

Why use a solicitor?

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

Your solicitor will also advise you when ADR is appropriate. For instance, ADR should not be used where the dispute involves violence.

If you have a legal problem, expert advice in the early stages can save time and money. A solicitor can help you 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, and
- appear with you at the ADR session

Legal costs

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



Finding a mediator, conciliator or arbitrator

If you are interested in using ADR, contact the Queensland Law Society on 07 3842 5842 and ask for a referral to a Law Society Approved Mediator or Arbitrator.

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



Law Society House
179 Ann Street
Brisbane Qld 4000

Telephone 07 3842 5888
Fax 07 3842 5999

info@qls.com.au
www.qls.com.au

Alternative Dispute Resolution

A legal guide on how to
avoid going to court



No matter who you are in dispute with – a neighbour, friend, 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 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 you can use to help solve your legal problem.

The ADR methods provide a means of resolving new disputes early as well as resolving lengthy disputes which have been running with no end in sight.

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 low 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 are:

Assisted negotiation

You and your solicitor meet with the other parties to discuss the issues. This method is a common and effective way to work out a solution.

Mediation

An independent person helps you and the other parties work out the issues in dispute and come up with an answer which everyone accepts. It is up to you to make an agreement. Control of the outcome stays with you.

Some courts and tribunals have the power to order you to try mediation before taking the 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

Usually, the conciliator is an expert on the subject of the dispute. The conciliator will help you and the other parties look at the strengths and weaknesses of your arguments but will not decide the issue for you. Once again, you retain control of the outcome.

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.

Arbitration

Using this process, the parties to the dispute choose an independent arbitrator to act as a judge. The person appointed makes a decision which is binding on you and the other parties.

Why use ADR?

Cost savings

A Justice Research Centre survey of family law costs in December 1996, found that the average price of a full litigated family law matter was eight times the cost of a family law matter resolved by mediation.

Time saving

Settlement is usually quicker than if you go to court.

Flexibility

You decide on the time and place of the ADR session and how formal or informal it will be.

Privacy

You can agree that discussion during the session is confidential.

Greater range of solutions

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

Future cooperative relations

An early amicable solution may bring future cooperative relations 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 are now suggesting that parties use a form of ADR 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.