

# Dispute Resolution

## Chapter 10

In this chapter we cover:

- **Dispute resolution**
- **Conference – Alternate dispute resolution**
- **Arbitration – Land Court of Queensland hearing**
- **Conduct and Compensation Agreement (Negotiation Framework)**
- **Make Good Agreement (Negotiation Framework)**
- **Potential breaches of agreements – Dispute resolution (restricted land)**

*Current as of February 2022*

# Dispute Resolution

## You are here



Options are available to help you reach agreements if negotiations or relationships with resource companies become challenging.

### DISPUTE RESOLUTION OPTIONS:

- Conference by DOR
- ADR with assistance from independent third party
  - Mediation
  - Conciliation
  - Case appraisal
- Arbitration
- Public hearing by the Land Court of Queensland
- Investigation of potential breaches to existing CCAs or MGAs by the Land Access Ombudsman.

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# Dispute resolution

Also see services listed in [Chapter 11 – Helpful Resources](#).

Various dispute resolution options are available if negotiations with resource companies become challenging or stall completely. Our recommendation, supported by experts in negotiation and issue resolution, is to keep the lines of communication open.

If the parties are unable to reach an agreement on their own, the resource company can issue a notice of intent to negotiate (NIN) which allows them to proceed through the statutory negotiation processes available.

Slight differences, such as time frames and requirements, exist between the process for negotiating CCAs compared to MGAs.

However the general resolution options available for the two types of agreements are similar as outlined in the diagrams below (see [Conduct and Compensation Agreement](#) and [Make Good Agreement – Negotiation Frameworks](#)).

Either party can seek to enter into a dispute resolution process by providing written notice to the other.

Dispute resolution options include:

- **CONFERENCE**
- **ALTERNATIVE DISPUTE RESOLUTION**
  - **MEDIATION**
  - **CONCILIATION**
  - **CASE APPRAISAL**
- **ARBITRATION**
- **LAND COURT OF QUEENSLAND HEARING.**

## LANDHOLDER TIP:

DOR's [A Guide to Land Access in Queensland](#) and the department's [Engagement and Compliance Unit](#) (phone 13 71 07 or [resources.info@resources.qld.gov.au](mailto:resources.info@resources.qld.gov.au)) are great value for any landholder preparing for land access negotiations with a resource company.

## Conference

An authorised officer from DOR facilitates discussions between the parties with the aim of reaching agreement usually within 20 business days for CCAs or 30 business days for MGAs. This is a low-cost, non-binding option.

Neither party can be represented by a lawyer unless the other party agrees and the authorised officer is satisfied there are no disadvantages. The information shared during a conference is maintained as confidential.

Conferences and ADRs are initiated by completing a form known as an election notice:

For CCAs, complete an election notice form number 'Mines-10 Conference election notice' available for download via: [www.business.qld.gov.au](http://www.business.qld.gov.au)

For MGAs, complete an election notice form number 'ESR/2016/2066' available for download via: [www.environment.des.qld.gov.au](http://www.environment.des.qld.gov.au)

Once an 'election notice' for an ADR or Arbitration is issued for a CCA, any DOR conference underway must cease and no new conferences can commence.

**To enquire about a DOR facilitated conference:**

**Phone: 13 71 07**

**Email: [resources.info@resources.qld.gov.au](mailto:resources.info@resources.qld.gov.au)**

**Web: [www.resources.qld.gov.au](http://www.resources.qld.gov.au)**

(search for 'Resource Community Infoline')

## Alternative Dispute Resolution

With ADR, issues are resolved with the aid of a qualified and independent expert. Both parties must agree to the choice of the independent expert.

The resource company is generally responsible for the costs of engaging the independent third party, regardless of who requests the ADR process. There are different types of ADR options that both parties must agree to proceed with:

**FACILITATIVE MEDIATION** – an independent person facilitates a discussion between the parties. The mediator is impartial and does not advise or make any decisions.

**EVALUATIVE MEDIATION** – a process which may include an assessment by the mediator of the strengths and weaknesses of the parties' cases and a prediction of the likely outcome of the case.

