

Article

Family Law



Family Courts Look to Arbitration to Streamline Resolutions

By Joanne Cliff

On 1 September 2021, significant changes to Family Law were implemented. These changes required separating couples to undertake “genuine steps” to resolve their issues before issuing court proceedings.

Alternative Dispute Resolution (ADR) is one of the accepted “steps” for resolving parenting issues or financial matters. Arbitration is one ADR option, in particular, that is becoming increasingly popular for its ability to deliver simplicity and timely resolutions to an often stressful and emotionally draining process.

Arbitration

Arbitration provides an alternate path for married and de-facto couples seeking to avoid court. It can be utilized either before or after court proceedings, but only for resolving financial matters. It is not applicable to parenting matters or child support.

Although not a novel concept in family law, its employment is less widespread compared to other legal areas, such as commercial law. To address this, the Family Court of Australia and the Federal Circuit Court of Australia have set up a specialised National Arbitration List and are actively promoting Court Ordered Arbitration. This move aims to ease the pressure on the Court system and fulfil Court’s purpose to resolve disputes fairly, legally, and in a quick, cost-effective, and efficient manner.

Compared to a trial, arbitration is a straightforward, low-cost and fast process that has the benefit of achieving the same result, namely, a court order that can be enforced by law.

One of the attractions of arbitration is that it can be used to determine a single issue or a range of issues, whether on a final or temporary basis. For example:

- a property division between a separated couple;
- whether spousal maintenance should be paid to one party and how much; or
- to determine disputes about the value of property and assets and superannuation splitting.

At the start of the process, an arbitrator is appointed or chosen by the parties. This person is usually a retired family law judge or experienced family lawyer trained as an arbitrator.

Depending on the extent of the dispute, the arbitration can proceed without needing a hearing or either party giving evidence. The arbitrator will review the available documentation, which should include agreed facts, and make a decision “on the papers”. This option is best suited to matters where most things are agreed (valuations of property and assets), but someone needs to decide who pays and what the amount will be. This is a far cheaper option because of the significant amount of time saved on preparation and negotiation.

Arbitration can also occur “on the papers” with the addition of oral submissions. This means that the lawyer for each party will present a proposal for finalising the matter. The arbitrator will consider the proposals and other documentation and determine how to resolve the dispute.

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Lastly, if required, there can be a full hearing where parties are cross-examined, and submissions are made at the end of the evidence. While this is similar to a trial, you don't have to worry about the long delays associated with going to court. This means a decision can be made far quicker, and both parties can begin to move on with their lives.

If you're already involved in the court process, you can agree with your former partner to have an arbitration rather than a trial. The court will make an order for the arbitration to ensure the arbitration is easily accessible, cost-effective and time efficient.

All arbitrations require the parties to disclose all financial documents, and with a court-ordered arbitration, a financial statement has to be provided by each party.

If your dispute is time sensitive and you wish to explore a cheaper and more timely process, arbitration could be an option.

If you would like to discuss to have a free no obligation chat to discuss this process and if it is right for you, please get in touch with Joanne, our family law expert.



[MORE INFO](#)

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