



NCAT  
NSW Civil &  
Administrative Tribunal

# Developments in Online Dispute Resolution

**LEADR**

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- Background to NCAT and why ODR is important
- What is online dispute resolution (ODR)?
- International examples of ODR:
  - eBay (cross border disputes)
  - Rechtswijzer 2.0 (Netherlands)
  - Consumer Protection BC (Canada)
  - Resolver (UK)
  - Cybersettle (US)
- Early Australian forays into ODR:
  - Dispute Settlement Centre of Victoria
  - Federal Court
  - Family Relationships Online
  - NCAT pilot
- Where to from here?

- 22 separate tribunals amalgamated into NCAT from 1 January 2014
- NCAT deals with a broad range of matters from tenancy to decisions on guardianship
- NCAT objectives - tribunal services that are:
  - Prompt
  - Accessible
  - Economical
  - Effective
- NCAT Registries in Sydney CBD, metropolitan and regional areas, and hearings in up to 70 locations around NSW

Administrative & Equal Opportunity Division	Consumer & Commercial Division	Occupational Division	Guardianship Division
<ul style="list-style-type: none"> <li>• Discrimination</li> <li>• Reviews or appeals against some government agency decisions including:</li> <li>• Charity referees</li> <li>• Child care providers, authorised carers and community welfare</li> <li>• Firearm licensing</li> <li>• Government information access and privacy</li> <li>• Land</li> <li>• NSW Trustee &amp; Guardian and Public Guardian</li> <li>• State revenue</li> <li>• Victims recognition or restitution payments</li> <li>• Vocational training</li> <li>• Working with children checks</li> </ul>	<ul style="list-style-type: none"> <li>• Consumer claims</li> <li>• Commercial matters</li> <li>• Dividing fences</li> <li>• Home building</li> <li>• Motor vehicles</li> <li>• Residential parks</li> <li>• Retirement villages</li> <li>• Social Housing</li> <li>• Strata &amp; community schemes</li> <li>• Residential tenancies</li> <li>• Retail leases</li> </ul>	<ul style="list-style-type: none"> <li>• Disciplinary applications about architects and building professionals, health professionals, legal and veterinary practitioners</li> <li>• Reviews of licensing decisions about:</li> <li>• Drivers and operators of taxis, buses, hire cars and tow trucks</li> <li>• Security guards</li> <li>• Builders</li> <li>• Real estate agents</li> <li>• Motor dealers and repairers</li> <li>• Pawnbrokers and second hand dealers</li> <li>• Stock and station, business and travel agents</li> <li>• Valuers</li> <li>• Conveyancers</li> </ul>	<ul style="list-style-type: none"> <li>• Appointment of a guardian</li> <li>• Appointment of a financial manager</li> <li>• Review of enduring guardianship</li> <li>• Review of power of attorney and revocation</li> <li>• Medical or dental treatment</li> <li>• Clinical trials</li> <li>• Review of orders</li> </ul>

# What is ODR?

Online Dispute Resolution (ODR) is a branch of dispute resolution that uses technology to facilitate the resolution of disputes between parties.

The term is sometimes used to describe the use of traditional technology, such as telephone and videoconferencing, to deliver dispute resolution services.

True ODR uses technology itself as a means of facilitating negotiation between the parties.

Most administrative and civil disputes in Australia are resolved using conventional dispute resolutions methods such as mediation, conciliation and arbitration, albeit with some use of technology to facilitate the process.

Several international jurisdictions in North America and Europe have now introduced ODR into their civil dispute resolution system.

ODR was pioneered over the past decade, mainly in the e-commerce space, with internet sales sites developing simple, online processes to resolve disputes between traders and purchasers.

There are two main approaches used in most ODR systems being:

- Automated Negotiation
- Assisted Negotiation

## Resolution Centre

### Resolve a problem

We always encourage our members to communicate with each other when there's a problem with a transaction. The first step is to contact the member through the Resolution Centre and try to resolve the problem.

To start the resolution process, please tell us what your problem is:

#### I bought an item.

- I haven't received it yet.
- I received an item that does not match the seller's description.

#### I sold an item.

- I haven't received my payment yet.
- The buyer and I agreed to cancel a transaction.

