

Arb Lite – Family law property arbitration pilot

Everything you need to know about how the Arb Lite arbitration program works under our lawyer-assisted mediation pilot

Legal Aid Queensland’s lawyer-assisted family law mediation and arbitration service resolves less complex property disputes for people not usually eligible for legal aid or who cannot afford legal representation.

The pilot service runs from 1 January 2020 until 31 December 2021 and applies to separated, married and de facto couples.

The service is for family law property disputes:

- with a net equity (the total value of assets less debts) of between \$20,000 and \$500,000 excluding superannuation (with no limit on superannuation)
- where the legally-aided person’s claim is a maximum of \$250,000 of a larger net equity amount.

What is property arbitration?

If you want to resolve a family law property dispute without going through court, then a family law property arbitration may be able to help.

Property arbitration is where an independent person (the arbitrator) is appointed to decide your property dispute. It can save you time and money rather than going through the courts. Our program is carried out by experienced and qualified family lawyers who have specialist training in arbitration. Decisions are made in line with current family law court practices so they will be similar to, if not the same as, decisions made by the family law courts.

What is “Arb Lite”?

“Arb Lite” is a streamlined arbitration program available to people funded under the lawyer-assisted mediation pilot.

This program is more streamlined than our full arbitration program because the people in the dispute should have already resolved any outstanding issues about evidence through a conference or court process.

Am I eligible for Arb Lite?

You may be able to attend property arbitration if:

- there are no outstanding issues about disclosure, valuations or the need for other evidence (for example, medical reports on future needs) and
- the matter is ready to be decided by the arbitrator.

Property arbitration may also be suitable if:

- the dispute is about property or other assets you gained during your relationship (including superannuation or funds where you may only receive a benefit later, and spousal maintenance)
- there are no outstanding parenting issues that could affect property division
- it’s been less than 12 months since you were divorced (if you were married) or less than 2 years since you separated (de facto couples). Strict time limits apply, so if this has expired, get immediate legal advice about your options. You may still be eligible for a property arbitration once the time limit issue has been resolved
- there are no businesses or third-party claims involved in your property dispute, or if there are, you and the other person agree on their value
- there are no trusts, including family trusts, in your matter.

How is arbitration different to a family dispute resolution conference?

Arbitration and family dispute resolution conferences are both voluntary.

Arbitration is a process where people present their evidence and argument to an arbitrator (decision-maker) in writing. Sometimes, a lawyer will make verbal submissions on behalf of their client to the arbitrator by phone (if requested by their client). The arbitrator then decides how the property will be split between the two people. The decision is binding.

Conferences are a way of resolving disputes between people by agreement, facilitated by an independent person known as the family dispute resolution practitioner (mediator). If an agreement is not reached, the mediation ends without a decision. Usually, most issues are solved through mediation.

Arbitration only covers financial matters, not children's issues. Conferences can include financial and children's issues.

If your dispute is about property and children's issues, read our *Need help to sort out a family law problem?* factsheet. We will consider funding children and property combined conferences where the property (including superannuation) in dispute has a net equity of between \$20,000 and \$400,000.

Attending property arbitration

Do I need legal representation?

You must have legal representation to participate in arbitration. You can't attend arbitration without a lawyer (ie be self-represented).

You can apply for a grant of aid for a lawyer to represent you at arbitration.

If you're not eligible for legal aid, you can arrange for a private lawyer to represent you (at your own cost).

Both people can receive legal aid funding, but at least one person must have legal aid funding for us to arrange arbitration.

What should I do if I am invited to arbitration?

Get legal advice about whether arbitration is right for you and then complete and return the *Client agreement to arbitrate (Arb Lite)* form. If you don't have a lawyer, call us on 1300 65 11 88 to make an appointment for legal advice or contact your local community legal centre or a private lawyer (at your cost).

Do I have to attend arbitration?

Attending arbitration is voluntary. If you don't want to attend, tell the arbitration officer so the file can be closed. If you choose not to attend arbitration, we may take this into account when considering requests for further funding about this matter.

Participating in property arbitration

What happens during property arbitration?

When the arbitration starts, the lawyer for each person has 28 days to give their written arbitration documents to the arbitration officer about their client's case. These arbitration documents include information about how property should be divided and why, and details of all assets, debts, superannuation and financial resources. The lawyers are also asked to prepare a joint balance sheet listing all property of the people involved and their value.

