

Fair, prompt and cost-effective resolution of commercial disputes

NEW ZEALAND'S LEADING INDEPENDENT,
NATIONWIDE PROVIDER OF SPECIALIST
DISPUTE RESOLUTION SERVICES



NEW ZEALAND
DISPUTE RESOLUTION
CENTRE

Te Pokapū Whakatau Tautohe o Aotearoa



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ABOUT US

The New Zealand Dispute Resolution Centre (NZDRC) is the leading independent, nationwide provider of private commercial dispute resolution and conflict management services in New Zealand.

NZDRC has extensive knowledge and experience in the design and implementation of dispute resolution processes. This has enabled us to develop a comprehensive understanding of the community's needs and to constantly deliver sound and commercially relevant advice on dispute resolution services.

We deliver private dispute resolution solutions to both the private and public sector, including for commercial, insurance, shareholder, employment, property, valuation, consumer, financial services, IT, trusts, and IP disputes.

Through our related registries, we also deliver specialist dispute resolution options for building and construction disputes, international commercial disputes, family and relationship disputes and public sector disputes.

With specialists working across a wide range of sectors and areas of law, NZDRC is well-positioned to identify the right third-party neutral for your case and to support you throughout the delivery of the process.

We focus on informing and educating parties and their advisers about dispute

resolution processes to assist them make informed decisions about the dispute resolution options that are available to them.

Our support team is approachable, accessible and helpful. Those parties to disputes and/or their advisers who contact us seeking advice tell us that they are grateful for the personal service and professional advice that our Registrars provide which demystifies the processes for them and helps them to achieve better and more effective results.

Find out more: www.nzdrc.co.nz

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Why Choose NZDRC?

The New Zealand Dispute Resolution Centre (NZDRC) has unrivalled experience in administering private dispute resolution services in New Zealand.

NZDRC has been delivering specialist, fully administered end-to-end dispute resolution services to the public and private sector since 2009.

Fair, prompt, and cost effective:

NZDRC is committed to resolving disputes fairly, promptly, and cost effectively. Fixed fee services for low value claims are available (claims under \$100,000 subject to conditions).

24-hour appointment service and ongoing professional case management: NZDRC's experienced Registrars provide a highly efficient, comprehensive, and professional end-to-end case management and administration service. The Registrars help parties and their advisers understand the processes and oversee and administer them from the appointment of the practitioner to the conclusion of the case.

This highly efficient registry service ensures certainty, consistency, and quality in the delivery of NZDRC's services.

Highly skilled, experienced, and respected arbitrators, mediators, adjudicators and other third-party neutrals:

NZDRC's practitioners are selected to join our panels by invitation only. They are highly trained, skilled, experienced, and knowledgeable in both law and dispute resolution, and are respected and recognised as leaders in dispute resolution in New Zealand and internationally.

Peer review of all awards and determinations:

Unless a party takes objection, each award and determination by an NZDRC arbitrator or adjudicator is subject to 'scrutiny' before being given to the parties. This unique quality assurance mechanism makes NZDRC's service New Zealand's most reliable private dispute resolution system.

Resources: NZDRC provides free-of-charge, access to a wealth of resource material relevant to all of its processes, including guides, legislation, judgments, template forms and precedents, and NZDRC's free online quarterly journal, ReSolution.

Find out more www.nzdrc.co.nz



Expertise

NZDRC has a long history of providing professional dispute resolution services to both the private and public sector.

We work with specialist third-party neutrals who have a depth of experience in their respective fields. The sectors and areas of practice our specialists cover include the following and more:

- Commercial Disputes
- Insurance Disputes
- Public Sector Disputes
- Shareholder Disputes
- Employment Disputes
- Property Disputes
- Valuation Disputes
- Consumer Disputes
- Financial Services Disputes
- IT Disputes
- Trust Disputes
- Building & Construction Disputes
- International Commercial Disputes
- Family & Relationship Disputes
- IP Disputes

To find out more, please contact our Registry staff who will be able to advise you further: registrar@nzdrc.co.nz.

