

6 STEPS TO SUCCESSFUL RESOLUTION

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Australia's dispute resolution agency.

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Introduction

Mediate Today Develops Small Business Kit

This information has been extracted from a kit produced by Mediate Today for the Federal Department of Employment, Workplace Relations and Small Business. 100,000 copies have been distributed following overwhelming demand for its practical approach to dispute resolution.

Resolving Disputes with 6 Simple Steps

This section is primarily directed towards assisting small business resolve disputes as quickly and as cheaply as possible, and to implement good business practice with respect to disputes that may arise.

Good Management Includes Good Dispute Management

Problems arise every day between individuals, businesses, their customers, suppliers, partners and employees. Most of these are dealt with quickly and efficiently through common sense. A small percentage, however, escalate into a dispute. Disputes that remain unresolved may start affecting the profitability and productivity of the business.

Traditional Dispute Resolution for Small Business

Although small businesses often have legal recourse in disputes, their access to justice can be constrained by the cost of going to court, the long time and delays before their case is heard, the disparity in the quality of representation and their need to preserve business relationships. In many cases, neither party achieves a satisfactory result from a Court judgement.

The Benefits of Alternative Dispute Resolution

We proudly encourage individuals and small business to use 'Alternative Dispute Resolution' (ADR) instead of litigation, where it is appropriate. In most cases ADR can offer you a low cost, quick and flexible system for resolving disputes. ADR is a viable alternative to litigation, typically achieving a success rate of around 80%, without costly and time consuming legal action. For example, some studies show that using ADR in a dispute can cost as little as five percent of the cost of going to court.

ADR processes seek to produce a negotiated settlement between the parties in a manner that encourages common sense, practical solutions and preserves business relationships. A neutral party (usually a mediator) helps the parties find a settlement that both can agree to, within a fully confidential process.

ADR provides the parties in a dispute with total control over the outcome, removing the uncertainty that comes with a Court case and judgement. Where an agreed settlement is not achieved, the parties retain their full rights to proceed with legal action.

These six simple steps should help you resolve your dispute.

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Step 1: Understand Your Dispute

Good business management involves good dispute management. A good understanding of your dispute will enable you to take control of the dispute and make an informed decision about the most appropriate way to resolve your dispute.

The steps set out below will enable you to better understand and resolve your dispute. The accompanying [Dispute Characterisation](#) section and [Case Study](#) section provide typical dispute scenarios and may also be of some use in understanding your dispute. These scenarios illustrate the type of disputes that are typically well suited to Alternative Dispute Resolution (ADR).

WHY DID THE DISPUTE ARISE?

- list the sequence of events leading up to the dispute
- document the facts
- has the dispute escalated? why?
- why hasn't the dispute been settled?

WHAT ARE THE REAL ISSUES?

- document the most important issues you need to resolve, in order of priority
- think about the issues from the perspective of the other party

WHAT DO YOU WANT TO ACHIEVE?

- think in terms of your 'needs' rather than your legal rights
- consider the impact of your preferred outcome on all parties - is this reasonable?
- consider your preferred outcome in terms of impact on profitability, productivity, future business and personal relationships, time and resources
- will the preferred outcome resolve the dispute in the long-term?

REALITY TEST

- play devil's advocate - are you being realistic about the strength of your position?
- is your preferred outcome a reasonable proposition?
- discuss the dispute with a trusted adviser - do they agree with your position?
- are you allowing anger or disappointment to cloud your perspective?

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Step 2: Understanding Your Options

There are many ways to approach dispute resolution. The great majority of problems encountered by small business are resolved through simple discussion and common sense between the parties and do not escalate into a dispute.

In virtually all instances, small businesses should at first attempt to resolve their disputes through direct discussion and negotiation.

Disputes will occur, however, where there is a lack of communication, where there are unrealistic expectations or where there is a grievance that cannot be resolved through direct discussion.

When a dispute occurs, each party has a choice about the dispute resolution method that they would like to pursue. Unfortunately, litigation is usually the norm and dispute resolution is often approached as a matter between lawyers and the Courts. There are, however, a variety of other approaches available which may save time and money and preserve business relationships.

Dispute resolution options for small business range from negotiation-based methods, where the parties have full control over the outcome (generally known as 'alternative dispute resolution' - ADR), to adversarial methods where the parties have less control over the outcome (such as arbitration and litigation). Where a negotiated settlement is reached through ADR, the terms of the settlement, once agreed and signed by the parties, are legally binding and can be enforced if necessary.

