

**Australian Institute of Project Management**

**27 April 2005**

**Dispute Management**  
**A Project Manager's Perspective**

# Seminar Outline

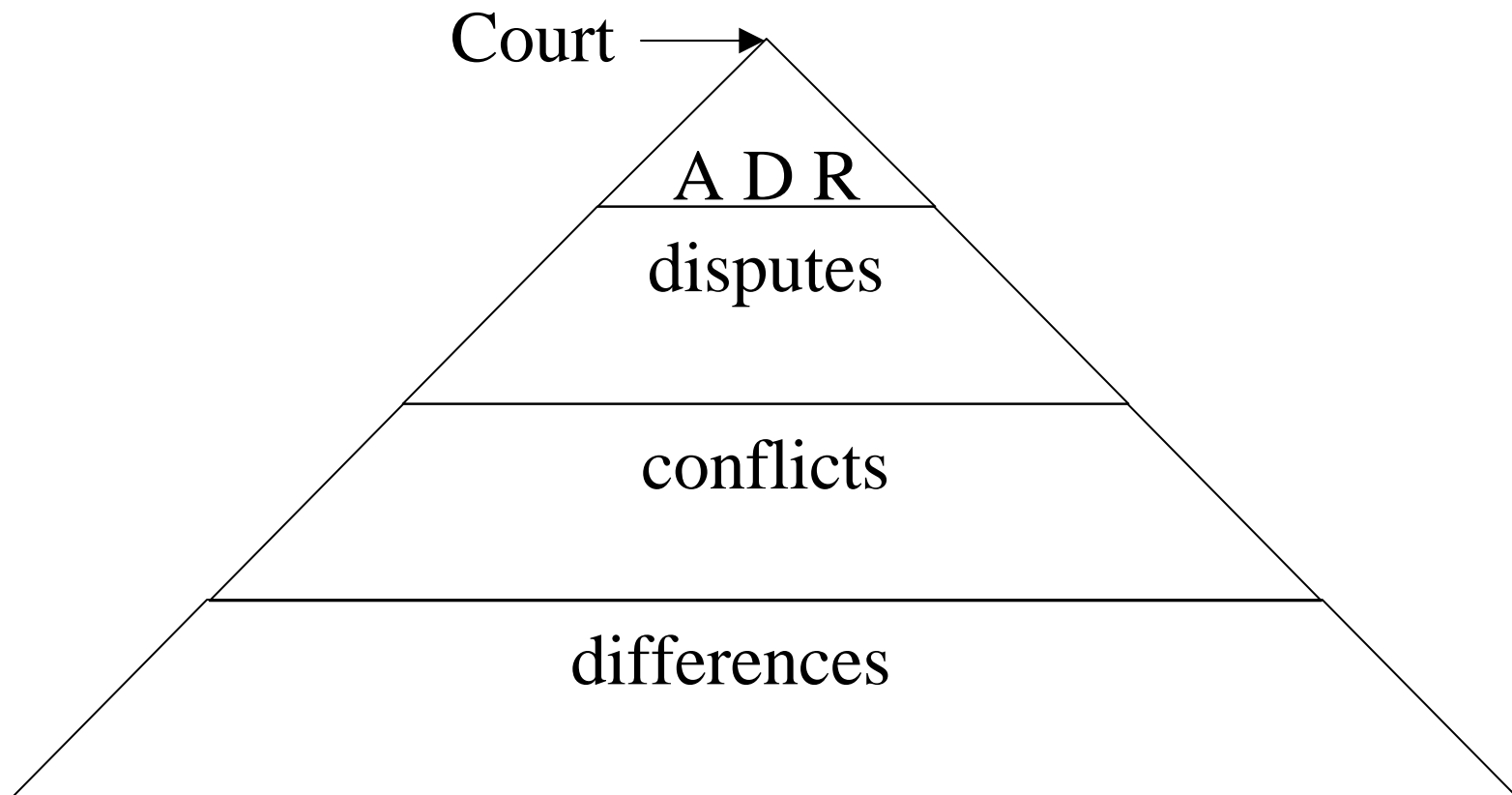
1. What is a dispute?
2. What is ADR?
3. What is an ADR System?
4. What to do?