Low Value Claims – fixed fee service

The New Zealand Dispute Resolution Centre (NZDRC) understands that the cost of having a dispute resolved, or uncertainty about those costs, prevents many people from getting started. This is particularly so where the amount in dispute is relatively small.

To alleviate this problem, NZDRC provides fully administered fixed fee arbitration and adjudication services for Low Value Claims (LVCs) of limited complexity (under \$100,000).

This scheme is aimed at providing you with certainty as to the cost of taking a dispute to arbitration or adjudication so that you can make an informed decision as to whether to proceed.

This unique service ensures that the cost of having an LVC resolved by arbitration or adjudication is not disproportionate to the amount in dispute.

Where the claim presented does not meet the criteria for the LVC scheme, it will proceed as a General Claim with fees charged on a time cost basis.

All our services are designed to deliver the most time and cost-proportionate response possible, while ensuring the quality of service remains of the highest standard.

For further information, please contact our Registry team.

PROCESS OPTIONS:

- Arbitration
- Mediation
- Arb-Med
- Adjudication
- Expert Determination
- Early Neutral Evaluation

The New Zealand Dispute Resolution Centre (NZDRC) offers a full range of private dispute resolution processes to resolve your dispute, and an overview of these process options is provided in this publication. Whatever your role, our Registrars will be able to work with you to identify the process that best meets your needs or your client's needs.



Arbitration

The objective of Arbitration is to provide a flexible and efficient means of resolving disputes quickly, cost effectively, privately, and confidentially without necessarily adhering to the formalised, technical procedures of litigation.

While arbitration is closely related to litigation, there are several key differences which make it an important and attractive alternative to litigation.

In particular, arbitration gives the parties the power to choose their own decision maker, place and time of a hearing, and as far as they can agree, to control the arbitration procedure which may be varied to suit the nature and complexity of the dispute. The ability to obtain a final and binding award that is recognised and enforceable in most jurisdictions (those that are contracting states to the New York Convention) is a significant advantage

in cross-border disputes where parties and/or their assets are located in different jurisdictions, and distinguishes arbitration from other forms of dispute resolution.

The New Zealand Dispute Resolution Centre (NZDRC) operates at the cutting edge of modern commercial dispute resolution, providing fully administered arbitration services governed by its comprehensive suite of Arbitration Rules, including expedited procedures and access to fixed fee and fee capped services. NZDRC's services provide parties with the highest quality arbitration services at a realistic and known price.

The primary objective of modern commercial arbitration is the fair, prompt, and cost-effective determination of any dispute in a manner that is proportionate to the amounts in dispute and the complexity of the issues involved. To ensure that the objective is met, NZDRC has developed a suite of Arbitration Rules that are robust and certain, yet innovative in their common-sense approach to the arbitration process.

Unless otherwise agreed by the parties in writing, for an arbitration administered under NZDRC's Rules, the standard Arbitration Rules will apply to all arbitrations in which the claim is for an

ARBITRATION MODEL CLAUSE:

"Any dispute or difference arising out of or in connection with this contract, or the subject matter of this contract, including any question about its existence, validity or termination, shall be referred to and finally resolved by arbitration in accordance with the Arbitration Rules of the New Zealand Dispute Resolution Centre."

amount greater than or equal to NZ\$2.5 million.

Where the claim is for an amount less than NZ\$2.5 million, or the claimant is seeking declaratory relief only, the arbitration will be governed by the relevant NZDRC Expedited Commercial Arbitration Rules, namely:

- where the claim is for an amount less than NZ\$250,000, or the claimant is seeking declaratory relief only, the NZDRC ECA45 Arbitration Rules will apply;
- where the claim is for an amount greater than or equal to NZ\$250,000 and less than NZ\$1million, the NZDRC ECA60 Arbitration Rules will apply; and
- where the claim is for an amount greater than or equal to NZ\$1 million and less than NZ\$2.5 million, the NZDRC ECA90 Arbitration Rules will apply.