The chart below sets out some of the advantages and disadvantages of different approaches to dispute resolution.

ADVANTAGES	METHOD	DISADVANTAGES
<ul style="list-style-type: none"> Parties Control Outcome Time - Efficient Cost - Efficient Confidential Maintains Business Relationships Non-Adversarial, Informal Process 	Alternative Dispute Resolution (ADR)	<ul style="list-style-type: none"> Does Not Establish Legal Precedent Not Open To Public Scrutiny Not Appropriate For Fraud Or Criminal Behaviour

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- Appropriate For Fraud Or Criminal Matters
- Can Establish a Legal Precedent →
- Appropriate Where One Party Has No Intention Of Compliance



- Parties Have Limited Control Over The Outcome ←
- High Cost & Lengthy Process
- May Destroy Business Relationships

Step 3: Select Dispute Resolution Method

This page is designed to help you select the most appropriate dispute resolution method for your dispute. Please work through the steps methodically. If additional information is required, contact Mediate Today as described in [Step 4](#).

<p>With regard to your dispute:</p> <p>Would you rather negotiate a settlement than go to Court?</p>	
<input type="checkbox"/> Yes	<input type="checkbox"/> No
CONTINUE	SELECT LITIGATION
<p>Is any aspect of the dispute about a potentially 'criminal'* matter, as opposed to a 'civil' matter? (*criminal matters can usually be defined as those that may warrant police involvement).</p>	
<input type="checkbox"/> Yes	<input type="checkbox"/> No
SEEK LEGAL ADVICE PRIOR TO CONTINUING	CONTINUE
<p>Do you need a binding legal interpretation of a fundamental contract clause?</p>	
<input type="checkbox"/> Yes	<input type="checkbox"/> No
SELECT LITIGATION OR ARBITRATION	CONTINUE
<p>Do you have a contract that requires arbitration to resolve any dispute that arises?</p>	
<input type="checkbox"/> Yes	<input type="checkbox"/> No
SELECT ARBITRATION	CONTINUE

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Do you have a contract that requires arbitration to resolve any dispute that arises?		
<input type="checkbox"/> Yes	<input type="checkbox"/> No	
SELECT LITIGATION	CONTINUE	
Is there a risk that a Court decision will not provide you with your preferred outcome?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
It is important to maintain an ongoing business relationship?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Would it benefit your business to have the matter settled quickly?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is the cost of settling the dispute an important factor?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Publicity about the dispute or its outcome should be avoided.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
The dispute lends itself to a realistic, commercial settlement rather than a court's legalistic decision.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
A full appreciation of my needs, interests, concerns and expectations, rather than legal rights, is most important.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
A mediator may help defuse emotion or hostility which otherwise may bar a settlement and could improve communication between the parties.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Will direct negotiations or continued inaction deepen into litigation, increase hostility and inflexible positioning by either party?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

IF YOU HAVE SELECTED 'YES' FOR ANY QUESTION THEN GO TO STEP 4.

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STEP 4: Access Mediate Today

ALTERNATIVE DISPUTE RESOLUTION (ADR) OPTIONS

If you have progressed this far through the checklist it should by now be apparent that an alternative dispute resolution (ADR) approach would be beneficial for the resolution of your dispute.

There are a large number of ADR methods which may be appropriate depending upon the particular circumstances of your dispute, including mediation, assisted negotiation, inter-mediation, facilitation, expert determination and partnering.

The information below will assist you to select the most appropriate ADR method for your dispute. If in any doubt you are welcome to contact Mediate Today for an obligation free, no charge consultation.

SELECT ASSISTED NEGOTIATION	If ongoing negotiations are deadlocked or bogged-down over sticking-points, which a joint negotiator/mediator may help resolve.
SELECT MEDIATION	If you are willing to work with the other party, with the assistance of a mediator, to identify issues, develop options, and try to reach an agreement.
SELECT INTER-MEDIATION	If the dispute is relatively large, complex or sensitive and would benefit from independent analysis, reality testing, a fresh perspective and creative input.
SELECT FACILITATION	If there are many parties or groups involved and many issues in the dispute. If there is a need for assistance or independence in the exchange of information, agenda setting, communication processes or the chairing of meetings.
SELECT EXPERT DETERMINATION OR RECOMMENDATION	If the dispute involves technical issues, such as standards, compliance, quality specifications, quantification of loss or similar issues and would benefit from independent expert advice, determination or recommendation.
SELECT PARTNERING	If a long-term working relationship and/or mutual goals are at risk. If there is a major project that must be completed within a tight timeframe and with minimum disruption. If it is important to maintain trust and effective communication in the working relationship.