**CONCILIATION** – an independent person who is an expert on the subject provides advice on the strengths and weaknesses of each side of the dispute. While the conciliator provides advice, they do not make any decisions.

**CASE APPRAISAL** – an independent person who is an expert receives evidence from each party. The case appraiser assesses the merits of each case and makes a non-binding decision in writing.

The information shared during an ADR process is maintained as confidential. ADRs are initiated by completing a form known as an **election notice**.

# Arbitration

Arbitration involves an independent and suitably qualified third party acting as a judge. Both parties must agree to the choice of the arbitrator.

*The arbitrator hears the arguments from both parties and makes a decision that is binding on both parties. The arbitrator must make the binding decision within six months of being appointed.*

For disputes over CCAs, the parties may agree to commence arbitration without first going through an ADR process. The resource company is generally responsible for the cost of an arbitrator if no prior ADR process has taken place.

For disputes regarding MGAs, arbitration is only an option if the parties have tried a conference or ADR process first. If the parties participated in a conference or ADR and failed to reach agreement, the cost of engaging an arbitrator is generally paid in equal parts by both parties.

The information shared during arbitration is maintained as confidential.

## Land Court of Queensland hearing

Either party can submit an application to the Land Court of Queensland to resolve a dispute if:

- The ADR process was attempted but not concluded within the agreed time period
- An issued election notice was refused
- The other party did not attend the requested ADR
- No agreement was reached at the end of the ADR.

The Land Court of Queensland has the power to:

- Order compensation
- Order the cessation of particular conduct
- Order that the parties attend a departmental conference or engage in further ADR.

These are public hearings and the decision of the Land Court is binding. An application can also be made to the Land Court to decide a dispute in relation to a MGA if a conference or an ADR was held and either not concluded or failed to reach agreement.

If a CCA is referred to the Land Court for determination, the resource company can enter private land to conduct advanced activities using a valid entry notice delivered 10 business days before entry.

These organisations can provide assistance in finding the right ADR convenor or arbitrator:

- Land Court of Queensland
- Resolution Institute
- Australian Mediation Association
- Queensland Law Society.