The New Zealand Dispute Resolution Centre Arbitration Rules Comparison Chart

	Standard Rules	ECA45 Rules	ECA60 Rules	ECA90 Rules
Which Rules by default?	Claims greater than or equal to NZ\$2.5M	Claims less than NZ\$250,000, or for declaratory relief only	Claims greater than or equal to NZ\$250,000 and less than NZ\$1.0M	Claims greater than or equal to NZ\$1.0M and less than NZ\$2.5M* *or where the Arbitral Tribunal determines the matter to be of exceptional urgency (Rule 1.4 Standard Rules).
Can a Claimant initiate a single Arbitration in relation to more than one contract?	Yes	Yes	Yes	Yes
Is the fixed fee arbitration service available?	No	Yes	No	No
Are the Arbitral Tribunal's fees capped?	Yes	Yes	Yes	Yes
How long does the process take from appointment to the Award on all substantive matters?	Within such time as agreed by the Parties or determined by the Arbitral Tribunal.	The Objective is to make a final award in respect of the substantive issues within 45 working days.	The Objective is to make a final award in respect of the substantive issues within 60 working days.	The Objective is to make a final award in respect of the substantive issues within 90 working days.
Can a Party apply for an Interim Measure/Preliminary Order?	Yes	Yes	Yes	Yes
Can a Party apply for an Interim Measure on an urgent basis?	Yes	Yes	Yes	Yes
Can a Party apply to join another party?	Yes	No	No	No
Can a Party apply to consolidate more than one Arbitration proceeding?	Yes	No	No	No
Is there a hearing?	Yes, unless agreed by the parties, there is a hearing at the Arbitral Tribunal's discretion.	No, although the Arbitral Tribunal may exercise its discretion to convene a conference if necessary.	Unless agreed by the Parties, at the Arbitral Tribunal's discretion but limited to 3 days.	Unless agreed by the Parties, at the Arbitral Tribunal's discretion but limited to 5 days.
Is there provision for a visit or inspection of the relevant location, subject matter, property, goods at issue?	Yes, at the Arbitral Tribunal's discretion.	Yes, at the Arbitral Tribunal's discretion.	Yes, at the Arbitral Tribunal's discretion.	Yes, at the Arbitral Tribunal's discretion.
Are the Arbitral Tribunal's Awards subject to scrutiny by the NZDRC before being issued?	Yes	Yes	Yes	Yes
Is there a right of appeal on a question of law?	On an 'opt in' basis only. The Parties may agree that any appeal on a question of law may be made to the AMINZ Arbitration Appeals Tribunal.	No	No	No

