

	What is it?	When is it appropriate?	Is the decision binding?	Remedies	Pros	Cons
Litigation	The formal resolution of a dispute by way of legal proceedings in a state court or tribunal. In Australia, proceedings will be entirely adversary, and conducted according to the rules of court applicable in the particular jurisdiction.	The parties involved are in the same jurisdiction, the dispute involves an issue of law, the parties wish for any resolution of the dispute to be state sanctioned, and the parties want there to be well defined appeal rights.	Once all rights of appeal are exhausted, a court ruling is final and can be enforced with the assistance of the State. The rights of appeal may be limited to questions of law, although some tribunal decisions can be reviewed on their merits.	Damages, injunctions, specific performance, declarations and various enforcement processes.	<ul style="list-style-type: none"> ■ State sanctioned ■ Finality ■ Numerous remedies ■ Legal expertise of judges ■ Counsel bound by duty to client/court ■ If successful, can often seek legal costs. 	<ul style="list-style-type: none"> ■ Rigid and formal process ■ Potential for lengthy delays ■ Expensive ■ No choice of judges, rules, etc ■ Proceedings / rulings open to the public.
Arbitration (domestic & international)	An adversary process whereby an independent arbitrator(or panel of arbitrators) is chosen to make a binding award after having heard submissions from them. The parties have considerable freedom to determine the scope, nature and rules governing the proceedings.	If the parties are unwilling or unable to resolve their dispute by way of negotiation or mediation, yet wish to maintain some flexibility and exercise greater control over the conduct of the proceedings, such as its date, location, the governing rules and the credentials/experience of the adjudicator(s). Also appropriate when the parties want a process that is faster and more confidential than court proceedings, and which may involve an arbitrator with technical expertise.	A decision will be binding, subject to limited rights of appeal outlined in the Commercial Arbitration Act and International Arbitration Act of each jurisdiction, such as appeals on questions of law, or misconduct by the arbitrator(s). Otherwise, decisions can be enforced as court judgments.	Damages are the primary remedy, however other remedies such as rectification, specific performance and the like may also be available in certain circumstances.	<ul style="list-style-type: none"> ■ Can appoint arbitrators with technical or professional expertise ■ Flexibility in conduct and speed of proceedings ■ Parties able to choose applicable law and location of proceedings ■ Proceedings are confidential and publicity can be avoided ■ Awards are easier to enforce internationally than court judgments ■ Greater ability for parties to maintain their relationship ■ Use of advocates who may be unable to appear in local courts. 	<ul style="list-style-type: none"> ■ Proceedings may be as expensive as court proceedings ■ Arbitrators sometimes may have less control (than judges) over the process, which can result in delay ■ Limited appeal rights.
Negotiation	The parties, without the presence of a third party, seek to communicate with each other and exchange information with the aim of agreeing to end a dispute or potential dispute between them.	The parties believe they can reach a commercially acceptable compromise without the assistance of others. They do not wish to expend time, money and good will on an adversary exercise. This quite often happens in parallel to other dispute resolution processes.	A negotiated settlement may be binding as a contract or a deed, depending on how the settlement is recorded.	If a party breaches the settlement contract or deed, then the other party may seek breach of contract remedies.	<ul style="list-style-type: none"> ■ Cost efficient ■ Quick ■ Parties have much greater control over the outcome ■ Can ensure working relationship is not jeopardised ■ Confidential. 	<ul style="list-style-type: none"> ■ Negotiations can falter at any time ■ Result may be one-sided if one party is a stronger negotiator than the other, although this may reflect the legal position in any event.
Mediation	A neutral third party who is not a partisan for any of the parties is appointed to assist them in working towards an agreement or resolution of any dispute, whether that be through the development of options, the consideration of alternatives, or identification of key points of differences/agreement.	If negotiations have stalled, or the issue at hand cannot be resolved by the parties alone, and the parties believe the intervention by a third party will help bring about a resolution. This is now quite commonly one of the steps in litigation or arbitration processes in any event.	Settlements are documented in a written agreement (sometimes a deed) and are enforceable as contracts or deeds.	If a party breaches the settlement contract or deed, then the other party may seek breach of contract remedies.	<ul style="list-style-type: none"> ■ Cost efficient ■ Quick ■ Parties have much greater control over the outcome ■ Can ensure working relationship is not jeopardised ■ Confidential ■ Presence of third party can ensure greater fairness. 	<ul style="list-style-type: none"> ■ Mediation can falter at any time ■ Some parties may use the process as a delay mechanism ■ An unsuitable mediator may actually hinder the process. ■ The mediator's goal is to achieve settlement and some parties may feel pressured to settle, even if it is against their interests.
Expert determination	The parties nominate an expert or panel of experts to determine a particular issue. Procedures are generally informal, with the expert free to conduct their own independent investigations and evidence gathering.	A particular dispute has arisen, the resolution of which requires an expert, or otherwise professional understanding of technical or financial issues. The dispute can be "carved out" from other legal or non-technical issues, and the parties do not feel that a judge or arbitrator would be appropriate to resolve the dispute and want an informal and binding fast-track process.	The extent to which such a determination is binding depends on the agreement between the parties which established the determination. There is no legislation which provides for the direct enforcement of a determination.	Depends on what the parties agree, but usually the decision is binding as a result of the contract out of which it arises.	Having an expert ensures the dispute is resolved by the "best person for the job" on a quick and informal basis.	Appeal rights are generally quite limited and there is some uncertainty surrounding the legal principles applicable to the process.