

Guide to Arbitration in Australian Family Law

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Family law disputes are often stressful and time-consuming, especially when they involve issues like property settlements or financial agreements. While many people assume that court is the only way to resolve such disputes, family law arbitration is another option and increasingly becoming more popular.

Arbitration in family law is a process that allows separating couples to resolve disputes outside of court with the help of an accredited independent third party for certain matters. This can be a faster and more cost-effective option than litigation.

In this guide, we'll cover the following:

What arbitration is and how it works in family law;

The types of family law disputes arbitration can resolve;

The benefits of choosing arbitration over court;

The process of arbitration;

How arbitration decisions are enforced;

Whether arbitration is right for your family law case.

What is arbitration in family law?

Arbitration is a private dispute resolution process where a neutral third party, known as an arbitrator, makes a legally binding decision. This decision has the same legal effect as a court order.

Arbitration is often compared to mediation, but they are different:

Mediation helps parties negotiate a mutual agreement but does not impose a decision.

Arbitration results in a binding decision made by the arbitrator, similar to a judge's ruling.

When can arbitration be used in family law?

Arbitration in family law only applies to financial matters, including:

Property settlements – deciding how assets and debts should be divided after separation or divorce.

Spousal maintenance – determining financial support for a former partner.

Financial agreements – disputes related to financial agreements entered into pre, post and during a relationship.

- Superannuation splitting – deciding how superannuation funds should be divided.

Arbitration cannot be used for parenting disputes. It is said parenting matters are best dealt with within the court process to ensure the best interests of the child.

Benefits of choosing arbitration over court

Many separating couples choose arbitration because of its advantages over traditional court proceedings.

Faster resolution – arbitration is often completed within months, whereas court cases can take years.

Cost-effective – fewer legal fees and court costs make arbitration more affordable.

Private and confidential – unlike court cases, which are public, arbitration is conducted in private.

Flexibility – parties can choose their arbitrator, the time, and the location of arbitration hearings.

Less stressful – arbitration is a less adversarial process than litigation, which can be emotionally draining.

How does arbitration work?

Step 1: Parties agree to arbitrate

Both parties must agree to use arbitration and sign an arbitration agreement outlining:

the issues to be resolved;

the choice of an arbitrator;

the procedure to follow.

Step 2: Selecting an arbitrator

Arbitrators must be accredited by the Australian Institute of Family Law Arbitrators and Mediators (AIFLAM). They are typically experienced family lawyers or former judges.

Both parties must agree on who the arbitrator will be. A family lawyer can recommend suitably accredited arbitrators based on your specific case.

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Step 3: Preparing for arbitration – submitting your case and evidence

Each party presents their case evidence including financial documents, witness statements, and legal arguments.

The process can be conducted in person, via video conference, or based on written submissions.

Step 4: The arbitrator’s decision

The arbitrator reviews the evidence and makes a legally binding decision.

This decision must be fair, reasonable, and in line with Australian family law principles.

Is arbitration legally enforceable?

Yes. Under the Family Law Act 1975 (Cth), a decision made by an arbitrator can be registered with the Federal Circuit and Family Court of Australia or the Family Court of Western Australia. Once registered, it has the same legal force as a court order.

However, if a party believes the decision is unfair, they can apply for judicial review. Courts will only overturn an arbitrator's decision in cases of:

fraud or misconduct by the arbitrator;

a legal error in the decision;

unreasonable or unjust outcomes.

Who pays for family law arbitration?

In family law arbitration, the cost is typically shared between both parties, unless they agree otherwise. The parties usually negotiate how to split the fees before arbitration begins.

Costs related to arbitration include:

the arbitrator's fees (hourly or fixed rate);

administrative expenses;

lawyer fees (if you have legal representation).

Since arbitration is a private process, the government does not cover costs. However, arbitration is often a more cost-effective alternative to going to court due to shorter timelines and reduced legal fees.

Is family law arbitration right for you?

Arbitration may be suitable if you and your former partner:

- have financial disputes but want to avoid court delays;
- are willing to accept a binding decision from a neutral arbitrator;
- prefer a private and confidential resolution process;
- want to save money on legal fees.

However, arbitration may **not** be suitable if:

- you need decisions about parenting arrangements;
- one party refuses to cooperate or agree to arbitration;
- you require urgent legal intervention (e.g., family violence cases)

Get help from a family lawyer

Arbitration is a valuable tool for resolving family law financial disputes. It offers a faster, more cost-effective, and confidential alternative to the court system. While it's not suitable for every case, it can be a practical solution for couples who want a legally binding decision without the stress and expense of litigation.

If you're considering arbitration, seeking legal can help you determine if it's the right option for your situation. Our experienced family lawyers can advise you on the suitability of arbitration in your case and assist you with the process.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.