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Step 5: Preparing for Resolution

At this stage you have chosen to seek resolution of your dispute through ADR and you now need to prepare for the resolution process.

Good preparation will maximise the opportunity for a successful resolution to your dispute. Working through the following steps will ensure that you are properly prepared.

<p>PRESENTATION AND ASSISTANCE</p>	<p>Consider whether there are other people who should attend the dispute resolution process with you.</p> <p>If there is a joint owner or business partner who will need to be party to the agreement, then it is very important that they attend or, alternatively, that they provide you with the authority to make a decision on their behalf.</p> <p>Consider whether you need assistance in the dispute resolution process. Depending upon the nature of the dispute it may be appropriate to bring a friend or family member, solicitor or barrister, accountant, interpreter or a professional negotiator.</p> <p>If you are strongly emotionally involved in the dispute, you may benefit from the assistance of a professional negotiator. If you need advice about this, contact one of the dispute resolution providers listed in step 4.</p>
<p>PREVIEW THE DISPUTE</p>	<p>Write down your understanding of the problem and list all the related issues in order of importance.</p> <p>Prepare the information and data required to justify your claim, and bring it to the mediation.</p>
<p>CONSIDER POTENTIAL OUTCOMES - BEST CASE</p>	<p>Identify a range of options which may resolve the problem- be as expansive as possible. Focus on addressing your real needs and concerns rather than your legal rights.</p> <p>Be clear about your preferred outcome.</p> <p>Identify those matters that are most important to resolve and those that are less important.</p>

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<p>CONSIDER POTENTIAL OUTCOMES - WORST CASE</p>	<p>Consider the alternatives to reaching an agreement at the mediation:</p> <ul style="list-style-type: none"> • what will be the cost (legal fees, time)? • what will be the impact on your business? • what is the risk of losing a Court case and what implications will this have? • what is the potential impact on your family and/or business associates if this dispute is not settled? (obtain their input).
<p>IS THERE COMMON GROUND?</p>	<p>Are there aspects of your commercial relationship which provide common ground. For example, will it be mutually beneficial to ensure an ongoing business relationship?</p> <p>List any potential areas of common ground.</p>
<p>DEVELOP A NEGOTIATING STRATEGY</p>	<p>Try to understand the dispute from the other side's perspective and be as objective as possible. Identify a range of options which the other party may see as acceptable to them and consider how you may present these in negotiation. Make sure that you understand the strengths and weaknesses of your case. Can you identify trade-offs that may be acceptable? This may involve identifying non-financial benefits or discounting a monetary settlement in return for ongoing business, early payment or other benefit. It is beneficial to identify in advance any issues where you are able to make a concession or compromise. This may prompt the other side to also make concessions.</p> <p>Think about your approach to the mediation - good negotiators usually present a combination of calmness and assertiveness. An aggressive attitude may undermine your ability to reach an agreement and escalate the dispute.</p> <p>How will you present your side of the dispute in a way that is clear and comprehensive? - prepare some notes to assist you.</p> <p>If you think that there may be a personality clash or an awkward situation in the mediation, consider how you will deal with this.</p>
<p>REALITY TEST</p>	<p>Reconsider whether you have contributed to the problem or its escalation. If so, does this change what is required to resolve the</p>

dispute?

Will your real concerns be resolved by your preferred outcome? If not, reconsider your preferred outcome.

Discuss the dispute with a trusted adviser and ask them for their honest opinion about your position and preferred outcome.

Most importantly, consider carefully your 'bottom line', having regard to:

- the most important issues that need resolution
- the strengths and weaknesses of your position
- the potential implications if a negotiated settlement is not achieved.

Consider your bottom line in terms of 'what can you live with'.

What ever you do, keep an open mind to new ideas and suggestions. This is your best opportunity to settle the dispute without going to Court.

Step 6: Successful Dispute Resolution

The information set out on this sheet will help ensure that you fully understand the dispute resolution process and are aware of what to expect. The typical dispute resolution process set out below is based on mediation, however, other ADR methods would usually follow a similar path.

