

RESOLVING YOUR FAMILY LAW MATTER OUT OF COURT

It is possible for you and your ex to reach agreement about parenting and/or property and spousal maintenance issues without going to Court. You can do so through Alternative Dispute Resolution (“ADR”) processes which can be faster and cheaper than Court depending on your circumstances.

ADR PROCESSES INCLUDE:

1. NEGOTIATION

WHAT IS IT:

Negotiation is where parties’ themselves or their lawyers exchange letters setting out what each party wants to achieve. Lawyers can also negotiate on behalf of parties by phone and the parties and lawyers can negotiate over a round table conference.

HOW IT IS USEFUL:

Negotiation is usually the first step in family matters and can often save you money and time that would be incurred if you applied straight to the Court.

Negotiation will only be successful if you and your ex are willing to negotiate the issues. In parenting matters negotiation will involve considering various issues, including who the children will live with, when the children will spend time with the other parent, which parent the children will spend time with on certain special occasions, etc. In property matters negotiation often involves exchanging financial documents so that you and your ex can agree on a list of assets and liabilities to be divided between you both.

HOW WE CAN HELP:

We can provide you advice on your parenting and/or property and spousal maintenance issue so that you can make an informed offer or counter offer to your ex. If you reach agreement we can assist in documenting the agreement and if you don’t reach agreement we can provide you advice as to your options, including another form of ADR or Court.

2. MEDIATION / FAMILY DISPUTE RESOLUTION

WHAT IS IT:

Mediation is a structured negotiation process where the Mediator assists parties to identify and resolve issues in dispute.

There are different styles of Mediation, including shuttle mediations and round table conferences. You can participate in public Mediation, such as through Relationships Australia or through a private Mediator. We can provide you with advice on which style and type of Mediation is right for your circumstances.

HOW IT IS USEFUL:

Mediation can help you and your ex reach agreement because you have the guidance of an independent person assisting you and your ex narrow down and resolve the issues in dispute. If you and your ex are willing to negotiate and compromise Mediation will be more successful.

HOW WE CAN HELP:

We can assist you throughout the entire Mediation process, including assisting in preparing for Mediation, providing you advice on what may happen at Mediation and also attending with you at Mediation. During Mediation we can provide you advice on what offers and counter offers to make to your ex so that you receive a fair outcome. If you and your ex reach agreement we can assist in preparing the documents to formalise the agreement or otherwise we can provide you advice on whether you should try another form of ADR or apply to the Court.

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3. CONCILIATION CONFERENCE

WHAT IS IT:

A Conciliation Conference is similar to Mediation and is used for family law property disputes in Court. A Registrar of the Court runs the Conciliation Conference.

HOW IT IS USEFUL:

Similar to a Mediation a Conciliation Conference is useful when you and your ex are willing to negotiate and compromise on property issues. You will have the benefit of a Registrar guiding the negotiations which may assist you narrow down and resolve the issues.

HOW WE CAN HELP:

One of our experienced Family Lawyers can assist you in the lead up to the Conciliation Conference. Usually the Court will need you and your ex to agree on a list of assets and liabilities and if not arrange for property valuations to be completed before you attend the Conciliation Conference. We can provide you advice on what assets and liabilities you need to consider and how to value them and engage family law valuers that we commonly use if needed.

We can also attend the Conciliation Conference with you. We can provide advice about what offers and counter offers to make to your ex so that you receive your fair share of the net assets. If you and your ex reach agreement we can assist in preparing the documents to formalise the agreement or otherwise we can advise you what will happen next in Court.

4. ARBITRATION

WHAT IS IT:

Arbitration is a form of dispute resolution that is more similar to Court than other dispute resolution processes, such as Mediation. Arbitration is only used to resolve property disputes (including spousal maintenance) and not parenting disputes. Parties need to agree to go to Arbitration.

Arbitration is run by an impartial Arbitrator who is usually an experienced Barrister. During Arbitration the Arbitrator reviews and considers all of the oral and written evidence that you and your ex provide to support your cases and then makes a decision called an arbitral award. Parties can decide to register the arbitral award with the Court so that it has the same legal effect as an Order made by the Court. If one party registers the arbitral award with the Court without the other party's consent then the other party has 28 days to apply to the Court and set out why the award should not be registered. We can provide you with further information on this.

HOW IT IS USEFUL:

Arbitration is useful where parties have tried other forms of dispute resolution and have been unsuccessful and need an impartial person to make a decision for them. Arbitration is often a cheaper and quicker process than applying to the Court and waiting for a Final Hearing where the Judge makes a decision.

HOW WE CAN HELP:

We can assist you throughout the entire Arbitration process. We can help you prepare for the Arbitration including letting you what information and documents you need so that your best evidence is put before the Arbitrator. We can also provide you advice on what the Arbitrator may do at the Arbitration. Further we can attend with you at the Arbitration and make oral submissions on your behalf setting out why the Arbitrator should make a decision in your favour.