Alternative dispute resolution processes are increasingly being used in a number of areas of the law to help resolve disputes. These are sometimes referred to as primary dispute resolution processes since they may be used before the parties opt to take the matter to court.

Alternative dispute resolution involves the use of an impartial third party to help the people in dispute come to an agreed resolution. ADR can involve a range of mechanisms for resolving disputes, including mediation, conciliation and some forms of arbitration.

Depending on the type of legal problem, your lawyer may suggest alternative dispute resolution as an avenue for resolving your problem without the need to go to court. Alternative dispute resolution processes are used in a wide range of areas of the law, including disputes in relation to neighbourhood issues, family law, commercial and industrial relations. They are also used in tribunals and some courts. ADR is considered to have the advantage of being faster, cheaper and more informal than traditional court-based action. However, certain types of disputes are not suited to mediation, including situations where there is a fear of violence, there is a significant ‘public interest’ at stake, a party is constrained in being able to reach a compromise or lacks the power or ability to negotiate on their own behalf.

Mediation

In mediation, a neutral third person assists the parties in dispute to reach a resolution between themselves. The mediator does not determine liability and cannot award financial costs or penalties. Mediators do not give advice or make suggestions for resolution. It is increasingly common for there to be two mediators, called co-mediators.

Mediation is often seen to be a suitable dispute resolution process in situations where there is an ongoing relationship between the parties, as a way of avoiding the type of damage which can be caused by the adversarial court system. Mediation is used for disputes between family members or neighbours. Mediation may be ordered by a court for an attempt at a fast and less costly resolution to a dispute. Such mediation is compulsory in family law matters. Mediation is also used by the Office of the Legal Services Commissioner in some disputes between lawyers and clients.

Conciliation and arbitration

In conciliation, a neutral third person assists the parties in dispute to come to a resolution by suggesting the terms of an agreement. It involves a much more active role for the third party than mediation, because they may offer an opinion on the situation.

Conciliation can be useful when one party to a dispute is unwilling to engage in mediation. Some agencies, for example the Anti-Discrimination Board, use conciliation because they have the responsibility to ensure that any agreement which is reached is not itself discriminatory. In some situations, conciliation is compulsory, for example in industrial disputes.

In arbitration, an independent third person makes a decision about a dispute between two parties which they are bound to observe. Arbitration is the most formal of the alternative dispute resolution processes. Arbitration is a non-judicial process in which the arbitrator determines what rights and obligations each party should have. It is different to adjudication, which is a court process concerned with determining existing legal rights and responsibilities. Arbitration is commonly used in the commercial and industrial arenas.

Community justice centres

Community Justice Centres (CJCs), established under the Community Justice Centres Act 1983 (NSW), provide free, impartial and confidential mediation facilities across NSW for disputes concerning neighbourhood, family, community and interpersonal conflict.