

FACT SHEET

How To Guide: Arbitration

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Step 1: Agree to Arbitrate and Contact a Suitable Arbitrator

Once parties have agreed that they wish to arbitrate to resolve a dispute, a suitable arbitrator should be identified. An advantage of arbitration over the court process, is that an arbitrator with suitable knowledge and experience of any particular issue can be instructed.

If the parties cannot agree on the identity of an arbitrator, the Institute of Family Law Arbitrators will appoint an arbitrator.

Step 2: Submit a Form to the Institute of Family Law Arbitrators

Once the parties have agreed to arbitrate, a form is submitted to the Institute of Family Law Arbitrators in which they describe and define the scope of the dispute that they agree to arbitrate.

The parties also agree in that form to be bound by the arbitrator's decision, to abide by arbitration rules, and to comply with the decisions, directions and orders of the arbitrator.

The Institute of Family Law Arbitrators will then invite the nominated arbitrator to become the appointed arbitrator.

Step 3: Begin Arbitration

The family arbitrator will then contact the parties to seek their agreement to the terms of the appointment, and they will be required to sign a formal letter of acceptance. The arbitration process is deemed to have commenced at this point.

The arbitration process from this point will depend on the issues in dispute and the parties' preferences as to the procedure. The parties may decide that the arbitrator should make a decision based on documents and written submissions only, without the need for an in-person hearing.

The parties may agree which issues are to be determined, and which are agreed. The parties may also agree which directions (i.e. steps to be taken to obtain necessary evidence for the arbitrator to be able to make a decision) are necessary and which are not. This level of flexibility does not exist within the court process.

The arbitrator will generally conduct a case management conference at the start of the process where these issues can be discussed. During the course of the family arbitration, any further procedural decisions will be taken by the family arbitrator after consultation with both parties.

Step 4: Make Your Representations

Once any directions have been met, the parties (via their lawyers) will make their representations as to the outcome that they seek and the reasons why that would be a fair outcome.

This may be done as written submissions or at an in-person meeting. The time, date and location of this can be agreed between the parties and the arbitrator. Again, this flexibility is not guaranteed in the court process.

Step 5: The Arbitrator's Decision

The arbitrator will then make a written decision (known as an 'award') which will include the reasons for that decision.

The parties will only have the right to appeal to court on a point of law or where there has been a serious irregularity which has resulted or may result in substantial injustice.

There will normally be a requirement in the agreement to arbitrate that the arbitrator's award will be converted into a court order. This will be drawn up by the parties' lawyers after the arbitration award has been made.