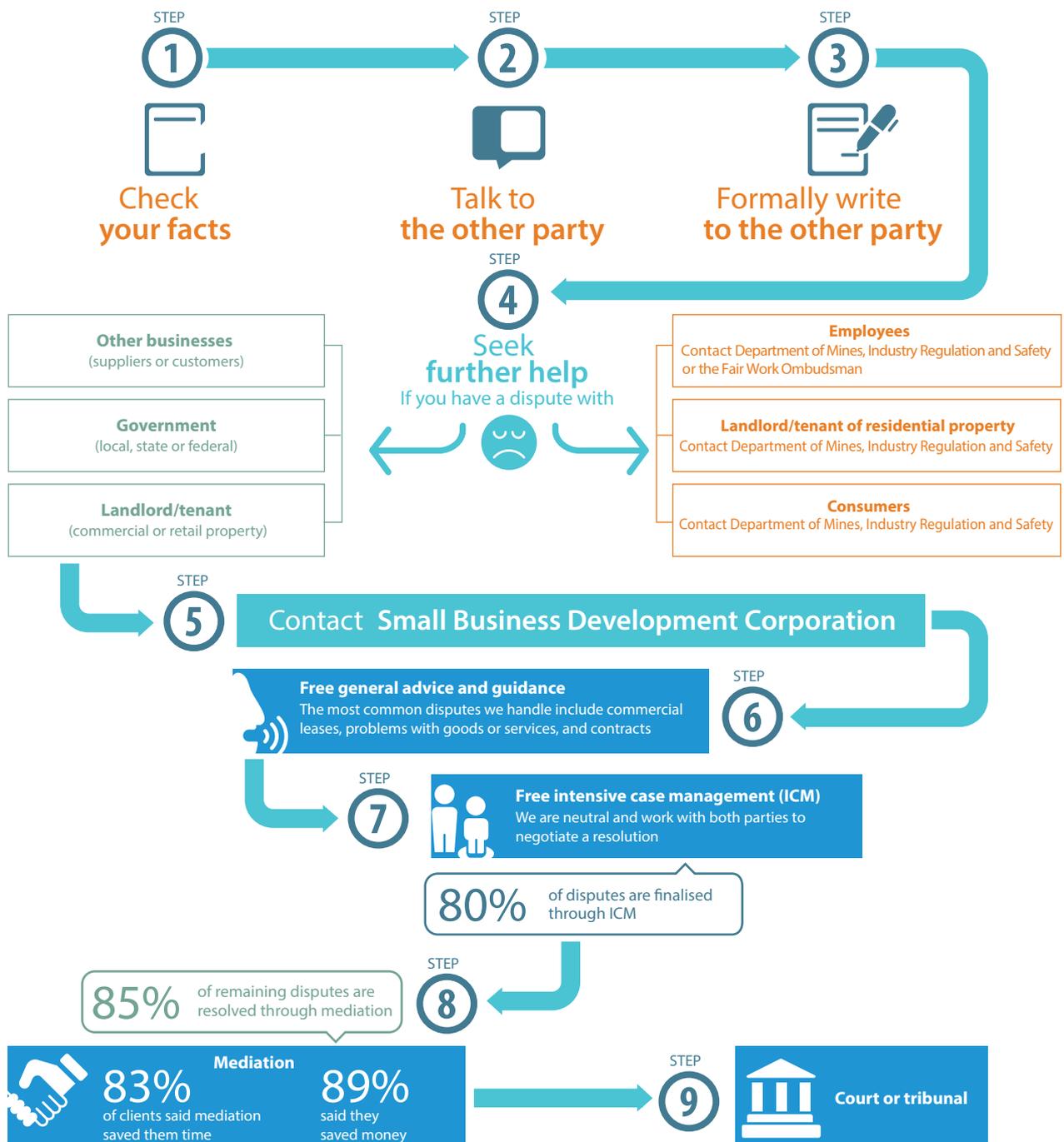


What to do when you're in dispute a practical guide



What to do when you are in dispute

An essential part of being a business owner is understanding how to best deal with problems. Many issues can be handled using common sense, however small problems can sometimes escalate into disputes. Often the most costly part of resolving a dispute is the time spent dealing with it, instead of running your business. The steps below explain what to do if you are in dispute.





You may find yourself in conflict with a client, supplier, employee, tenant or landlord, or Government agency. In each case how you manage the dispute may vary, however there are some key steps you can follow to handle the issue and maintain good business relationships.

Check your facts

- Consider exactly how the dispute arose.
- List the events leading to the dispute and highlight the key ones. Also include details of the issues you would like to be resolved.
- If you have a written contract read it carefully to clearly understand the rights and responsibilities of each party. The contract may include a clause relating to a particular dispute resolution process that needs to be followed. Verbal agreements with supporting paperwork, such as emails, specifications and quotes with details of materials and timeframes, can also show evidence of a contract.

Talk to the other party

Many disputes arise due to misunderstandings; a conversation with the other party may clarify the problem and lead to a resolution. While a minor issue could be handled with a phone conversation, more complex matters are often better dealt with at a face-to-face meeting.

