Arts Law's Alternative Dispute Resolution Guidelines

These Guidelines set out the steps of the Alternative Dispute Resolution **(ADR)** options under the ADR service provided by the Arts Law Centre of Australia (**Arts Law's ADR Service**).

Which ADR processes does the Arts Law's ADR Service encompass?

Arts Law can provide access to practitioners for the following ADR processes:

1. Mediation,
2. Binding expert determination; and/or
3. Non-binding expert evaluation.

For information about mediation as a method of dispute resolution, please refer to Arts Law's information sheet on mediation, available at https://www.artslaw.com.au/info-sheets/info-sheet/mediation-service/.

For information about binding expert determination and non-binding expert evaluation, please refer to Arts Law's information sheet on binding expert determination and non-binding expert evaluation, available at https://www.artslaw.com.au/images/uploads/NEW_ADR-_binding_expert_dermination_and_non-binding_expert_evaluation.pdf .

The members of our ADR panel have all been carefully selected for their expertise in the relevant creative industry as well as in dispute resolution. Many but not all of them are lawyers. The mediators are all trained or experienced in mediation. There is no mandatory accreditation or registration system for mediators however most of our mediators are accredited by LEADR. We endeavour to find the right expert or mediator for each dispute.

Accessing Arts Law's ADR Service

When Arts Law is contacted for assistance to resolve a dispute through the Arts Law ADR Service, Arts Law may suggest that a party or parties may benefit from legal advice or other independent advice prior to engaging in ADR. Legal advice may be available from the Arts Law service or through a private referral depending on the individual circumstances of each party.

There are two ways to access this service which is primarily designed for parties who are not represented by lawyers during the process.

Contract: The parties may be required to submit their dispute to an ADR process. For example, many contracts including a number of Arts Law's template agreements contain a clause in which the parties agree that in the event of a dispute they will try ADR before starting court proceedings. When a dispute arises under a contract containing such a clause, and the parties agree to use the Arts Law ADR Service, the process set out in these Guidelines applies.

1. At least one of the parties to the contract must be an Arts Law subscriber. If neither party has subscribed and the parties cannot reach agreement as to who should subscribe, then each party must pay Arts Law a fee of $100 in order to access the ADR service **(ADR Service Fee)**.
2. One of the parties to the dispute sends a written request for ADR to Arts Law specifying:
   a. The names of the parties and their contact details;
   b. A copy of the contract containing the ADR process clause;
   c. A brief description of the dispute; and

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   d. Either :
      i. The name of the party who is a current Arts Law subscriber;
      ii. An application for subscription and accompanying payment; or
      iii. Payment of that party's $100 ADR Service Fee.

3. Within 7 calendar days of receiving the request, Arts Law will:
   a. Confirm receipt of the request for ADR to the requesting party in writing;
   b. Notify the other parties to the contract of the dispute and that the ADR process clause has been invoked;
   c. Where applicable, request payment of the $100 ADR Service Fee by the other parties;
   d. Provide all the parties with a copy of these Guidelines and Arts Law's information sheets on the different ADR processes.

4. If the contract specifies a particular ADR process, such as mediation, that is the process which will be used. If it simply refers to ADR, the parties will be required to engage in mediation unless they agree to binding expert determination or non-binding expert evaluation instead.

Agreement: Parties can also agree at any time to submit a dispute to ADR. One party cannot force the other party to engage in ADR but often all parties will see the wisdom of ADR rather than risk litigation. The Arts Law ADR Service is available as a means of resolution of an arts-related dispute. (Our service is not appropriate for other types of disputes such as family law matters). If you believe the Arts Law ADR Service may be appropriate in your dispute, you can access this service as follows.

1. At least one party to the dispute must be a subscriber to Arts Law. You can subscribe online at https://www.artslaw.com.au/subscriptions/.
2. Send a written request for ADR to Arts Law specifying:
   a. The names of all the parties and their contact details;
   b. A brief description of the dispute;
   c. Their preferred ADR process – mediation, expert determination or non-binding expert evaluation.

3. Within 7 calendar days of receiving the request, Arts Law will:
   a. Confirm receipt of the request for ADR in writing;
   b. Notify the other party (or parties) to the contract of the dispute and that a request has been made to use the Arts Law ADR Service to try and resolve the dispute;
   c. Provide the parties with a copy of these Guidelines and Arts Law's information sheets on the different ADR processes; and
   d. Request the other party (or parties) to confirm in writing within 14 days whether:
      i. they agree to submit the dispute to ADR under the Arts Law Guidelines; and
      ii. if so, which ADR process they want to use.

