

Arbitration has been proposed

The other party in your family law matter has proposed that the financial issues between you be decided by an arbitrator rather than by a court. This sheet explains what that means. It does not ask you to decide anything.

Nothing is binding at this stage. A proposal is not an agreement. You are free to decline, and if you do, the matter stays with the court. Nothing happens unless both of you agree.

You do not have to respond quickly. Take the time you need, and take advice before you go any further.

WHAT IS BEING PROPOSED

Arbitration is a binding decision on a family law financial dispute, made by an arbitrator the parties appoint together, applying the same law a court would apply.

A decision, not a negotiation

An arbitrator hears both sides and decides. It is not mediation, and the arbitrator does not help you reach agreement.

A decision-maker you both choose

Arbitrators must be on a national list, have practised in family law for years, and have completed specialist training. You must both agree on who it will be.

Enforceable as a court order

The award is registered with the court and, once registered, has the same force as an order of the court.

In private, on dates you agree

No open court and no public list. The date is agreed between you, and documents produced for the arbitration can be used only for it.

It can only deal with financial issues. Property, superannuation, debts and spousal or de facto maintenance can be arbitrated. **Parenting arrangements and child support cannot** — those remain for agreement between the parents, or for the court. If your matter involves both, the financial issues can be arbitrated separately and need not wait.

WHAT YOU WOULD BE GIVING UP

Two things, and you should understand both before agreeing rather than afterwards.

You would both be paying for the decision-maker

A court hearing carries no fee for the judge. In an arbitration the parties pay the arbitrator, and those costs are shared equally between you unless you both agree in writing to something different.

The decision is final

A court can review a registered award only on a question of law, or set it aside for fraud, unenforceability, changed circumstances, bias or unfairness. You cannot ask a court to decide the matter again because you are unhappy with the result.

ADVICE

You will need legal advice before you can sign anything. An arbitration agreement has to contain a statement that you were given advice on it, and that statement must be signed by the lawyer who gave you that advice. The arbitration cannot proceed without it.

You do not need a lawyer for the whole arbitration. You can act for yourself and just get advice on the agreement. But you should **consider getting advice now**, before you respond to the proposal at all, so that the decision is an informed one.

If anything would make it hard or unsafe for you to take part, say so to your lawyer, or when the arbitrator first speaks to you both. An arbitration must be stopped where a party cannot properly take part.