New family law arbitration list proving to be a timely and cost effective way of resolving property disputes

The Family Court of Australia announced a dedicated National Arbitration List (NAL) in April which commenced in June this year. During the first four months of operating, the innovation has proven to be a successful way of resolving family law property disputes. Importantly, it has provided families with a cost-effective and timely alternative to the traditional path of litigation.

Chief Justice of the Family Court of Australia and Chief Judge of the Federal Circuit Court of Australia, the Hon Will Alstergren said the NAL was one of many initiatives in a suite of reforms introduced to reduce the backlog of pending cases in the Courts. As an alternative to a court trial, parties can appoint their own accredited arbitrator and they can set their own timetable. This can enable families to extricate themselves from the anxiety of waiting for a judge to become available to hear their case.

All cases conducted as part of the NAL so far have been heard and determined by accredited arbitrators within three months of entering the judge-controlled NAL, with no appeals to date. Under court rules the arbitrator must produce an award within 28 days of concluding the arbitration. Once registered, the award becomes a decree of the court, enforceable like any other court order.

Justice Josh Wilson is the National Arbitration Judge for the Family Court of Australia.

Under current NAL procedures, Justice Josh Wilson makes orders referring property cases to arbitration and requires the arbitration to be concluded within six months. So far, 55 matters have been referred to the NAL. To date, 12 matters have reached a final resolution, all within 3 months of the date of referral. The remaining 43 matters are undergoing close case management and are expected to have completed arbitration within three to six months of the date of referral to arbitration.

“To have cases determined and resolved by an arbitrator within three to six months of being referred is extremely impressive. This is a relatively new innovation of the Courts and while we are very happy with the results so far, we would like to see increased use of arbitration by practitioners and parties,” Chief Justice Alstergren said.

Prior to the commencement of the NAL, delays in referring cases to arbitration, in registering awards and in the hearing of appeals from arbitrators led to an unwillingness among parties and the legal profession to engage in the arbitration process. The NAL resolves the problem. Parties pay a fee to the arbitrator, as opposed to funding the cost of a lengthy trial. This ensures they have access to a speedy, legally sound and enforceable decision.

“Each Friday Justice Wilson sits to deal with applications in the NAL where he makes required orders and directions to remove any roadblocks to the hearing and determination of the arbitration. This ensures accessibility to the Court, fluidity and a fast turn-around. The NAL is a good illustration of the Courts and the profession working in partnership to assist litigants to resolve matters in a timely manner,” Chief Justice Alstergren added.

The NAL also operates in the Federal Circuit Court. In both Courts, parenting cases continue to be heard by judges and not arbitrators.