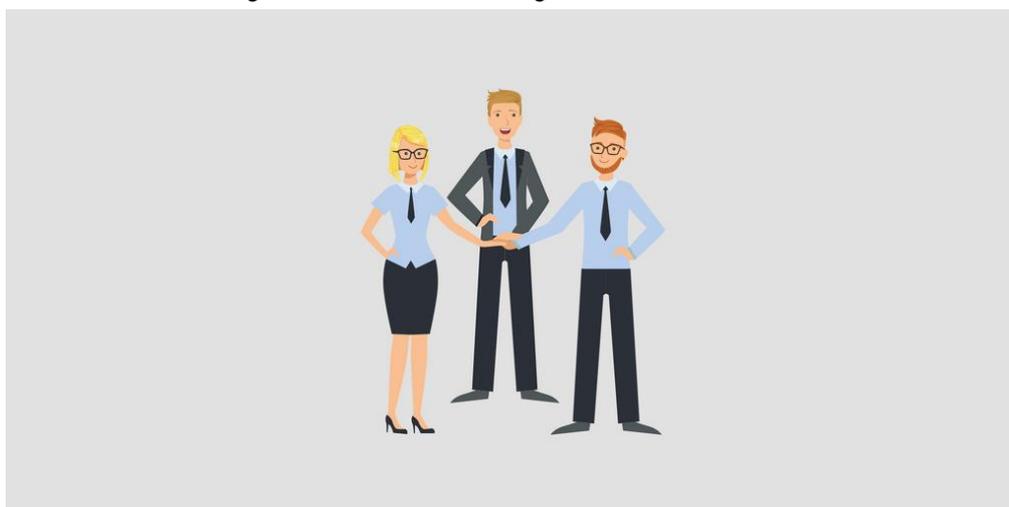


# 6 alternatives to going to court for your family law matter



## What are the alternatives to going to court?

Going to court is a lengthy and costly route to take in family law matters. The process from application to final hearing (in cases where resolution can't be reached along the way) can take anywhere from 2 and 4 years. While the courts endeavour to have matters concluded within 12 months – in contested matters, this is rarely the case.

The reality is that some matters do in fact need court determination. This could be because some parties won't comply with reasonable requests and need the forceful prod of court; or because the matter relates to serious allegations of abuse which are not going to resolve. However, for general family law matters, if you can avoid going to court, you should do everything in your power to do so. This includes during the court process. At any time along the way, you can try to resolve your matter so that you and your ex-partner can get on with your new lives.

There are a range of different ways that you can work towards resolving your family law matter, and different types of documents that you can prepare yourself or with the assistance of a lawyer to finalise your matter without the need to actually go to court.

## So what are the alternatives?

### #1 Family dispute resolution

Family dispute resolution (FDR) is a formal process which facilitates a discussion between parties who have separated to work towards resolving their parenting or property dispute. The FDR process is a service provided by organisations such as the Family Relationship Centres, Relationships Australia and Legal Aid (in each state), along with other community organisations. FDR can also be facilitated by lawyers, social workers, psychologists and other practitioners who specialise in mediation.

Please note: Only registered FDR practitioners can issue a certificate which indicates you have made a genuine attempt to resolve your matter (as required by the *Family Law Act*, if you need to commence proceedings for your parenting matter).

### #2 Child inclusive processes for parenting matters

Some FDR centres offer a child inclusive process which runs alongside the FDR process. This process involves a child consultant, usually a practitioner with psychology or social work training, will meet with the child separately to the FDR process to give the child an opportunity to tell their story and express their views about what has been happening. The child consultant will report the outcomes back to both parents in

a joint session. This allows the parents the opportunity to review their arrangements and keep the child's best interests in mind.

### **#3 Mediation**

Similar to the FDR process, mediation is a method used to resolve property and parenting matters. This process involves a confidential, individual session between you and the mediator to discuss the issues you feel are most important, prior to the mediation commencing. Most mediation sessions are facilitated by private practitioners, including lawyers, social workers, and barristers, and other accredited mediators.

Please note: Not all mediators are FDR practitioners. This is important to remember as parenting disputes require a family law certificate from an accredited FDR practitioner to prove a genuine attempt to resolve the family law matter has occurred.

### **#4 Negotiation directly or through lawyers**

Depending on the scope of the dispute and the personalities of the parties, some property and parenting matters can be resolved through negotiation between lawyers. Negotiation is beneficial when the differences between each party's position is limited or where the parties are uncomfortable directly engaging in discussions with each other – particularly for clients who have experienced domestic and family violence or power imbalance.

### **#5 Arbitration**

Arbitration is a process where the parties choose a private arbitrator to decide how their property is to be divided, or whether spousal or de facto partner maintenance is payable. An arbitrator must be a legal practitioner who is experienced in family law matters either through accreditation or years of experience, and has completed specialist arbitration training. The arbitrator must apply the principles set out in the *Family Law Act 1975*, as the court would do.

### **#6 Collaborative Law**

Collaborative law is the practice of working co-operatively with your former partner to resolve your matter, with the mutual agreement of your spouse not to go to court. The focus of collaborative practice is to minimise the conflict between parties by adopting problem-solving methods to reach an agreement. In addition to specifically trained collaborative lawyers, other professionals including accountants, financial advisors, mediators and psychologists can also be engaged to guide the parties to a settlement arrangement that benefits the family as a whole.

Just remember that regardless of which option you choose, it is important to document any agreement that is reached. This includes agreements that both parties have reached together or agreements that have been reached through alternative dispute resolution processes.

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