

Alternative dispute resolution

Alternative dispute resolution (ADR) is a way of resolving disputes without going to court. Most types of ADR use a neutral third person to help the parties come to agreement and the degree of influence this person has over the final outcome depends on the type of ADR.

There are a number of advantages to using ADR processes. They offer more flexibility and can also offer more creative solutions where relationships need to be preserved. Confidentiality is another benefit as neither the reason for a dispute or its resolution need to be made public. There can be savings in legal costs and time as ADR processes can occur at short notice and at a time convenient to the parties.

In some specialist areas or industries ADR schemes have been set up to handle disputes more efficiently. Examples of these include the Energy and Water Industry Ombudsman, the Australian Banking Industry Ombudsman, the Financial Industry Complaints Scheme, the Insurance Equities and Complaints scheme and the Telecommunications Industry Ombudsman.

In some areas of the law, it may be a requirement to use ADR procedures before bringing a matter to court. For example, family law matters require counselling to be undertaken prior to the commencement of proceedings and in many civil matters being brought before a Magistrates' Court pre-hearing procedures will require parties to conduct mediation conferences to attempt to resolve their dispute prior to hearing.

Negotiation is an informal bargaining process. It takes place directly between the people in dispute, but can be assisted by lawyers and advocates. Communication may be written or spoken and effective negotiators acknowledge that it is hard to reach agreement unless everyone involved gets some benefit. Negotiation is a good first step for almost any type of dispute.

Mediation is a process in which a qualified mediator assists people to negotiate with each other to resolve their dispute. Mediation is confidential and normally all parties meet together and the mediator assists the process by helping to identify issues and possible options. Mediators don't impose a decision, they simply run the meeting. Even if all aspects of a dispute are not settled, mediation can narrow down the issues that may subsequently go to Court.

Facilitation is like mediation but it is used for groups in conflict. The facilitator helps the people involved in the dispute to negotiate with one another to come to an agreement. All the parties involved attend one or more meetings which are run by the facilitator. The facilitator helps to identify problems and tasks to be accomplished. Facilitators don't impose a decision. The people at the meeting make a group decision about actions and outcomes. Facilitation is useful in providing a forum for various points of view and it can be useful in situations where people are having problems working together.

Conciliation is a process in which people try to resolve a dispute with the assistance of a conciliator. Normally conciliators have experience of the subject of the dispute and can advise the parties what their rights and obligations are. Discussions are confined to the subject matter of the dispute. Conciliation can only work where both parties are prepared to work toward resolution of the dispute. It is a confidential process and the conciliator does not impose a decision. Conciliation can be used where you need to uphold your rights or need advice on your rights.

Arbitration is a formal process in which the people in dispute present their case to an independent third party and are bound by that person's decision. People may agree to arbitration and on the choice of the arbitrator but more often one party will apply for arbitration and the other party is obliged to participate. Sometimes a dispute put forward for arbitration will be referred for mediation or conciliation. Arbitration may be nominated in a contract as a form of dispute resolution and it is often used for property and industrial relations disputes.

This article contains general information only and is not provided as legal advice. Professional advice should be taken before any course of action is pursued, or any information here is relied upon.

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