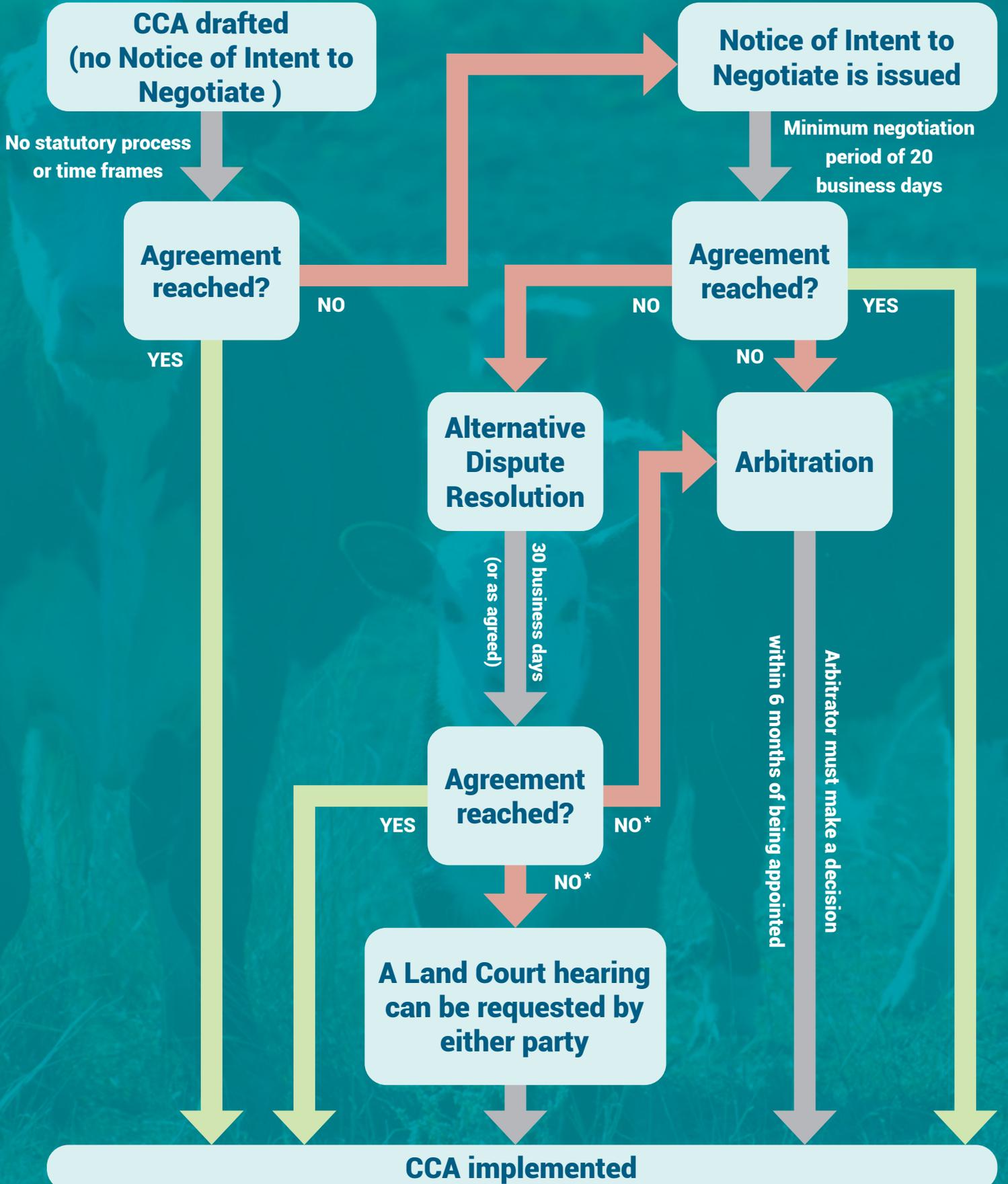
(see contact details in *Chapter 11 – Helpful Resources*)

Visit the GasFields Commission website for more information regarding 'Dispute Resolution Options': [www.gfcq.org.au/landholders/dispute-resolution-options/](http://www.gfcq.org.au/landholders/dispute-resolution-options/)