# 1 What is a Dispute?

# What is a dispute?

- **difference** or **conflict** or **dispute**
- between which **persons**:
  - Client v Contractor
  - Project Manager v Client / Contractor / Staff
  - Contractor v Contractor / Consultant
  - Staff v Management / Staff / Consultant
- **your role**:  
participant / responsible / independent

difference > conflict > dispute



# Approach to your disputes

- avoid
- smooth
- compromise
- confront
- force

# Approach to other's disputes

- take one side - fuel the fire
- take other side - devil's advocate
- independent view
- judge without hearing the other side

## 2 What is ADR?

# A D R?

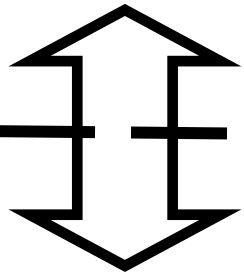
## *Alternative Dispute Resolution*

- Alternative to What?
  - Litigation
  - Binding Determinations
- Disputes - differences & conflicts
- Resolution

# Forms of Dispute Resolution

**Non  
Binding**

- Negotiation
- **Alternative** Dispute Resolution



- **Binding** Dispute Resolution
- Litigation

**Binding**

# Alternative Dispute Resolution

- Assisted negotiation
- Conciliation
- Mediation
- Facilitation / Moderation
- Expert Appraisal
- Mini Trial
- Dispute Resolution Boards

# Binding Dispute Resolution

- Expert Determination
- Arbitration
- Litigation

# Litigation vs Arbitration (1)

- Speed
- Privacy
- Costs
- Simplicity
- Control
- Convenience

# Litigation vs Arbitration (2)

- Jurisdiction
- Legal issues
- Other parties
- Finality

# Expert Determination (1)

- Quality or Value
- **Classic** Arbitration
- Expert's knowledge
- Simplicity
- Speed
- Control

# Expert Determination (2)

- Convenience
- Privacy
- Costs
- Other Parties
- Faults
- Natural Justice

# Mediation & Conciliation

- Third party assistance
- Parties reach their own resolution
- Not necessarily win-win
- Very flexible
- Speed, Privacy, Costs
- Emotion & logic considered

