

Overview of the AANZ Disputes procedure

Disputes may occur between two members or between a member and the Association. There are procedures in place for how these disputes should be dealt with.

In the first instance, one party must bring the dispute to the attention of the other party. When it is recognised that there is an issue to be dealt with the procedure requires that both parties must meet within one month of the dispute being known to both parties. If it is possible for both parties to meet face to face this is an ideal scenario. However, as it is possible that parties to the dispute will be geographically separate, telephone conversations may be an alternative mechanism

If it is possible to resolve the dispute in that fashion, all well and good. However, if an amicable resolution is not forthcoming the intervention of a mediator is the next step. If the dispute is between individual members, the mediator will be appointed by the National Council. It is possible that this person will be from the Mediation and Arbitration Sub-Committee but may be a mutually acceptable alternative. At this stage, all parties need to be in full agreement with the choice of mediator. It will be important to discuss the mechanism by which communication will take place by all parties, be it face-to-face, by telephone or by telephone conference. It will also be important to discuss any costs incurred and the payment of said costs.

If the dispute is between a member and the Association, a qualified Mediator from the Arbitrators' and Mediators' Institute of New Zealand Inc (AMINZ) will be appointed. There will be a cost associated with their involvement and the division of these costs must be discussed and agreed upon before commencing the mediation process.

Mediation is a non-binding and voluntary dispute resolution process in which an independent and impartial mediator facilitates negotiation between the parties to assist them to resolve their dispute. Mediation differs significantly from arbitration and litigation in that neither the parties nor the mediator are limited by what is legally "right" or by any rules of evidence. The mediator's role is to guide the process so that the issues can be defined, the relevant information produced and options explored without undue delay or legalistic procedures. When a dispute is resolved by mediation a written agreement is signed by the parties which sets out the outcome of the issues that have been resolved at the mediation.

If mediation still fails to resolve the issue and the issue is between two members, the Mediation and Arbitration sub committee will discuss the next step with both parties. At this stage an arbitrator from the AMINZ may be an agreed choice or the parties may wish to take their dispute to Court for it to be heard through the NZ legal system. There will be further costs associated with this process.

If the dispute is between a member and the AANZ, the mediator will discuss the options of Arbitration or litigation with both parties. There will be further costs associated with this process.

Arbitration is a process for the settlement of disputes where an independent and impartial arbitrator makes a decision settling the dispute after considering the representations of the parties. The arbitrator's decision is called an "award" and is normally final and binding on the parties. The award is written and signed by the arbitrator and is enforceable by the courts. The Arbitration Act 1996 contains statutory provisions that relate to arbitration.

These disputes are likely to fall into a category best described as Rural Disputes. The AMINZ has a division that is skilled in mediating and arbitrating such issues. Rural disputes cover a wide range of commercial, land and relationship matters, with (not by way of limitation) problems requiring resolution, involving sharemilking contracts; leases of land or livestock; boundary fence arguments; matrimonial and relationship dissolutions; land or livestock valuation assessments; partnership or company dissolutions; share valuations; employment contracts; sale and purchase contracts; and a myriad of other associated issues. AMINZ has established a specialist list of Rural Dispute Resolution Professionals for the purpose of making available to the public practitioners who have been selected for their dispute resolution qualifications and experience of resolving disputes in the rural sector. Practitioners on the Rural List include mediators, conciliators and arbitrators and have met the prescribed criteria for admission in accordance with the requirements set down by AMINZ.

It is common sense to realize that disputes that are not quickly resolved can be very damaging to all parties. They consume a lot of time, energy, emotion and not an insignificant amount of money. In an ideal world it would be best if all disputes could be resolved amicably and speedily. Members are encouraged to think long-term of the negative impact that lengthy disputes can have on themselves. Even if one party achieves their original goal at the resolution of a lengthy dispute, they often do not feel as though they have been successful due to the emotional drain they have experienced.

Members are encouraged to follow the procedure laid down by the Association and to utilize the resources available to the AANZ mediation and Arbitration sub-committee before taking their grievance to the court system.

If you wish to discuss any aspects of a problem, or wish to submit a formal grievance, contact:

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