

Mediation/Conciliation Process

MEDIATIONS AND CONCILIATIONS ADMINISTERED BY ADC

Alternate Dispute Resolution (ADR) is an umbrella term for non-judicial processes in which an impartial person (an ADR practitioner) assists parties in a dispute to resolve the issues between them.

In a mediation, a mediator assists parties to a dispute to identify and clarify issues, develop options, consider alternatives and endeavour to reach an agreement. Typically, the mediator will not have an advisory or determinative role, but will act to enable the parties to settle the dispute to their mutual satisfaction.

In a conciliation, a conciliator (engaged to assist the parties in a similar way to a mediator) is permitted to advise on the content of the dispute or outcome of its resolution but does not have a determinative role. The aim of conciliation is to reduce adversity and advance a timely and cost effective solution.

ADC mediations are conducted in accordance with the ADC Guidelines for Commercial Mediation and conciliations in accordance with the ADC Guidelines for Commercial Conciliation.

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NOTIFICATION

Notification of Dispute: The party alleging a dispute must give written notice to the other party setting out: (i) the nature of the dispute; (ii) how the dispute arose; and (iii) the solution sought (Notice of Dispute). There is no specified form for the Notice of Dispute, but it must be apparent on the face of the document that it is a Notification of a Dispute.

Reasonable steps to resolve: Within seven days of the Notice of Dispute, the parties must take reasonable steps to resolve the dispute. If the dispute is not resolved within seven days (or such time as agreed between the parties) both or either of the parties shall notify ADC that the dispute is not resolved and is to be referred to mediation or conciliation. ADC should be provided with a copy of the Notice of Dispute and the agreement under which the dispute has arisen.

Statement of Key Facts and Issues: Each party shall pay half or the agreed proportion of the ADC registration fee for the matter to proceed. Both parties are also given the opportunity to provide a brief statement of the key facts and issues they consider will arise in the mediation/conciliation.

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APPOINTMENT

Provision of Panel: Based on the material provided by the parties, ADC will provide the parties with a panel of two or more qualified potential mediators/conciliators, including copies of their CVs and information relating to their fees.

Parties' list of preferences: Within seven days of being provided with a panel, the parties must separately provide ADC with a list setting out their order of preference with respect to the proposed mediators/conciliators. Any concerns about unsuitable candidates may also be expressed to ADC at this point.

Selection: If a preferred mediator/conciliator can be identified from the lists provided by the parties, then ADC most likely will appoint that person. If parties fail to identify a preferred mediator/conciliator, and alternative methods for appointment (if any) have been exhausted, then ADC may, in its absolute discretion, make an appointment.

Appointment: ADC will confirm the appointment to the mediator/conciliator and the parties. ADC will also request an estimate of fees and disbursements from the mediator/conciliator to provide to the parties. The parties will be requested to make payment of a security deposit, within fourteen days of the provision of the estimate. The parties and the mediator/conciliator will also be required to execute a Mediation or Conciliation Agreement.

PROCESS CONTINUES OVER PAGE

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PROCEEDINGS

Preparation: The mediator / conciliator will discuss the relevant preparation steps with the parties. The parties may confer with each other and the mediator/conciliator, at a preliminary meeting (if required) to determine what further steps need to be taken.

Conduct of the proceedings: The mediation or conciliation will be at a date, time and place agreeable to the parties and the mediator/conciliator. If the party is an individual, that individual must attend. If the party is a company, a representative authorised by the company must attend. Parties are entitled to bring a legal representative. In the course of the mediation/conciliation, the parties may also meet separately with the mediator/conciliator. Information revealed in these sessions will not be revealed to the other side unless otherwise agreed. All attendees of the mediation/conciliation must sign a confidentiality agreement.

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OUTCOME

Enforcement: The mediator/conciliator does not have the authority to impose a settlement on the parties, but will attempt to help them reach a satisfactory resolution of the dispute.

Settled Disputes: In the event that one or more of the disputed issues is, or are, settled, the parties may enter into a settlement agreement to record the terms of their agreement. The terms of that agreement may be enforced by judicial proceedings.

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DISPUTE RESOLVED

APPLICABLE FEES

REGISTRATION AND ADMINISTRATION FEES*

For each mediation/conciliation, ADC charges a non-refundable registration fee as follows:

- \$1,600.00 (exclusive of GST) which covers registration and the first five hours of administration by ADC.
- In the case where the claims of more than one aggrieved party are consolidated, ADC may in its absolute discretion, charge a fee to cover registration and the first 5 hours of administration by ADC which, in general, will amount to \$800.00 per party (exclusive of GST).

ADC may in its absolute discretion charge a further administration fee at the rate of \$300.00 (exclusive of GST) per hour, after the first 5 hours of administration covered by the registration fee.

REFERRAL FEE

15% of the mediator/conciliator's fee is payable to ADC.

*Current as at 9 April 2024.

NOTE

This fact sheet provides general information about ADC's mediation/conciliation process. It does not constitute legal advice and should not be relied upon as such. The process may vary from case to case and is dependent on the parties' agreement. It is recommended that you seek independent legal advice to consider the application of the process to your circumstances.