A typical dispute resolution process

<p>APPOINTMENT OF A MEDIATOR/ VENUE SELECTION</p>	<p>Most mediations are organised through a dispute resolution provider (refer to step 4). An important role for the provider is to ensure that the mediator in any particular dispute is independent from all parties and does not have a conflict of interest in the matter.</p> <p>The dispute resolution provider will usually send both parties a list of potential mediators for their consideration. Any party to a mediation has the right to veto the appointment of a mediator, however, this should be done at the earliest possible time.</p> <p>The dispute resolution provider will also arrange all aspects of the mediation, including co-ordinating a mutually convenient time for the mediation and organising a 'neutral' venue.</p>
<p>MEDIATION AGREEMENT</p>	<p>The dispute resolution provider will provide the parties with a 'mediation agreement' for signature prior to the mediation. This agreement sets out details relating to the conduct of the mediation, such as payment for mediators' services, confidentiality provisions, enforceability issues and termination of the mediation. These matters are discussed in greater detail below.</p>
<p>CONFIDENTIALITY</p>	<p>In most cases, the parties to a mediation will be asked to sign a confidentiality agreement. This ensures that all information provided at the mediation, including settlement offers that may be made, cannot be revealed in other proceedings.</p> <p>The purpose of this confidentiality provision is to ensure that the parties in a mediation are able to discuss the dispute openly and frankly, and seek settlement, without the risk of prejudicing further legal action that may occur if the mediation fails. Confidentiality is also important for the resolution of disputes where adverse publicity may undermine the chances of a settlement.</p>

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<p style="text-align: center;">OPENING STATEMENTS</p>	<p>At the commencement of the mediation both parties will be asked to make a short statement providing your perspective to the dispute, including:</p> <ul style="list-style-type: none"> • how the dispute started • how the dispute has affected you and your business • what your main concerns are • what you see as the main issues • your needs that will need to be satisfied in any settlement. <p>Each person is usually required to speak for themselves when making opening statements. The only person who may interrupt is the mediator, who may want to clarify some points. The other party cannot interrupt.</p>
<p style="text-align: center;">ISSUES IDENTIFICATION</p>	<p>The mediator will summarise each party's key points and identify the key issues in dispute. Both parties can provide additional information at this stage, with the aim being a full compilation of all relevant issues.</p> <p>Once issues have been comprehensively identified and summarised, the mediator will usually encourage discussion about the issues so that any early opportunity for resolution can be identified.</p>
<p style="text-align: center;">PRIVATE SESSIONS (CAUCUS)</p>	<p>In most disputes, the mediator will meet with each party separately and privately. This provides an opportunity for more frank discussion about the dispute and exploration of opportunities to resolve the dispute. The mediator may discuss with you matters that were raised in the opening statements and establish whether these change the situation or your expectations in any way.</p> <p>You will be able to confidentially discuss any matter with the mediator in this private session. The mediator is bound to maintain the confidentiality of anything said in private session unless you provide authority for him/her to transmit information to the other party. In some cases you may ask that the mediator convey a settlement offer to the other party. The mediator would, however, usually be reluctant to do this until all issues are explored.</p>

<p>TERMINATION OF THE MEDIATION</p>	<p>You have the right to terminate the mediation at any time, for example, if you think the mediator is biased or the other party does not seem to be acting in good faith. If you wish to terminate the mediation for any reason, it is recommended that you first discuss your concerns with the mediator in private.</p> <p>Mediation has a very high success rate (80%+), however, if it becomes apparent that the parties are not going to reach a settlement the mediator will normally recommend that the mediation be terminated.</p> <p>Most importantly, consider carefully your 'bottom line', having regard to:</p>
<p>ACHIEVING RESOLUTION</p>	<p>A joint session of the parties chaired by the mediator is usually held to finalise settlement terms. If necessary, further private sessions may be held to fine-tune difficult issues or break deadlocks.</p> <p>In some instances there may be agreement between the parties on some issues but not on others. In these instances there may be an opportunity for the mediation to be adjourned so that further advice can be obtained. Where there is a technical issue in dispute, the parties may agree to commission an independent expert to provide a recommendation. A mediation settlement may also take the form of an action plan which sets out dates for the making of payments or the completion of various activities (such as the preparation of legal documents, new lease agreements, supply contracts and the like). The terms of settlement of the dispute are not determined by the mediator but by the parties themselves. These terms are written down and signed by each party. If there is a considerable amount at stake, ask for time to seek the advice of a lawyer on the proposed agreement before signing.</p>
<p>ENFORCEABILITY</p>	<p>The signed settlement agreement can be enforced through the courts in the event that a party fails to abide by any of the terms of the agreed settlement.</p>

Contact Us

If you have any questions or comments feel free to contact us

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