



# Arbitration

A real option in Family Law  
FAMILY COURT OF WESTERN AUSTRALIA

## What this brochure will tell you

This brochure will help you understand arbitration and how it can assist you in resolving disputes over property and maintenance.

For information about ways to resolve parenting disputes, see information on the Family Court of Western Australia website ([www.familycourt.wa.gov.au](http://www.familycourt.wa.gov.au)), or ring the Family Relationship Advice Line on **1800 050 321**. Parenting disputes are not matters that can be dealt with in an arbitration.

## What is arbitration?

Arbitration is a process (other than the judicial process) in which parties to a financial dispute (using lawyers if they wish to) present arguments and evidence to an independent arbitrator who makes a determination to resolve the dispute.

The issues that can be arbitrated are limited to financial matters such as property settlement, spousal maintenance, superannuation, and financial agreements.

Arbitration can be ordered by consent in matters in which there are current proceedings before the Court or parties can agree to have a private arbitration.

The parties may choose the process involved. They have control over the process and the choice of arbitrator. Arbitration is only conducted with the agreement of both parties. It cannot be forced upon people.

An arbitrator must apply the principles set out in the *Family Law Act 1975*, or the *Family Court Act 1997*, exactly as the Court would.

## What are the benefits of arbitration?

Resolving financial disputes by arbitration offers a number of significant advantages over taking the matter to Court. These include:

- Control of the process and the degree of formality - the arbitration can be designed to meet the needs of the individual parties and their issues.
- Flexibility - an arbitration does not require the same level of formality as a Court hearing.
- Convenience - the arbitration can be held at a time and place, and in accordance with a timetable, agreed between the parties and the arbitrator.
- Choice of decision maker - the parties can choose an arbitrator in whom they have confidence.
- Avoidance of delay - by setting their own timetable, the parties can avoid the delays inherent in the formal Court processes, obtain a prompt resolution of disputed issues, and have certainty that the hearing will take place on the agreed date.
- Promptness of decision - the arbitrator agrees to provide his or her award and reasons within a specified period (generally not later than 28 days from the hearing).
- Confidentiality - arbitration takes place in a confidential setting. Arbitrators take an oath not to disclose any communication or information received in their capacity as arbitrator.
- Binding result - an arbitral award is a conclusive determination of the dispute subject to rights of review provided in the *Family Law Act* or *Family Court Act* and is binding and enforceable.
- Cost - by designing an arbitration process which meets their individual needs, and avoiding the costs of the Court processes, parties can achieve significant savings. Further, because of arbitration taking place at a time of their choosing, valuations remain current and the expense of updating material is avoided.

It is for these reasons that the Family Court encourages people to consider arbitration as a means of resolving financial disputes.

Arbitration can be a particularly valuable option for parties who might have a limited issue in dispute such as valuation, maintenance or costs that block a settlement in mediation. This issue can be dealt with quickly and then allow parties the ability to continue to discuss settlement.

Similar interim issues can also be dealt with quickly by arbitration.

## Who are the arbitrators?

The Australian Institute of Family Law Arbitrators and Mediators (AIFLAM) maintains the only list of trained and qualified family law arbitrators qualified pursuant to Regulation 67B of the *Family Law Regulations* 1984.

Under the Regulations an arbitrator must:

- be a Legal Practitioner who is either accredited as a Family Law Specialist recognised as such by the relevant State Law Society or Association or who has practiced as a Legal Practitioner for at least 5 years with at least 25% of work done in that time in relation to Family Law
- have completed specialist arbitration training conducted by a tertiary institution or professional association of arbitrators
- be included in a Law Council of Australia list of Practitioners maintained by AIFLAM. A list of arbitrators can be found on the [AIFLAM](#) website.

## Is the decision final?

An Award (decision) by an approved arbitrator is binding upon each of the parties, subject only to a review on a question of law. An Award by an arbitrator who is not approved is not binding on the parties.

If you undergo arbitration in a financial matter, you may register your Arbitration Award with the Court and, once registered, it is enforceable as if it were an order made by the Court.

## Confidentiality

Discussions during arbitration are generally considered to be confidential. You should always discuss the issue of confidentiality with your arbitrator before you sign any agreement to arbitrate, as in some circumstances arbitrators are compelled by law to report matters to the relevant authorities.

## Getting started

If you have a lawyer, you should discuss arbitration with them to determine whether it is suitable for you.

If you do not have a lawyer, please see further information on the Family Court of Western Australia website to assist self-represented parties concerning [Legal Advice](#) and [Legal Resources](#). You can also contact an arbitrator directly by finding their details on the [AIFLAM](#) website.

## The Court's approach to arbitration

The Family Court of Western Australia supports the use of arbitration in appropriate cases.

Any relevant arbitration application will be dealt with expeditiously by the designated Arbitration Judge.

## Need more information?

For more information about the Family Court of Western Australia, including access to the legislation, forms or publications listed in this brochure go to [www.familycourt.wa.gov.au](http://www.familycourt.wa.gov.au).

This brochure provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Family Court. The Family Court cannot provide legal advice. The Family Court respects your right to privacy and the security of your information.