ROBIN **COLESMITH**

FAMILY LAW ARBITRATOR

What is family law arbitration?

A private way of having a financial dispute decided. An arbitrator you both choose applies the same law a judge would, and the decision is registered with the court and enforceable as an order.

WHAT AN ARBITRATOR CAN AND CANNOT DECIDE

CAN BE ARBITRATED

- How property and financial resources are divided
- Superannuation splitting
- Spousal and de facto maintenance
- Financial agreements and their effect
- Setting aside a transaction made to defeat a claim

CANNOT BE ARBITRATED

- Parenting arrangements
- Child support
- A maintenance agreement approved by a court under the old provisions

If your matter involves both money and children, the financial issues can still be arbitrated. The two run separately, and the financial dispute does not have to wait.

HOW IT WORKS

1. **Agree to arbitrate**

   You both agree to arbitrate, and choose an arbitrator together.

2. **Preliminary conference**

   The issues, timetable and format are settled. The arbitration agreement is signed afterwards.

3. **Preparation and evidence**

   Disclosure, valuations and evidence, on the agreed timetable.

4. **The hearing**

   On the documents alone, on submissions, or with oral evidence.

5. **Award and registration**

   A written decision with reasons, registered with the court.

THREE THINGS TO UNDERSTAND BEFORE YOU AGREE

YOU BOTH HAVE TO AGREE

One person cannot start an arbitration. You must both agree to it and agree on the arbitrator. You do not have to agree about the dispute itself, only about how it will be decided.

YOU EACH NEED ADVICE

The agreement must contain a statement that you were given legal advice on it, signed by the lawyer who gave it. You can act for yourself throughout and get advice on the agreement alone.

YOU PAY THE ARBITRATOR

A court hearing carries no fee for the judge. Arbitration costs are shared equally between you unless you both agree in writing otherwise.

HOW FINAL IS IT?

Once an award is registered, a court can review it **only on a question of law**. It can also set an award aside, but only where the award was obtained by fraud, including non-disclosure of something material; where it is void, voidable or unenforceable; where changed circumstances make it impossible to carry out; or where the arbitration was affected by bias or a lack of procedural fairness.

What you cannot do is ask a court to decide the matter again because you think the arbitrator reached the wrong result. That finality is the point of arbitration, and also the risk.