Points to remember when dealing with the other party:

- Make sure the person you are communicating with has the authority to settle the dispute.
- Always remain calm, polite and professional in your spoken or written communications. Avoid abusive or emotional language, or laying blame.
- Plan what you are going to say. Set out your concerns as clearly as possible, making it evident that you are looking to resolve the situation quickly and in a professional manner.
- Try to understand the situation from the other party's perspective.
- Make a list of possible solutions to the dispute for discussion with the other party – be realistic and prepared to negotiate.
- Consider how achieving a particular solution (or not achieving it) will impact on your business – particularly in terms of time, money and future working relationships.
- Listen carefully to what the other party has to say – you may find the difference between your position and theirs is not as significant as you initially thought.
- Look for a 'win-win' solution that restores your business relationship. Make a list of realistic solutions to discuss with the other party.
- After discussions with the other party make clear notes and record any outcomes that were agreed.

Formally write to the other party

If talking to the other party doesn't work, the next stage is to communicate your concerns and the outcome you are seeking in a polite, professional letter. A letter serves two purposes; it provides the other party with an opportunity

to resolve the dispute before further action is taken, and it provides evidence that you have attempted to resolve the dispute. This may be required if you need to use other means of resolution.

When sending the letter, attach copies of any relevant paperwork; such as a copy of your contract, emails, a list of specifications, quotes, invoices or other documents that outline your areas of concern. Make sure you keep a copy of all correspondence.

If you are still unable to resolve the dispute after talking and writing to the other party you may need assistance from a third party. Be cautious about resorting to litigation. Consider using an alternative method to resolve the dispute such as negotiation and mediation.

These services are usually cheaper and less stressful than going to court.

If the dispute still remains unresolved, there are third parties who can help (see graphic on page two), including accessing our alternative dispute resolution service.

Download our free customisable 'letter of demand' and 'letter of complaint' business templates at smallbusiness.wa.gov.au

Alternative dispute resolution

We understand the value of your time and the importance of your business relationships. The faster disputes are resolved, the sooner you can return to running your business.

Our alternative dispute resolution (ADR) service assists small business owners to resolve business-to-business or business-to-government disputes. ADR is a voluntary process whereby disputing parties attempt to resolve their issues with the assistance of an impartial third party. As part of this service, our case managers provide general advice and assistance to all parties in dispute, helping them understand their rights and responsibilities, clarifying issues and exploring options to resolve the matter.

The ADR service gives you an opportunity to resolve disputes in a timely and cost-effective manner without needing to engage in a formal legal process. Early effective ADR can also have a positive effect on maintaining ongoing business relationships.

Although the option of taking your dispute to court is always available, it should generally be viewed as a last resort.

The ADR process is set out below:

1. Initial advice

Contact us in person, by telephone or email for free guidance and advice. You will be asked to provide all the details to the dispute and we may also contact the other party or parties to obtain information.

Most disputes are finalised at this stage. Those that aren't may be referred to one of our case managers.

2. Case management

An experienced case manager will work with you and the other party to outline your rights and obligations and identify options for resolving the dispute. This service is free.

Case managers cannot advocate on your behalf or provide you with legal advice. Around 80 per cent of disputes handled by intensive case management (ICM) are finalised at this stage. Those that aren't (or those for which ICM is not appropriate) may be referred to mediation.



Alternative dispute resolution (continued)

3. Mediation

Mediation offers a structured negotiation process in which an independent mediator assists both parties to reach an agreement. Participating in mediation is voluntary. In most cases a mutually agreeable outcome can be achieved with one mediation session.

The mediator cannot provide legal advice, nor do they have the power to direct a party to take a particular course of action. Mediation is only available if all parties agree to participate, with each party contributing a subsidised fee of \$125 per session.

Sessions are arranged according to the availability of the parties and the mediator, with urgent matters scheduled as quickly as possible.

Disputes are referred to as 'finalised' when they have been closed.

They may be finalised for a number of reasons including the dispute being resolved, one or more party no longer wanting to proceed, or the matter being taken to court.



I had been battling with a business for eight months trying to get the refund they promised after we returned a faulty winch worth more than \$2,500. This was actually the second one of the same make returned – the first one lasted seven months and the second barely twelve months, hence the reason for the refund.

Once the winch was returned all attempts to contact the manager (for our refund) via email and phone calls were ignored. I then sent a letter of demand which was also ignored and finally contacted the manufacturer of the winch, who in turn put me onto the supplier in the Eastern States. Even their attempts to contact the manager were ignored.

I had resigned myself to having to proceed to court. I rang the SBDC for advice on the procedure and was directed to their alternative dispute resolution service. I emailed all the paperwork and details of my attempts to contact the manager at the winch supplier. An SBDC adviser rang me the next day to say he had read through the information and to confirm the contact details for the manager. By the third day the refund was in our bank account.

I can't thank the SBDC team enough for the fantastic service as they certainly took away the prospects of further stress and costs to take the matter to court – particularly as we are based in the country.



SBDC client



Visit smallbusiness.wa.gov.au for more information or contact one of our business advisers on 13 12 49.

Sign up for our **e-news** via our website **homepage** and follow us on facebook.com/smallbusinesswa to receive handy hints and tips on running your business.

We also encourage you to join thousands of WA business owners in our **Facebook group** **'I'm a small business owner in Western Australia'** – the perfect place to ask questions and share ideas with your peers.

Note: This information is not a substitute for legal advice.

13 12 49

Small Business Development Corporation

Level 2, 140 William Street, Perth WA 6000

info@smallbusiness.wa.gov.au

smallbusiness.wa.gov.au