[Continue](#)[| My problem is not listed here](#)

### Help

- [How eBay Buyer Protection works](#)
- [What to do when a buyer doesn't pay](#)
- [Cancelling a transaction](#)
- [What to do when you don't receive your item or it's not as described](#)
- [Resolving buying problems](#)
- [Resolving selling problems](#)
- [Report a problem with a buyer](#)

### Your requests and cases

[Sign in](#) to see your requests and cases.

 **MONEY BACK GUARANTEE**  
Get the item you ordered or get your money back.

[See what's included](#)

First developed about 10 years ago by the Dutch Legal Aid board in partnership with Hague Institute for the Internationalisation of Law (HiiL).

Initially focussed on information provision and problem diagnosis, the most recent version (Rechtwijzer 2.0) also incorporates ODR.

The site is described as offering ‘complete online justice journeys’ by integrating activities that tend to be provided by courts of law, legal information websites, lawyers and mediators.

Pay-as-you-go system with a fully transparent price for end-users that total in the range of €100-€1500.

Available for a range of disputes, including family law, industrial matters and residential tenancy.

<https://www.youtube.com/watch?v=400eNEsZ6S4#t=21>

Consumer Protection BC promotes a fair marketplace for consumers and businesses in British Columbia (Canada).

Established in 2004 as a not-for-profit corporation to strengthen consumer protection in BC.

Operates using a cost recovery model.

Consumer Protection BC's mandate is to:

- Deliver consumer protection services throughout British Columbia;
- Promote fairness and understanding in the marketplace; and
- Enforce consumer protection laws in BC.

Offers a voluntary ODR process, with or without a facilitator.

<http://www.consumerprotectionbc.ca/get-started>

Cybersettle, based in the United States, developed a software platform to provide 'blind bidding' services.

In short, this process is tailored to facilitating disputes in which liability is not in issue, simply the amount of money to be paid.

Essentially, the plaintiff and the defendant submit the highest and lowest settlement figures that would be acceptable to them.

The amounts are not disclosed but, where the ranges overlap, the system will achieve a settlement that is usually the midpoint of the overlap.

For example, if a plaintiff submits a range of \$20,000 - \$25,000 and the defendant submits \$17,000 - \$22,000, the system will achieve a settlement of \$21,000.

Primarily used by the City of New York to manage a backlog of 40,000 personal injury claims.

Cybersettle reports it has handled over 200,000 claims worth a combined value of over \$1.6 billion with a settlement rate of 66 per cent within 30 days of commencement.

## **Dispute Settlement Centre of Victoria**

The DSCV does not a full online solution but demonstrates how web-based information and guidance can support, enhance and provide an alternative to more traditional forms of ADR.

Suite of online resources targeting parties in neighbourhood disputes. Particular emphasis on meeting the needs of culturally and linguistically diverse communities, with the web-based material being offered in various languages and with a facility for posting comments.

Supplemented by a Dispute Resolution Advisory Service offering telephone information and advice on the prevention and resolution of disputes.

<http://www.disputes.vic.gov.au/>

Software application that assists divorcing couples to negotiate their disputes.

The system distributes items in a dispute to those who most desire the given item. Described as taking a rational approach to negotiation and gets the disputants to focus upon their interests.

Through a series of trade-offs and compensation strategies, disputants can often achieve 70-80 per cent of what they require, rather than the traditional 50-50 approach to resolving disputes.

Based on game theory techniques and subsequent algorithms developed by Nobel Laureate John Nash.

Three steps:

1. Feedback provided (via software) on the likely outcome of the dispute if the negotiation were to fail (BATNA / WATNA)
2. Disputants guided through the system using dialogue techniques
3. For any issues not resolved in step two, the disputants use compensation/trade-off strategies to facilitate resolution of the dispute.

