

## Dispute Resolution

**Civil Law** is the law relating to disputes between individual members of society, including between people and corporations or businesses.

Civil Law usually involves a requirement to first try to resolve the dispute between the individuals themselves, unless it is urgent or there are safety issues involved. This is called 'dispute resolution' – it's a way of resolving disagreements without going to Court. It is one of the first steps in trying to reach an agreement about many kinds of problems, including disputes:

- between neighbours;
- between separating couples;
- between landlords and tenants;
- about goods and services; or
- in the workplace.



There are different methods of dispute resolution for Civil Law issues. Many of them involve a process where a third person or organization helps the individuals negotiate and reach an agreement.

**Negotiation** involves people in a dispute communicating directly, either by speaking or in writing, to try reach an agreement. It is a good step for most types of disputes. Lawyers often help people to negotiate by representing their client in a dispute.

**Mediation** is when an impartial person (a mediator) helps people to negotiate with each other to resolve their dispute.

**Facilitation** is like mediation, but it is used for larger groups that are in conflict, such as in planning matters or body corporate disputes. Facilitation can be used as a forum for different points of view to be discussed and considered in reaching an agreement. It is led by an impartial person (a facilitator).

**Conciliation** is a process in which the people in dispute try to reach an agreement with the assistance and advice of an impartial person (a conciliator). The conciliator usually has some experience of the matter in dispute and can advise the parties of their rights and obligations.

**Arbitration** is a formal process in which the people in dispute present their case to an independent third person (the arbitrator) and are bound by that person's decision.

Mediators, facilitators, and conciliators can give information and advice, but do not impose a decision about how the dispute should be resolved.

In Civil Law cases, the Courts sometimes include compulsory dispute resolution as part of their process of handling a case. Also, in some types of disputes, such as Family Law, a person cannot go to Court unless they first attempt a form of dispute resolution similar to mediation, called Family Dispute Resolution.

However, there may be exceptions where they do not need to do this first if a person has experienced family violence, or mediation is not appropriate for other reasons.



## Settlement

**Settlement** is when a dispute is solved by coming to an agreement, often after one of the dispute resolution processes above. A settlement is usually recorded in writing, and may take the form of a legal document such as a Deed of Settlement. The terms of a settlement are decided between the individuals or businesses involved in a dispute. In some cases, especially where Court proceedings have already started, a Court may need to approve the terms of a settlement to ensure it is fair in all the circumstances.

Often, a settlement or agreement states that it is made without admitting the allegations or admitting liability for the injury, loss or damage. This allows people in disputes to come to a practical solution without necessarily having to admit fault, especially where admitting fault may cause further legal issues later on.

## Going to Court

Most disputes in our society are solved by the dispute resolution processes above and reach some kind of settlement. The advantage of this is that the people involved in the dispute are able to make their own decisions and control what the outcome might be.

When these dispute resolution processes are not successful, or not appropriate, people in disputes need to go to a Court or Tribunal or other decision maker who has the power to make a binding decision for them. When this happens they have less control over the outcome because the Court or Tribunal will make the final decision.