# Conduct and Compensation Agreement – Negotiation Framework

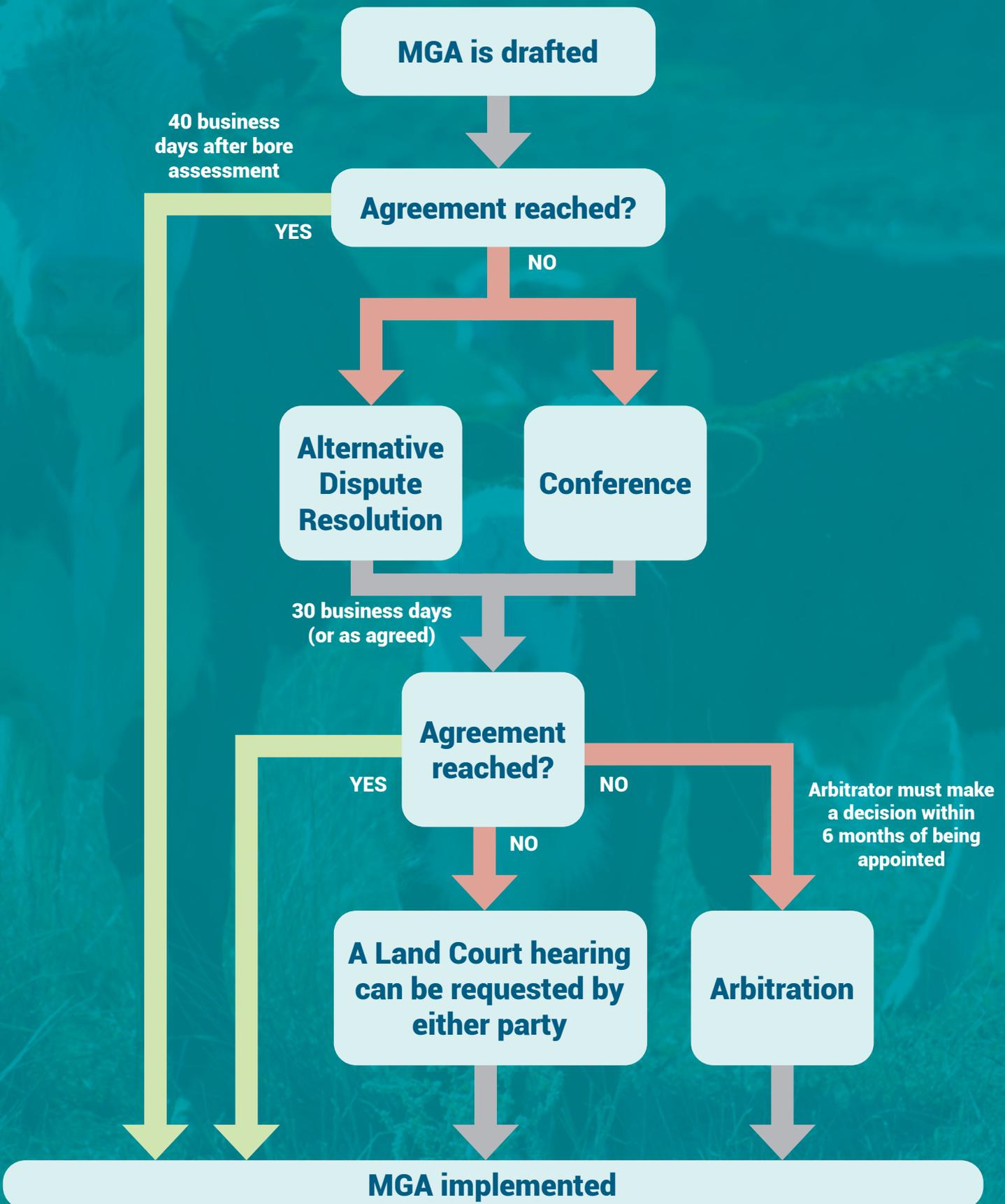
## DISPUTE RESOLUTION OPTIONS



\*Note: If after ADR there is no agreement, parties may agree to arbitration or proceed to the Land Court for determination

# Make Good Agreement – Negotiation Framework

## DISPUTE RESOLUTION OPTIONS



## Potential breaches of agreements

Queensland's first Land Access Ombudsman has been appointed to provide a faster, free alternative to legal action for industry and landholders that have existing CCAs or MGAs.

The Land Access Ombudsman can investigate disputes about alleged breaches of CCAs and MGAs and assist the dispute by:

- Offering an opinion on the merits of each party's position
- Advising on a way forward
- Making practical recommendations based on the specific facts and circumstances of each dispute.

For more information contact the Land Access Ombudsman via:

**Phone (free call): 1800 717 550**

**Email: [enquiries@lao.org.au](mailto:enquiries@lao.org.au)**

**Web: [www.lao.org.au](http://www.lao.org.au)**

## Dispute Resolution (restricted land)

If parties are unable to reach an agreement on whether a certain building, structure or area is restricted land, either can apply to the Land Court of Queensland for an order declaring whether particular land is restricted land for a resource authority, and whether a particular activity is a prescribed activity for the purpose of applying restricted land protections.

Read more about restricted land access in **A Guide to Land Access Queensland** by DOR.

For further information on restricted land access contact the Land Court of Queensland via:

**Phone: (07) 3406 7777**

**Email: [landcourt@justice.qld.gov.au](mailto:landcourt@justice.qld.gov.au)**

**Web: [www.courts.qld.gov.au/courts/land-court/procedural-assistance-service](http://www.courts.qld.gov.au/courts/land-court/procedural-assistance-service)**