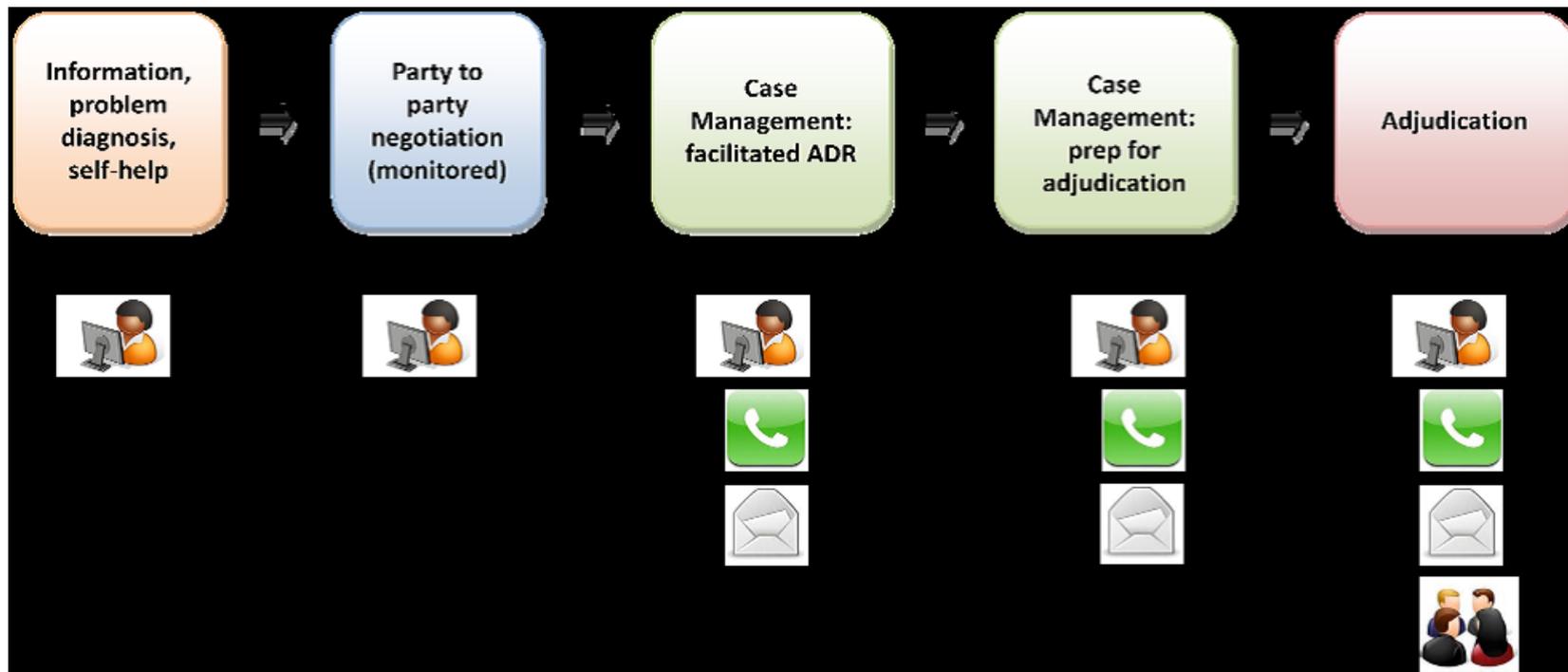
If the result from step three is unacceptable to the parties, they return to step two and repeat the process until either the dispute is resolved or a stalemate occurs.

## NCAT Pilot of online dispute resolution (ODR) system between Sept and Dec 2014

- Consumer → business disputes
- Focus on lower values claims (under \$5000)
- Automated software guides parties through -
  - issue identification
  - joint development of solutions and
  - ultimately the generation of a negotiated agreement or a withdrawal
- Parties who cannot resolve using ODR will proceed down regular NCAT pathway
- Explanatory video: <https://vimeo.com/107375430>

## Canadian Civil Resolution Tribunal

From the summer of 2015, the Tribunal will assist people to resolve small claims and strata property disputes where one of the parties requests access to the online, party to party negotiation service provided by the tribunal. If the other party agrees to participate, the online negotiation tool will guide the parties through a structured negotiation phase. Access to the system is via the internet and parties can participate in the negotiations at different times, when and where it is convenient for them. If no agreement is reached within a specified time, the negotiation ends. As the chart shows, face to face hearings are used but only used as a valued “last resort”.



The UK Online Dispute Resolution Advisory Group, chaired by the Rt Hon Lord Dyson, has recommended the establishment of a new, Internet-based Court service, known as HM Online Court (HMOC).

Tier 1 – Online Evaluation to assist people diagnose and classify their grievance or problem, understand their rights and obligations and the range of options and remedies available

Tier 2 – Online Facilitation to bring disputes to quick, fair and inexpensive resolution with the assistance on online facilitators

Tier 3 – Online Judges to decide cases online where the parties have not been able to resolve themselves or with the assistance of a facilitator. Largely to be managed through electronic pleadings and submissions, supported where necessary, by telephone or video conferencing facilities.



<https://www.youtube.com/watch?v=DlYr5TXqe8Y>



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**Question time**