# Mediation vs Conciliation

## **Mediation**

Facilitative

No Opinion

Soft Issues

Emotional

Family, Domestic,  
Neighborhood

## **Conciliation**

Evaluative

Opinion

Hard Issues

Logical

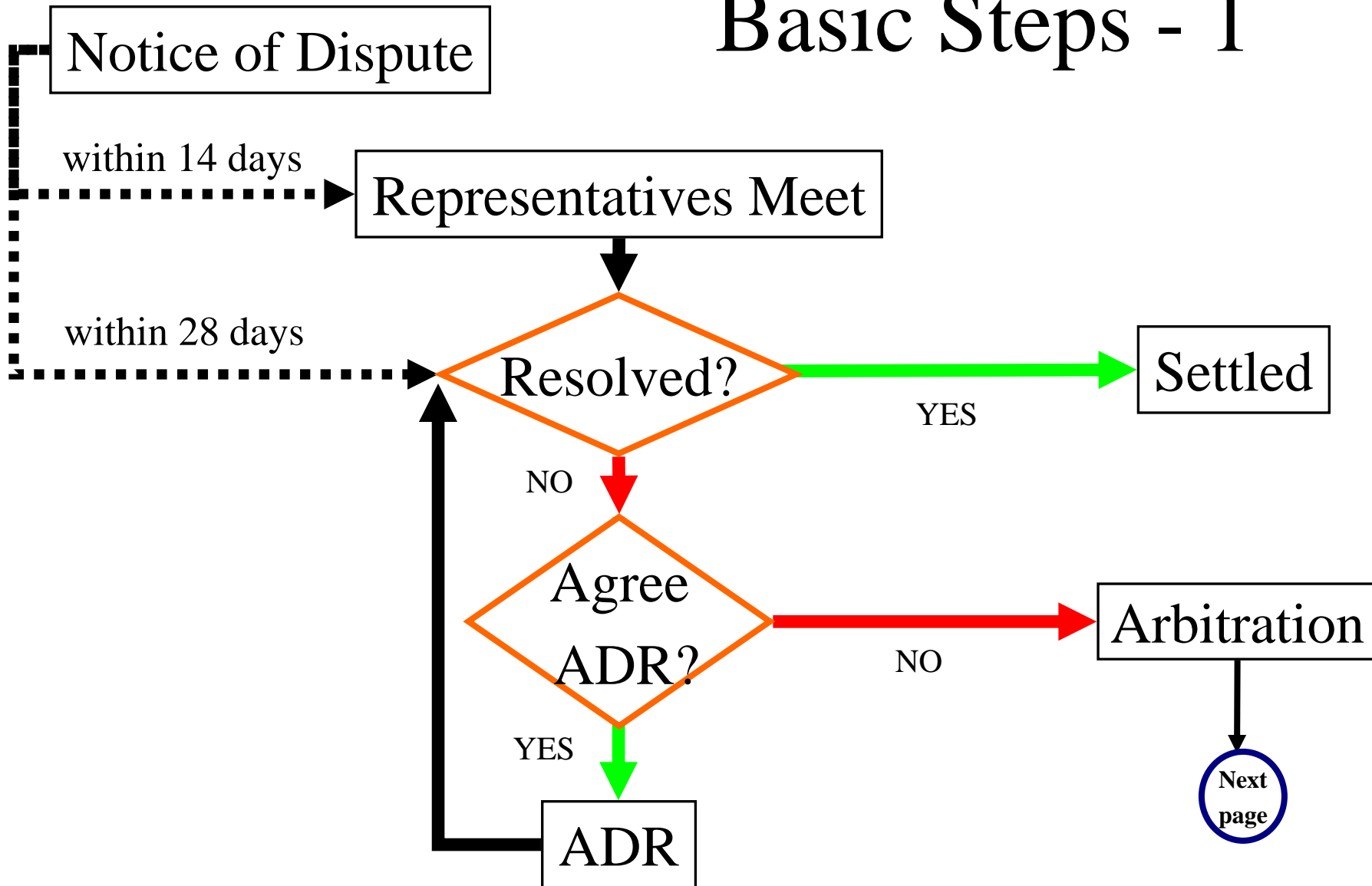
Legal, Commercial,  
Contractual

# 3 What is an ADR System?

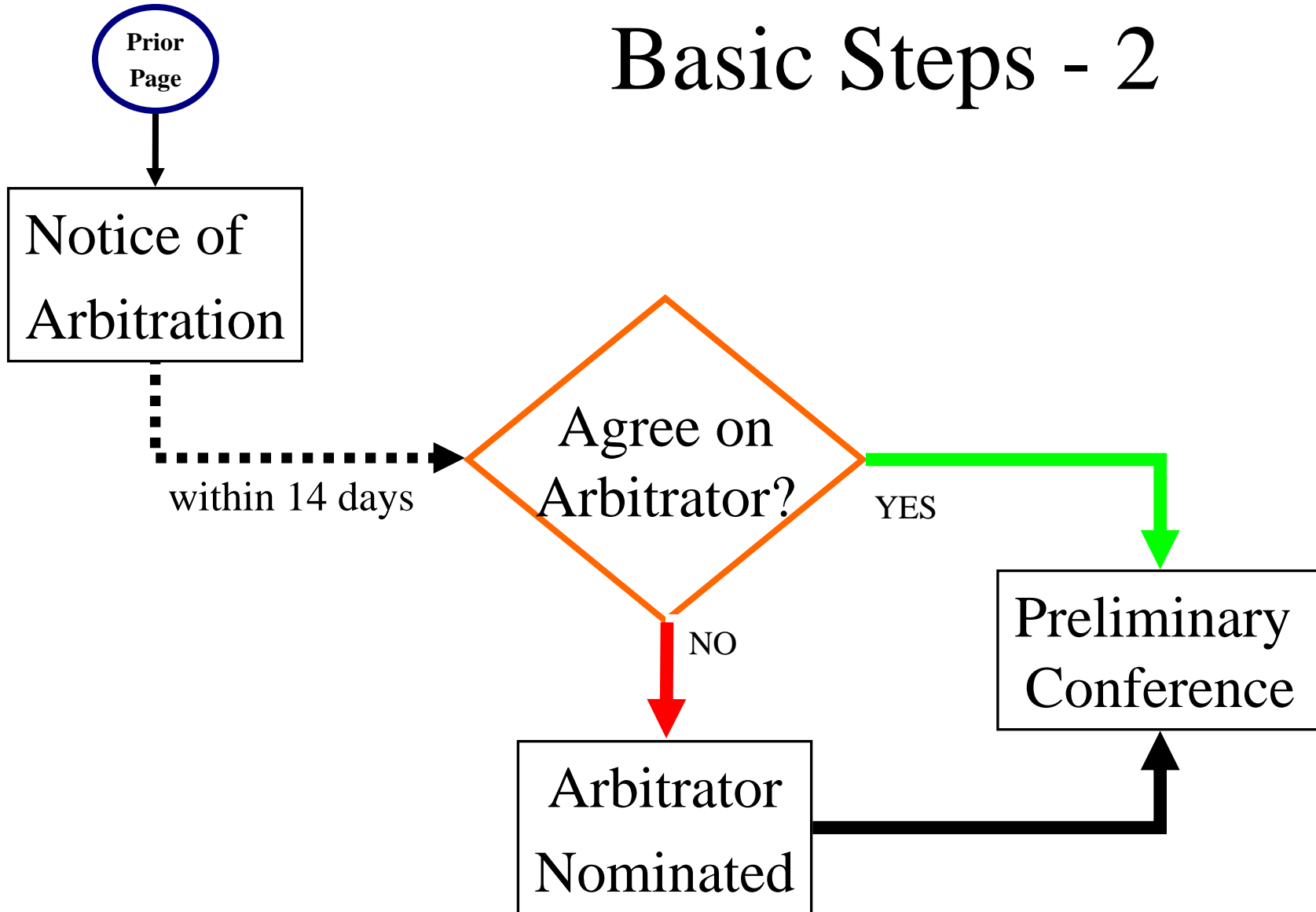
# ADR System

- Procedure defined
- Understood
- Confidence
- Commitment to resolve
- Notice of Dispute
- Procedure followed
- Finality

# Basic Steps - 1



# Basic Steps - 2



# Typical Contract Clause

## **Australian Standard 4000-1997**

### **Clause 42. Dispute resolution**

42.1 Notice of dispute

42.2 Conference

42.3 Arbitration

42.4 Summary relief

## 42.1. Notice of dispute

- difference or dispute
- including claims:
  - i) *in tort*
  - ii) *under statute*
  - iii) *for restitution based on unjust enrichment or other quantum meruit or*
  - iv) *rectification or frustration, or like claim available under the governing law*

## **42.1. Notice of dispute (continued)**

- written notice of dispute
- adequately identifying and providing details
- continue to perform the Contract.

## 42.2. Conference

- confer within X days
- resolve or agree on methods
- represented by a person having authority
- privilege
- not resolved in X days - refer to arbitration.

## 42.3. Arbitration

- If not agree arbitrator - nominated by X
- Arbitration conducted under rules of Y

## 42.4. Summary relief

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the *Contract* or to seek injunctive or urgent declaratory relief.

# 4 What to do?

# Preparation - Personal basis

- Human skills, group dynamics
- Body language / Meta language
- Communication / Listening skills
- ADR techniques
  - Negotiation – single view
  - Mediation – multiple views
  - Expert Determination – expedient view
  - Arbitration – ultimate view

# Preparation - Project basis

- Consider all relationships
- Establish ADR Systems
- Educate participants on ADR systems
- Attitude - it's okay to differ, conflict or dispute

# Managing Disputes

## Project Management Body of Knowledge – 3<sup>rd</sup> Edition

### 1.5.5 Interpersonal Skills

Negotiation and **conflict** management

### 9.4.2 Manage Project Team: Tools and Techniques

**3 Conflict** Management

### 12.5.2 Contract Administration: Tools and Techniques

**6 Claims** Administration

# In practice

- awareness, identify
- self help
- monitor
- trigger ADR system
- administer
- resolve
- close out

# When in dispute

- Keep communicating – won't resolve if not
- Be flexible with solutions
- Genuinely consider other side's position
- Seek early third party assistance
- Seek other opinions
- Don't give up or think it's all too hard
- Fix the problem not fix the blame

# Summary

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