



Australian Government

WorkChoices

What is a workplace dispute?

Disputes between an employee and an employer at the workplace level can be resolved using the framework established in the Workplace Relations Act (WR Act). Workplace disputes can arise about the application of:

- awards;
- agreements;
- the Australian Fair Pay and Conditions Standard (Standard);
- workplace determinations;
- legislative entitlements to meal breaks, parental leave and public holidays; and
- during negotiations for a collective agreement.

For each of these disputes, parties can agree to refer the matter to either the Australian Industrial Relations Commission (AIRC) or to a private alternative dispute resolution (ADR) provider for assistance.

There are no limits on the types of ADR that the AIRC or a private body can provide. However, some examples of the kinds of ADR that may be supplied include:

- conferencing;
- mediation;
- assisted negotiation;
- neutral evaluation;
- case appraisal;



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- conciliation; and
- arbitration.

There are protections for parties who use the AIRC or a private body to help them to resolve their dispute. For example, ADR must always be conducted in private (although a party may be allowed to have a representative with them). Also, information or documents given by the parties during dispute resolution cannot be used or disclosed unless:

- it is for the purpose of helping to resolve the matter;
- the parties agree; or
- it is required by law.

Finally, evidence of anything said or done during dispute resolution is not admissible as evidence in related proceedings unless the parties agree.

If the parties to a dispute agree to go to the AIRC for assistance, there are certain parameters around what the AIRC can and cannot do (see below). However, if the parties decide to go to a private body, it is up to them to agree on the parameters and limitations that they would like that provider to abide by.

The Government also provides financial assistance to help parties with the cost of private ADR (see below).

Model dispute settlement provision (DSP)

The WR Act contains a model dispute settlement procedure (called a DSP) which will be used to settle workplace disputes in most cases.

Under the model DSP, the employer and employee must make a genuine attempt to resolve the matter at the workplace level.

If the parties involved cannot settle their dispute, they can refer the matter either to the AIRC or a private body for ADR.

If parties cannot decide who should conduct dispute resolution, then either party may apply to the Australian Industrial Registry. There is then a further two week period during which the parties must try to agree on the dispute resolution provider. If they are still unable to agree, then the AIRC will provide dispute resolution services.

If the dispute is referred to the AIRC, it will help the parties to reach an agreement, for example, by arranging conferences between the employers and employees and their representatives.

In helping to resolve a dispute, the AIRC can make recommendations, issue binding determinations and arbitrate where the parties agree. However, the AIRC cannot compel a person to do anything, make orders or awards or appoint a board of reference.

All disputes about:

- the rights and obligations of people covered by an award;
- the application of the Standard to an employee;
- the application of workplace determinations;
- legislative entitlements to parental leave, meal breaks and public holidays;

must be dealt by using the model DSP.

Disputes arising during negotiations for a collective agreement

Under WorkChoices, the AIRC will provide voluntary ADR for matters arising during negotiations for a collective agreement. In order for the AIRC to conduct ADR, both employers and employees must agree. Employers and

employees can also agree to refer the matter to a private ADR practitioner of their choice.

The AIRC can assist employers and employees to resolve the disputes in a range of ways. The AIRC may also make recommendations about how to resolve the dispute but cannot:

- issue orders or make awards;
- make binding determinations;
- arbitrate;
- compel a person to do anything; or
- appoint a board of reference.

In addition, the AIRC may provide voluntary dispute resolution where a bargaining period has been:

- suspended to provide a ‘cooling off’ period; or
- terminated and the 21 day negotiation period has not expired.

For further information about the suspension of termination or bargaining periods, see the ‘WorkChoices and industrial action’ fact sheet.

Disputes about the applications of agreements

Employers and employees may develop their own DSP to include in their agreement (an agreed DSP).

If an agreement does not contain its own agreed DSP, then the model DSP applies (see above).

A dispute cannot be properly referred to the AIRC under an agreed DSP unless all the requirements in the agreed DSP have been followed.

In carrying out functions under an agreement DSP, the AIRC only has the powers conferred on it by the agreement.

The changes made by the WorkChoices amendments do not apply to any pre-reform agreement that has a DSP which conferred power on the AIRC to settle disputes. These agreements will continue to be governed by the pre-reform WR Act rules for resolving disputes over the application of an agreement.

Alternative Dispute Resolution Assistance Scheme (ADRAS)

Employers and employees covered by the federal workplace relations system may be able to receive up to \$1,500 (including GST) towards the cost of private ADR services under the ADRAS. If the parties to a dispute are located in a regional or remote area, up to an additional \$500 (including GST) may also be available to cover the ADR provider’s reasonable travel expenses.

The types of disputes eligible to receive assistance under the scheme are those:

- about the application of awards, agreements, the Standard, workplace determinations and legislated minimum entitlements to meal breaks, parental leave and public holidays;
- arising during negotiations for a collective agreement;
- where the AIRC has suspended a bargaining period to allow for ‘cooling off’; and
- where the AIRC or the Minister for Employment and Workplace Relations has terminated a bargaining period because industrial action is threatening, or would threaten to:
 - endanger the life, personal safety or welfare of the Australian population or part of it; or

- cause significant damage to the Australian economy or an important part of it.

To access assistance under the scheme any party (but only one party) must complete an application form which will be assessed by the Department of Employment and Workplace Relations.

Further information about the scheme, including application forms, are available online at www.workchoices.gov.au or by contacting the WorkChoices Infoline on 1300 363 264.

WorkChoices is a new system of workplace relations legislation that covers up to 85 per cent of Australian employees. This series of fact sheets is available to assist workers and employers to understand their rights and obligations under the legislation.

For more information call the **WorkChoices Infoline** on **1300 363 264** or visit the **WorkChoices** website **www.workchoices.gov.au**

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