Mediation

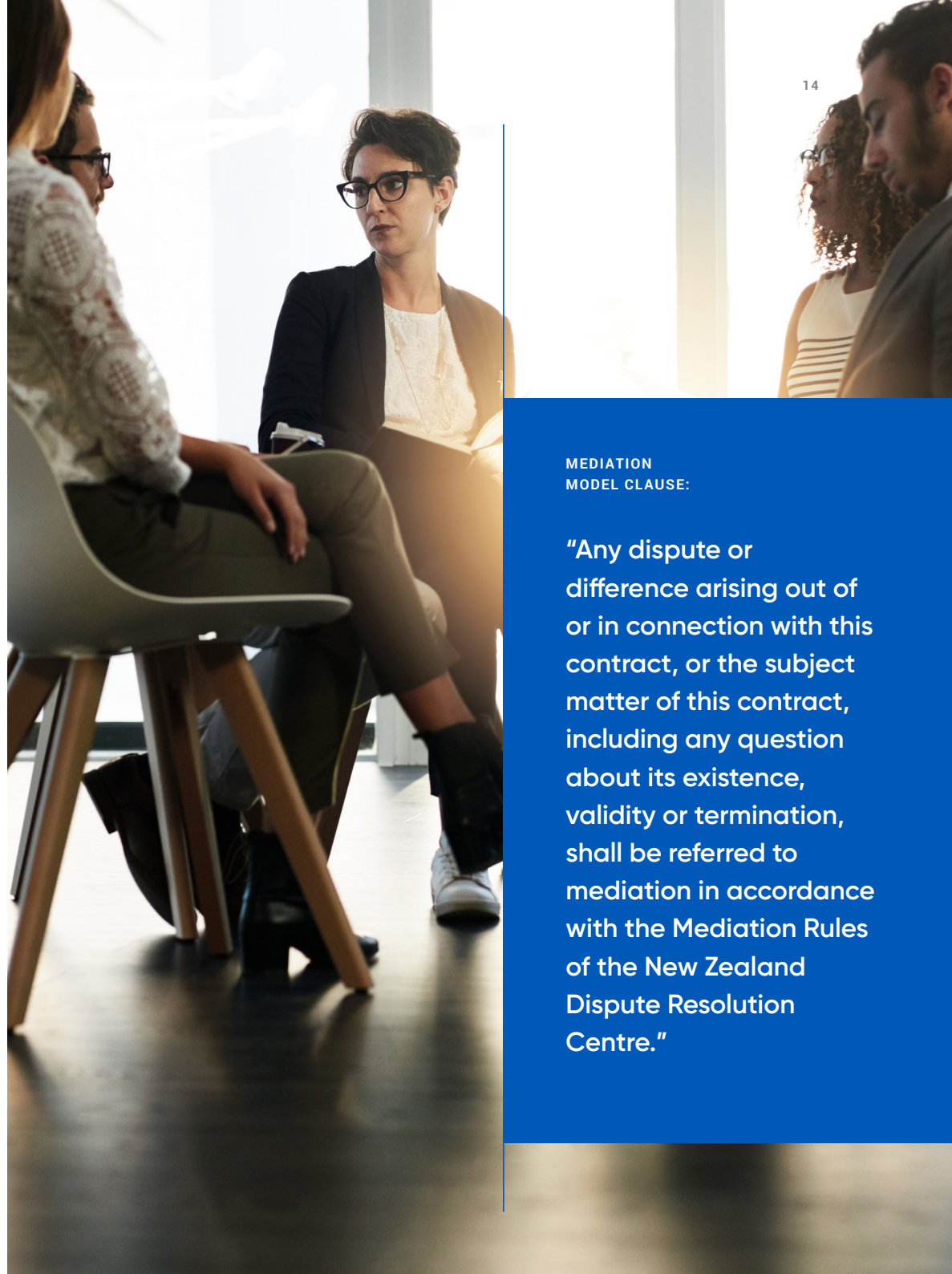
Mediation is a consensual, confidential and relatively informal negotiation process in which parties to a dispute use the services of a skilled and independent mediator to assist them to define the issues in dispute, to develop and explore settlement options, to assess the implications of settlement options, and to negotiate a mutually acceptable settlement of that dispute which meets their interests and needs.

The objective of mediation is to enable and empower the parties to negotiate and resolve the dispute promptly, cost effectively and confidentially rather than to have a decision imposed upon them by a judge, arbitrator or adjudicator. The process enables the parties to negotiate flexible and creative solutions which need not conform to strict legal rights or general community standards.

Generally, any agreement reached will be recorded in writing and will be binding on the parties. Any party to such an agreement may enforce its terms by issuing court proceedings. Mediation has the advantage of assisting in repairing and/or preserving business relationships where adversarial proceedings may not. Mediation is a particularly effective process in circumstances where there

needs to be an ongoing relationship between the parties.

To provide certainty of outcome, the New Zealand Dispute Resolution Centre Mediation Rules include an agreement to arbitrate where the dispute is not resolved within 30 days of the Commencement Date.



MEDIATION MODEL CLAUSE:

"Any dispute or difference arising out of or in connection with this contract, or the subject matter of this contract, including any question about its existence, validity or termination, shall be referred to mediation in accordance with the Mediation Rules of the New Zealand Dispute Resolution Centre."

Arb-Med

Arb-Med is a hybrid dispute resolution process that combines the benefits of arbitration and mediation, including speed, procedural flexibility, confidentiality, choice of decision maker, ease of access to the tribunal, continuity, finality, and enforceability of the outcome.

The primary objective of Arb-Med is the informed good faith negotiation and settlement of the dispute by the parties, with the initial assistance and efficiency of the Arbitral Tribunal's information gathering powers, in the context of a formal arbitration process that will immediately resume if the mediation that follows is not successful.

