violence or where the matter is deemed sufficiently urgent.

-  Access guidance issued by the court
-  Access guidance issued by the court



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PREPARATION FOR COURT

Filing documents

Your legal team will take detailed instructions from you to draft the relevant documents, which are then sworn or affirmed by you and filed with the court. These documents will explain your circumstances to the judge and set out the orders that you are seeking.

The documents to file will depend on whether you are applying for financial orders, or parenting orders.

First court event

The first court event takes place 1-2 months after filing. This is usually a procedural event heard by a judicial registrar, who will make directions to progress your case along the court path within a reasonable timeframe. The purpose of this hearing is to ascertain whether the parties have made a genuine attempt to resolve the dispute outside of court, to identify the issues in dispute between the parties and to consider whether the matter is suitable for court funded dispute resolution or external mediation, with regards to the means and resources of the parties. The court may also list the matter for an interim hearing if deemed necessary.



You will not need to actively participate in the hearing. You will receive advice from us on the expected timeline and how we can prepare for next steps.

Interim hearing

Should your matter require a decision to be made on specific interim issues, for example, where one party seeks short-term financial support from the other or where there is a dispute about the children's time with their parents, the court can list the matter for an interim hearing.

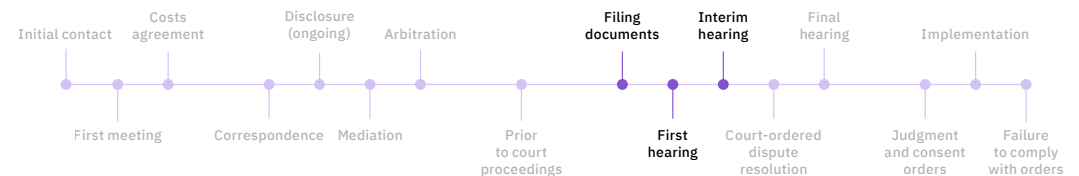
Often, a barrister will appear on your behalf at the hearing and your lawyer will provide instructions to your barrister. A judge or senior judicial registrar can make interim orders after hearing oral submissions from the representatives for both parties, or the parties may reach an agreement on an interim matter while they are at the court.

Interim orders

Interim orders continue until final orders are made. Before the interim hearing, the parties must exchange, and provide to the court, a minute of proposed orders and a case outline document. These documents set out the precise interim orders sought and the parties' reasons for seeking those orders.



During the interim hearing, you will need to give instructions to your lawyer and barrister as to any particular matters raised. You are not expected to be involved in the actual hearing, although you should attend.



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COURT-ORDERED
DISPUTE RESOLUTION

Conciliation conferences and
judicial settlements

If the court determines it is appropriate for parties to participate in court-based dispute resolution, the matter will be listed for a conciliation conference or a judicial settlement conference. All forms of dispute resolution are confidential.

A conciliation conference or judicial settlement conference will usually take place within six months of issuing court proceedings. A number of documents are required to be filed prior to the conference, including the orders sought, a balance sheet and current valuations, to ensure constructive negotiations can take place. These conferences are convened by a registrar, and deal with financial matters only. The registrar can make binding orders by consent.

The goal of these conferences is for you and the other party to reach a resolution. You must make a genuine effort to resolve all issues in dispute, or to reduce the number of matters in dispute.

i The majority of matters settle by this stage.

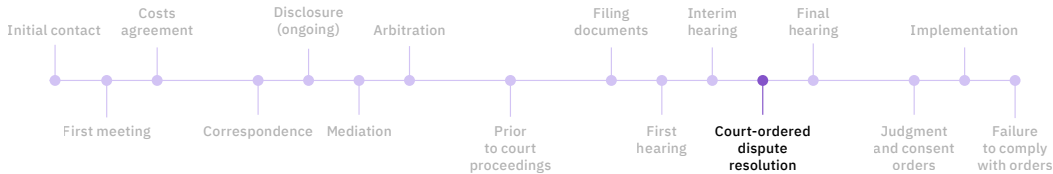
Private mediation

Parties can be referred to private mediation, private or community-based Family Dispute Resolution, and/or arbitration. All forms of dispute resolution are confidential.

Prior to the mediation, your lawyer must provide you with a notice setting out the legal costs you've incurred to date and an estimate of your anticipated costs. This costs notice may assist when you are considering settlement proposals during the mediation.

[Learn more about what to expect on the day of a mediation](#)

i [Click to learn more](#)



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PREPARATION FOR COURT

Compliance and readiness hearing

If your matter does not settle through dispute resolution, it will be listed for a compliance and readiness hearing. The court aims for these hearings to be listed within six months of the initial application to the court.

Prior to the hearing, the parties must file an undertaking, declaring they have complied with their disclosure obligations, together with a certificate confirming the matter is ready for trial.

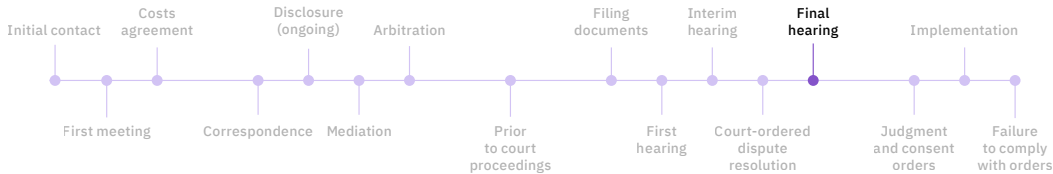
At the hearing, the parties will identify the outstanding issues to be determined at trial and the judge will list the matter for trial.