The arbitration officer exchanges the arbitration documents between the lawyers. If anyone wants to dispute a matter raised in the arbitration documents, their lawyer has 14 days to reply to the arbitration officer.

The arbitration officer will exchange the material (supplied on reply) and give a copy of all written documentation to the arbitrator.

In some cases, the arbitrator may ask one or both people for more information. The arbitration officer will let both lawyers know, and they'll have 28 days to provide this. If they fail to provide the extra information, the arbitrator may still decide the matter without it.



If anyone asks their lawyer to make a verbal submission, the arbitration officer will contact the lawyers with the date for this to happen. Verbal submissions will take place over the phone. The lawyers have a maximum of one hour to make verbal submissions to the arbitrator. Clients should be at their lawyer's office while verbal submissions are made in case their lawyer needs their instructions.

What happens after arbitration?

The arbitrator decides on the property dispute within 28 days of the last arbitration event (whether it is the arbitrator receiving each person's documents in reply, the lawyers making verbal submissions or the lawyer's response to the arbitrator's request for information). The arbitrator's decision is known as an arbitral award, and is binding and enforceable.

Everyone involved in the dispute (with the help of their lawyer) must file a consent order in the family law courts to reflect the arbitral award.

If someone doesn't agree to file consent orders, the other person can apply to court to have the arbitral award registered.

Do I have a meeting with the other person, like a conference?

No. Arbitration does not involve a conference. The lawyer helps their client to prepare their case and gives documents to the arbitrator when it is time for the arbitrator to make their award.

This doesn't stop the people in the dispute from trying to resolve their matter by agreement through negotiations. If you and the other person reach an agreement before the arbitrator makes their award, either you or your lawyer should let us know so we can cancel the arbitration.

My matter is already in court, can I still do arbitration?

Yes, if you and your ex-partner agree. Talk to a lawyer about having your matter referred from court to arbitration.

Disclosure

In family law property matters, both people must give the other all documents and information relevant to the issues in dispute. This is known as full and frank disclosure. If you don't give complete disclosure, this may result in significant penalties for you, including the court giving the other person more assets than they may have otherwise received.

What if my ex-partner is going to sell our property or empty the bank account?

Get immediate legal advice about your options, even if the property or bank account is in sole or joint names. If you don't have a lawyer, call us on 1300 65 11 88 to make an appointment, or contact your local community legal centre or a private lawyer (at your cost).

Costs

How much will property arbitration cost?

Legal aid isn't free. It's a low cost alternative.

If a person is eligible for legal aid funding for arbitration, they may still have to pay a contribution towards their legal costs at the end of the arbitration.

If someone has a private lawyer, they must pay \$490 upfront to Legal Aid Queensland before the arbitration starts to cover half of the arbitrator's costs. They are also responsible for paying any legal fees directly to their lawyer.

Applying for legal aid for arbitration

To apply for legal aid funding, fill out a *Legal Aid Queensland application form* and send it to us.

Legal aid funding for arbitration is available to anyone meeting the income and merits tests. If you receive a grant of aid, we will pay your lawyer's fees for the arbitration, subject to any conditions listed.

Your Local Legal Aid Queensland office:

BRISBANE

44 Herschel St, 4000

BUNDABERG

3rd Floor, WIN Tower,
Cnr Quay & Barolin Sts, 4670

CABOOLTURE

Ground Floor, Kingsgate
42 King St, 4510

CAIRNS

Level 2, Cairns Square Complex,
42-52 Abbott St, 4870

INALA

Level 1, Inala Commonwealth
Offices, 20 Wirraway Pde, 4077

IPSWICH

Level 7, 117 Brisbane St, 4305

MACKAY

Ground Floor,
17 Brisbane St, 4740

MAROOCHYDORE

Ground Floor, M1 Building
1 Duporth Ave, 4558

MOUNT ISA

6 Miles St, 4825

ROCKHAMPTON

Ground Floor, 35 Fitzroy St, 4700

SOUTHPORT

Level 2, 7 Bay St, 4215

TOOWOOMBA

1st Floor, 154 Hume St, 4350

TOWNSVILLE

3rd Floor, Northtown
280 Flinders St, 4810

WOODRIDGE

1st Floor, Woodridge Place,
Cnr Ewing Rd & Carmody St, 4114

For more information
about our services visit
legalaid.qld.gov.au

or phone 1300 65 11 88
or 1300 650 143 (Indigenous Hotline)