If full settlement is not reached in the mediation, the arbitrator who was acting as mediator will have been informed as to the issues in dispute and the facts of the case, which can be carried over into the arbitration with potentially significant time and cost savings for the parties. The New Zealand Dispute Resolution Centre (NZDRC) has developed

Arb-Med Rules for the resolution of disputes that are robust and certain, yet innovative in their commercial common-sense approach to the challenge of combining arbitration and mediation in a single unified process that ensures the principles of natural justice are observed and a just, final, and binding decision is made.

ARB-MED MODEL CLAUSE:

"Any dispute or difference arising out of or in connection with this contract, or the subject matter of this contract, including any question about its existence, validity or termination, shall be referred to and finally resolved by arbitration in accordance with the Arb-Med Rules of the New Zealand Dispute Resolution Centre."

The Rules provide both a framework and detailed provisions to ensure the efficient and cost-effective resolution of disputes.

The Rules are intended to give parties the widest choice and the capacity to adopt fully administered arbitration and mediation procedures that are fair, prompt, and cost effective, and that provide a structured and proportionate response to the amounts in dispute and the complexity of the issues involved.

The Rules are set out in a manner designed to facilitate ease of use and may be adopted by agreement in writing at any time before or after a dispute has arisen. NZDRC's Arb-Med Rules are fundamentally and purposively directed to ensuring the resolution of disputes in a manner that is private, efficient, flexible, cost effective, and certain.

Adjudication

NZDRC has developed adjudication as a unique fast track dispute resolution process with the primary purpose of improving cashflow. It offers access to justice, is quick, relatively inexpensive, and is confidential.

Statutory adjudication under the Construction Contracts Act 2002 has proven to be a successful process in New Zealand and our (contractual) Adjudication Rules enable more disputes to be resolved in this effective and efficient forum.

NZDRC's Adjudication Rules 2022 provide parties with access to a private dispute resolution process that is fair, prompt, cost effective, and proportionate to the amount in dispute and the complexity of the issues involved. Our plain language Adjudication Rules provide parties and their advocates with access to a simple and

effective procedure that is convenient, certain, and provides the parties with a determination that is provisionally binding and enforceable within 35 working days.

In our experience, in the vast majority of cases, the parties comply with an adjudicator's determination and the matter goes no further.

However, because an adjudicator's determination is binding in the interim, ie unless or until it is changed, altered or amended by agreement, an arbitral award (if there is an arbitration clause), or court judgment, we also

recommend inserting the following clauses together with the adjudication model clause to the right.

"Any dispute or difference that has been the subject of an adjudication, may be referred to and finally resolved by arbitration in accordance with the Arbitration Rules of the New Zealand Dispute Resolution Centre.

No party may commence arbitration or any other legal proceedings other than commencing proceedings necessary to preserve its legal rights unless that party has first complied with the adjudicator's determination."

ADJUDICATION MODEL CLAUSE:

"Any dispute or difference arising out of or in connection with this contract, or the subject matter of this contract, including any question about its existence, validity or termination, shall be referred to adjudication in accordance with the Adjudication Rules of the New Zealand Dispute Resolution Centre."

Expert Determination

Expert Determination is often used in disputes where the parties have a specific technical or scientific issue that needs to be resolved.

In Expert Determination, the expert is given the power to make a decision on the dispute based on their expertise and the materials presented to them. The decision of the expert is usually final and binding, meaning that the parties agree to be bound by the decision and not to pursue the matter further in another forum. In some cases, the parties prefer to make the decision non-binding, although this is not as common.

One of the key advantages of the New Zealand Dispute Resolution Centre's (NZDRC) Expert Determination process, is that it is generally faster and less expensive than other forms of dispute resolution. As the expert's decision is also based on their technical expertise and knowledge, this can result in a more informed and objective outcome than a decision made by a judge or arbitrator, who may not have the same

level of technical expertise and who must make their decision based on the evidence submitted by the parties.

Overall, Expert Determination can be a useful tool for resolving disputes in a timely and cost-effective manner, particularly in cases where the parties have a specific technical issue that needs to be resolved during the course of a project.