4. If the other party does not consent in writing to ADR or agreement cannot be reached as to the ADR process to be followed, Arts Law will notify the initiating party and take no further action. Unfortunately ADR is a consensual process. If ADR is not required by contract it is voluntary and all parties must agree to participate.

The ADR Process

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Once the appropriate ADR process for the dispute has been identified (Mediation, Binding Expert Determination or Non-binding Expert Evaluation), Arts Law will refer the parties to an appropriate external ADR practitioner. The referral process is the same whether or not the dispute arises out of a contract with a formal ADR process clause or other circumstances.

1. Arts Law will provide the parties with the name of two possible ADR practitioners suitable for the dispute and a brief description of their fees and qualifications. The parties must notify Arts Law in writing within 7 days:
   i. if they have any objections to that practitioner; and
   ii. if there are any dates within the next 30 days on which they are unavailable to attend an ADR process.

2. If either party objects to the ADR practitioner nominated by Arts Law, Arts Law will identify a further practitioner within 7 days of receiving that party's objection. If either party objects to that practitioner, Arts Law will appoint an independent ADR practitioner and provide that person's details to both parties in writing.
3. Where an ADR practitioner is successfully appointed, Arts Law will provide the ADR practitioner with the following:
   a. Contact details for the parties and any dates on which they are unavailable;
   b. A description of the dispute and, if applicable, a copy of the contract containing the ADR clause;
   c. A copy of the relevant Arts Law's ADR Information Sheet (Mediation or Evaluation/Determination); and
   d. The Arts Law ADR Agreement.

4. The ADR Practitioner will manage the ADR process from that time forward including all details as to the time, date and procedure to be followed. The ADR Practitioner will provide the parties either with his/her own ADR Agreement or a copy of the Arts Law ADR Agreement and accompanying Explanatory Notes. Arts Law subscribers can request a legal advice session with Arts Law to explain the meaning of the agreement. The parties and the ADR Practitioner must sign the ADR Agreement before they proceed with the ADR process.
5. The ADR Practitioner will notify Arts Law of the date and venue arranged for the process. Arts Law will not play any further role, although, if requested, will try to arrange a suitable venue at no cost. However, Arts Law cannot guarantee that a venue will be available.

5. The preparatory procedures for the process can vary depending on the chosen ADR process; the nature of the Dispute and the circumstances of the parties. This is something that the ADR Practitioner will work out with the parties. However an example of the preparatory steps for Mediation might be as follows:
   a. The Mediator will contact the parties separately to confirm dates and a venue and may arrange a preliminary telephone conference call or meeting;
   b. In that preliminary joint discussion, the Mediator may confirm arrangements, confirm who will be attending the conference, briefly explain the terms of the ADR agreement, and make any directions that might be necessary for the parties to prepare and exchange statements of issues and any other relevant documents;
   c. Several days before the conference, the parties may be asked to serve a Statement of Issues on the Mediator and each other party.

6. After the process, the ADR Practitioner will advise Arts Law that the ADR process has been completed. Arts Law will send an evaluation form to the parties. This assists us to improve our ADR Service.

Cost of the ADR process

For existing subscribers, there is no fee to access Arts Law's ADR Service. If neither party to the dispute is a subscriber, there is a $100 administration fee for each party which must be paid prior to the commencement of the process.

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The parties are jointly responsible for the fees of the ADR Practitioner. Arts Law have recommended to their panel of ADR Practitioners that fees for clients accessing their services through the Arts Law ADR Service should be capped at $200 per hour (exclusive of GST) for disputes involving two parties. However practitioners may charge higher or lower fees. It is not possible to confirm the cost of an ADR process in advance due to a range of variables. In some situations, the ADR Practitioner may be prepared to agree on a set fee.

There are a small number of pro bono ADR practitioners which may be available to parties in significant financial distress.

Disclaimer

The information in this information sheet is general. It does not constitute, and should be not relied on as, legal advice. The Arts Law Centre of Australia (Arts Law) recommends seeking advice from a qualified lawyer on the legal issues affecting you before acting on any legal matter.

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