

# Legalquotes News

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## GOING TO COURT IS NOT THE ONLY OPTION

It may be thought that seeing a lawyer to help resolve a legal problem will result in excessive time and expense being spent by lawyers going to Court. These days, more and more, lawyers and their clients prefer to try and resolve the dispute without even lodging proceedings with the Court.

Alternative dispute resolution ("ADR") is described as the decision making process by which matters are resolved outside the usual Court based litigation model. The word alternative also means that the decision is not made by a judge. The aim of ADR is to encourage settlement of the dispute between the parties with the assistance of a neutral person.

The main types of ADR are:-

- Arbitration – This is similar to having a private court case and is a system of determining disputes by a private tribunal. In this instance, there is an arbitrator as opposed to a judge.
- Mediation – This is more informal than arbitration and a neutral person (mediator) tries to bring the opposing parties together. The result of a mediation is non-binding, however, the respective parties can make it binding if they wish.
- Expert Determination – This is a process where a third person, an expert in their field, determines the dispute. The decision of the expert is binding with limited rights of appeal.

Of course, there are many benefits to ADR. Those benefits are being

embraced by the legal system to ensure a just, quick and cheap resolution to legal disputes. The advantages of ADR are that it is a much faster and cheaper way to resolve a legal dispute. It is also less adversarial than litigation and this results in less stress to the parties and less damage being caused to professional and personal relationships. Even if the matter is not resolved at the settlement, ADR also has the added benefit of allowing parties to discuss the issues so settlement can occur not too long after.

In accordance with the growing trend toward ADR, there are new pre litigation requirements that have been implemented in New South Wales. Schedule 6 of the *Courts and Crimes Legislation Further Amendment Act 2010* amends the *Civil Procedure Act 2005* and these amendments will come into full operation on 1 October 2011. For the moment, these amendments will not include proceedings that are in the Supreme Court.

In essence, these pre litigation requirements create obligations on lawyers and their clients to take reasonable steps to either resolve the dispute by agreement, or to clarify or narrow the issue in the event that civil proceedings are commenced. Should a matter proceed to Court, the parties will be required to file a dispute resolution statement. Participation in some form of ADR is likely to be a reliable way for the parties to fulfil their pre litigation requirements, and at the



same time maximise the chance for an early settlement. The dispute resolution statement will need to show how the Plaintiff has tried to resolve the matter, or at least, narrow the issues. The Defendant will then note agreement with the Plaintiff or note any differences.

The vast majority of matters that are commenced in Court do not proceed to a hearing. The amendments to the *Civil Procedure Act 2005* aim to bring matters to settlement even without the need to file proceedings in the Court. This will assist in ensuring that matters are resolved within a minimum amount of time and expense for the clients.

Legal disputes do arise and there is a growing trend in resolving the disputes without the need to enter a foot in the courtroom. Rankin Nathan Lawyers is able to assist you in resolving your dispute as expediently as possible. We may also assist you in preparing legal documentation that includes a clause in relation to ADR so that you know it is binding right from the beginning. If we could be of any assistance in resolving a current dispute or in promoting ADR into your legal documentation, please do not hesitate to contact our office.



**Rankin Nathan Lawyers**  
**1300 727 813**

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