

# Who's in your corner?

## Alternative Dispute Resolution



### How do I find out more?

Some industries have codes of conduct that have specific ADR requirements. Check the details of your code for more information. Eg. the franchising industry should contact the Office of Mediation Adviser at [www.mediationadviser.com.au](http://www.mediationadviser.com.au).

Participants in the retail grocery industry can find out more at Mediate Today [www.mediate.com.au](http://www.mediate.com.au).

For further information, contact the ACCC Infocentre on 1300 302 502 or visit the ACCC website at [www.accc.gov.au](http://www.accc.gov.au).

### Franchise

If you are a franchisee in a dispute with a franchisor, bear in mind that the mandatory Franchising Code of Conduct **requires** both parties to a dispute to attend mediation and try to resolve the dispute if either party has told the other in writing:

1. the nature of the dispute
2. the outcome the complainant wants and
3. what action the complainant thinks will settle the dispute

### AND

The parties must have failed to resolve the dispute within three weeks of the complainant giving the other party notice as above **and** the complainant must have asked the mediation adviser to appoint a mediator.

### Did you know?

The Office of Small Business produces a publication outlining steps to the ADR process *Resolving Small Business Disputes—six steps to successful dispute resolution*. It is available on their web site at [www.industry.gov.au](http://www.industry.gov.au).

Two parties are fighting over an orange. If they go to court, one will end up with the orange, the other will lose out completely, and both will have been caught up in a lengthy, costly court process.

If they choose an ADR process such as mediation, the

mediator, as a neutral party, finds the common ground and can help the parties reach an agreement that will benefit both.

The argument has made the parties blind to the obvious, that together they can work out a way to share the orange. During mediation they

realise that one party wants the orange to make orange juice and the other needs the rind for mixed peel.

And the great news is, mediation was not only cheaper and faster than going to court, it's kept the business relationship intact.



## Alternative dispute resolution

**G o o d** relationships with suppliers, customers or landlord are essential for the smooth running of your business. But what happens when it all goes sour?

Even in relationships that work hard to avoid disputes, they sometimes happen—whether from simple misunderstanding, communication breakdown or as the result of a legitimate grievance. Unresolved disputes can be costly and damaging to your business, especially when they land you in a long and expensive court process. So what other options are available?

Alternative dispute resolution (ADR) is a convenient label for a range of methods by which people involved in a dispute can be helped to resolve it cost effectively, fast and efficiently. Common ADR processes include:

### N e g o t i a t i o n

If you can't work it out among yourselves, there is an option for **assisted negotiation** whereby an independent third party (a go-between) will help the parties to prepare for and undertake the negotiation process.

### C o n c i l i a t i o n

Similar to negotiation or mediation, a conciliator will help the parties to reach agreement by making various recommendations. The recommendations are not binding unless the parties agree that they should be.

### M e d i a t i o n

An independent person helps the parties to find a mutually acceptable solution. The process focuses on the parties' resolving the disputes themselves using the skills of the mediator.

## What are the advantages of ADR?

Generally speaking, the parties are given the opportunity of finding their own solution to the dispute rather than having a decision made for them by a court. The processes can also offer:

### A confidential approach

In contrast to a court process, some ADR processes such as mediation and arbitration are conducted in private and

the results remain private. No business needs adverse publicity arising from litigation. ADR can help keep the dispute out of the limelight and therefore maintain a business's good image.

### Significant savings in legal costs

A dispute can mean one trip to your lawyer or it can mean several. Often, disputes 'blow out' a legal budget and the only person to benefit is your lawyer.

### Significant savings in time

If a business is involved in litigation or a complex dispute, the business focus is diverted away from making a profit and the business bottom line may suffer.

### C o n v e n i e n c e

The parties have more control over the ADR process, which can be held at relatively short notice. It also allows for creative solutions such as the 'lemon' example.

### Retaining business relationships

ADR encourages businesses to develop business solutions themselves. It puts the onus on all parties to participate, which decreases the potential for animosity.