EXPERT DETERMINATION MODEL CLAUSE:

"In the event of any dispute or difference arising out of or in connection with this contract, or the subject matter of this contract, including any question about its existence, validity or termination, the parties must refer that dispute in the first instance to Expert Determination in accordance with the Expert Determination Rules of the New Zealand Dispute Resolution Centre."

Unless the parties intend for Expert Determination to be final and binding, we recommend that the above clause then be followed by the following arbitration clause:

"If either party is dissatisfied with the expert's determination, either party may, by service of a Notice of Arbitration, require the matter in dispute to be referred to arbitration in accordance with the Arbitration Rules of the New Zealand Dispute Resolution Centre."

Early Neutral Evaluation

Early Neutral Evaluation (ENE) is a form of alternative dispute resolution (ADR) that involves a neutral third-party evaluator who provides an early assessment of a dispute.

The evaluator is usually a legal expert or a subject-matter expert, such as an arbitrator or judge who is chosen because of their knowledge and expertise in the subject matter of the dispute.

In an ENE process, the evaluator reviews the case and provides an opinion on the strengths and weaknesses of each party's arguments, as well as the likely outcome if the dispute were to go to court. The evaluator's opinion is not binding, meaning that the parties are not required to follow it, but it can be very helpful in guiding the parties towards a settlement.

ENE is often used in complex disputes where

the parties may have vastly different views on the merits of their case. By obtaining an independent evaluation of their case early on, the parties can gain a better understanding of their chances of success and the likely costs and risks of litigation or arbitration.

One of the main advantages of early neutral evaluation is that it can be a cost-effective way to resolve disputes. By obtaining an independent assessment of the case early on, the parties can avoid the time and expense of going through a full trial or arbitration. Additionally, ENE can help to preserve the relationship between

the parties, as it is often less adversarial than other forms of dispute resolution.

Overall, ENE can be a useful tool for resolving disputes, particularly in cases where the parties are seeking a quick and cost-effective resolution, or where there is a need for an independent evaluation of the case where the parties are looking at lengthy and expensive court or arbitration proceedings.

Resources

The New Zealand Dispute Resolution Centre (NZDRC) provides access to a wealth of resource material relevant to all of its processes, including:

Forms and Precedents

You can find forms and precedents required to meet all of your obligations under any of our dispute resolution processes, on our website.

Our library of forms and precedents is regularly updated to ensure these documents remain current and comply with any amendments.

We recommend you return to our website each time you wish to access any of these documents so that you can be sure that you are using the most up-to-date version of any of the documents.

Guides and Briefings

NZDRC routinely publishes guides and briefings on its website and via its social media pages on LinkedIn and Facebook – follow us today to keep updated.

Model Clauses Guide

Access our comprehensive guide including recommended model clauses for all processes.

Judgments

Looking for judgments relevant to private dispute resolution processes?

These can also be found on our website.

Legislation

Links to relevant legislation.

NZDRC also publishes a free online quarterly journal, ReSolution, in which we bring you a wide range of contributions written by leading lawyers, academics, and prominent dispute resolution professionals from various jurisdictions around the world. Our resources are always developing and improving. We encourage you to connect with us by subscribing to ReSolution and connecting with us via our social media pages to ensure you receive the latest news and resources we have to share.

Visit www.nzdrc.co.nz



New Zealand's Purpose-Built Dispute Resolution Hub

Based in Auckland and with expansive views of Takapuna Beach and Rangitoto Island, the ADR Centre is New Zealand's only purpose-built dispute resolution facility. It can accommodate in-person, virtual and hybrid meetings, arbitrations, mediations, court hearings, and general business meetings, and has state-of-the-art AV technology to support these.

Contact us to discuss your needs:

info@adrcentre.co.nz

+64 9 871 0333

The ADR Centre is home to these specialist registries:



To Pokapu Whakataua Tautoko o Aotearoa



To Pokapu Whakataua Tautoko o Whānau



To Pokapu Whakataua Tautoko o Aotearoa



To Umanga Arotake Amuamu Motuhake



To Tārapunara Tautoko Hanga Whano



**NEW ZEALAND
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