Final hearing

At the final hearing, all of the evidence compiled by both parties is heard by a judge. The duration of the hearing depends on the complexity of the matter but usually takes place over several days.

Both parties, witnesses and experts are cross-examined during the final hearing. This can be a stressful time, but your experienced legal team will ensure you understand what is expected of you at the final hearing and that you understand the court’s processes. You will almost certainly be represented by a barrister, who is an experienced court advocate.

i The expectation of the Federal Circuit and Family Court of Australia (FCFCOA) is that the final hearing takes place within 12 months from the commencement of proceedings.



PHASE FIVE

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IMPLEMENTATION

Judgment and consent orders

The final hearing results in one of two outcomes - you and the other party reach an agreement while at the court, which is documented in consent orders; or a judgment (decision of the court) is delivered. The judge will usually deliver their decision within 3-6 months, but there can be court delays. This timeframe depends on the capacity of the judge and the complexity of the case.

Consent orders

Consent orders have the same binding effect as a court judgment.

Once you and the other party have agreed on the orders, one of the lawyers will draft the final orders in a court-approved format. These are then filed with the court.

The court will consider the orders and determine whether they represent a just and equitable outcome, generally within 3-4 weeks. If successful, sealed orders will be made available and the orders will be enforceable.

A judge may also make requisitions, or further questions regarding the orders. For each requisition made by the court, an additional two weeks are required for the orders to be approved.

 It is difficult to ascertain when a judgment will be delivered after the final hearing, as this depends on the complexity of the case and the workload of the judge.

Implementing orders

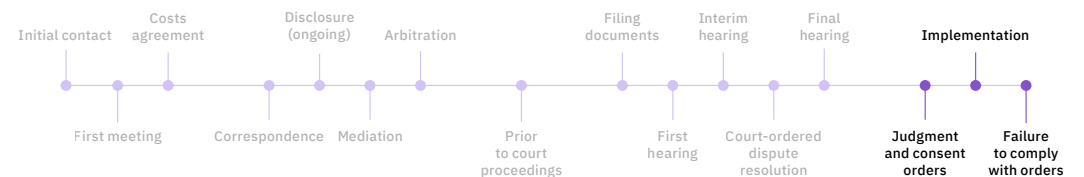
At this stage of the process, we may refer you to a financial planner and/or accountant who will work with you to put in place strategies that meet your current and future financial obligations pursuant to the court orders. We have a number of preferred providers who regularly assist our clients at this stage of their family law journey and you can be assured that we will connect you with a professional who is appropriate for your particular circumstances.

Your lawyer will send you a letter outlining the final outcome of your matter and your obligation to comply with the orders. We provide in-house conveyancing services, should your settlement involve a transfer of real estate, and we can assist with implementing the balance of your financial and/or parenting orders.

Failure to comply with orders

If either you or the other party fails to comply with orders, the complying party can notify the court.

The court has discretion to vary the original orders or to order costs in favour of the applicant.



BINDING FINANCIAL AGREEMENTS

What is a financial agreement?

Financial agreements are available to married couples as well as those in a de facto relationship, and can be made before or during a relationship, or after separation. They are legally binding under Australian law as long as the requirements for validity are met.

To be binding, the agreement must be in writing and signed by both parties. Prior to entering into the agreement, each party must receive independent legal advice from an Australian legal practitioner. Lander & Rogers' family lawyers have extensive experience drafting financial agreements and will ensure you clearly understand the effect on your rights of signing the agreement, and its advantages and disadvantages.

What can be included in a financial agreement?

A financial agreement records a couple's intentions as to how all, or some, of their property is to be dealt with following a separation. It can also cover obligations by one party to pay spousal maintenance to the other in the event of a separation, or terminate that obligation altogether.

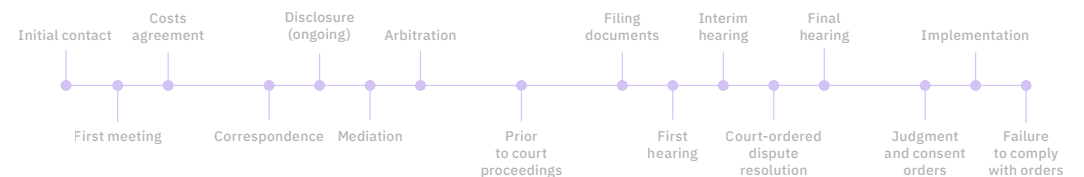
You can tailor your financial agreement to suit your circumstances, aim and financial position, and those of the other party.

What is the effect of a financial agreement?

If a financial agreement has been properly prepared and the requirements met, it is binding on the parties. This means that neither party can then make a claim to the court in relation to matters covered in the agreement such as property settlement and/or spousal maintenance. This provides certainty in how your property will be divided following a separation, and saves considerable money in legal fees and time, with no need to pursue litigation in the court at the end of the relationship.

Specialised legal advice

Financial agreements are highly technical and detailed documents. Your family lawyer will help you determine whether a financial agreement is right for your circumstances, as well as record and document the most appropriate terms of the agreement.



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