

Alternative dispute resolution

A legal guide to your rights and obligations

No matter who you are in a dispute with – a neighbour, friend, former spouse or partner, business associate or a major corporation – the option of using alternative dispute resolution, instead of a draining legal battle, is well worth considering. Your solicitor can advise you on which course you should take to avoid going to court.

What is alternative dispute resolution?

Alternative dispute resolution (ADR) is the term used to describe methods, outside of court proceedings, which you can use to help resolve your legal problem.

The ADR methods provide a means for early resolution of new disputes. It also aids in quickly resolving lengthy disputes.

These dispute resolution methods can be built into agreements before disputes arise, so if a problem develops it can be sorted out quickly and at a lower cost.

Most importantly, with ADR, the solution is up to you.

What are the ADR methods?

The methods you can choose to help solve your legal problem include:

Mediation

An independent and neutral person helps you and the other parties to work out the issues in dispute, and come up with an acceptable solution. It is up to you to make an agreement. Control of the outcome stays with you. The mediator is not there to advise or make decisions regarding the issues. The mediator is a facilitator, not a decision maker.

Many courts and tribunals have the power to order you to try mediation before taking a matter to trial. Otherwise, it is voluntary. This means you cannot force the other party to mediate. They have to agree. If you and the other party choose to mediate and an agreement is not reached, you can still go to court.

Conciliation

Conciliation is a process in which the parties to a dispute, with the assistance of a neutral person, identify the disputed issues. The conciliator will help you and the other parties to look at the strengths and weaknesses of each other's arguments. Usually, the conciliator is an expert on the subject of the dispute and as a result, the conciliator may provide indications about how a court may decide your case. However, the conciliator does not make a decision for you.

As with mediation, some courts and tribunals may order you to try conciliation before going to trial. You cannot force another party to conciliate. If you and the other party choose to conciliate and an agreement is not reached, you can still go to court.

Collaborative law

Collaborative law involves both parties and their legal representatives signing an agreement to reach a settlement without resorting to litigation. The focus of all participants is, therefore, entirely on reaching a negotiated settlement.

Arbitration

Using this process, the parties to a dispute choose an independent arbitrator to act as a decision-maker. The person appointed as the arbitrator makes a decision which, in some jurisdictions, is binding on you and the other parties. In other jurisdictions such as family law property cases you and the other party will need to agree to file the arbitrator's award in court for it to be binding.

Arbitration is now used in family law matters.

Why use ADR?

Cost savings

Research into mediation has found the cost of disputes that go to court is notably much higher than the cost for matters that have been successfully mediated.

Time saving

Settlement is usually quicker than it would be if you went to court.

Flexibility

You decide on the time and place of the ADR session. You choose whether the session should be formal.

Privacy

You can agree that discussions during the session is confidential. This may be subject to legal limitations.

Greater range of solutions

You can expand the range of possible solutions to your dispute.

Future cooperative relations

An early amicable solution may improve your future relationship with the other parties.

When is ADR used?

ADR is a flexible way of sorting out disputes. It has already been used for everything from neighbour disputes over a fence, to divorce settlements, to multi-million dollar commercial contract disputes.

Courts generally expect parties to participate in some form of ADR to try to resolve their legal disputes.

ADR can be used at any time in the dispute, from the early stages before it goes to court, right up until the dispute is ready for trial.

Adjudication

Under the *Building and Construction Industry Payments Act 2004*, a process of rapid adjudication has been introduced to resolve progress payment disputes.

Queensland Law Society is registered as an Authorised Nominating Authority (QLS ANA) under the Act.

The Society can put you and your solicitor in contact with skilled adjudicators who can make quick (within ten business days), legally enforceable decisions.

If the respondent fails to pay by the due date stated in an adjudicator's decision, the QLS ANA can issue an Adjudication Certificate that, in essence, confirms that decision. This can be filed in an appropriate court for enforcement and without the need for a hearing.

Why use a solicitor?

Many solicitors have been trained to act as mediators, conciliators, arbitrators and adjudicators.

Your solicitor will also advise you when ADR is appropriate.

If you have a legal problem, expert advice in the early stages can save time and money. A solicitor can help you to choose the best way to resolve your dispute. If ADR is the best option, a solicitor can:

- help persuade other parties in the dispute to use ADR
- help you find an independent person for your ADR session
- assist you in preparing for the negotiations
- appear with you at the ADR session.

Legal costs

At your first appointment, ask your solicitor about the costs involved in using ADR to resolve your dispute.

Finding a mediator, arbitrator or adjudicator

If you are interested in using ADR, visit qjs.com.au/findasolicitor to use the 'find a mediator' or 'find an arbitrator' searches. Alternately, you can contact Queensland Law Society at the number below and ask for a referral to a nationally accredited mediator, arbitrator or adjudicator.

Queensland Law Society

Contact us

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The information in this brochure is merely a guide. It is not meant to be a detailed explanation of the law and it does not constitute legal advice. Queensland Law Society recommends you see your solicitor about particular legal concerns.