

**SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION
LEGISLATION COMMITTEE**

**2006-2007 SUPPLEMENTARY BUDGET SENATE ESTIMATES HEARING
2ND NOVEMBER 2006
EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO**

QUESTIONS ON NOTICE

Outcome 2: Higher productivity, higher pay workplace

Output Group 2.2: Workplace Relations Implementation

Output 2.2.3: Workplace Relations Services

Question Number: W694-07

Question:

Senator Wong asked in writing:

Work Choices Implementation Agencies - Alternative Dispute Resolution Assistance Scheme.

Can DEWR produce the Fact Sheets referred to in the regulations regarding what information parties will receive where parties to a dispute cannot agree on a provider?
(a) Please table any forms relating to applying for relief in respect to the model dispute resolution process.

Answer:

The Department has issued a document containing the prescribed information referred to in Regulation 13.1 of the Workplace Relations Regulations 2006, which must be made available to parties when they cannot agree on a provider (attached).

In addition, the Department provides information brochures on the Alternative Dispute Resolution Assistance Scheme and a Fact Sheet titled *WorkChoices and workplace disputes*, all of which are available at www.workchoices.gov.au.

Estimated cost: Based on the FOI calculator it has taken approximately 3 hours at an estimated cost of \$60 to prepare this answer.

Prescribed information on dispute resolution

ADR services

Employers and employees can both agree to refer certain disputes to either the Australian Industrial Relations Commission (AIRC) or to a private alternative dispute resolution (ADR) provider of their choice.

Both the AIRC and private practitioners can provide a range of ADR services, including:

- **conferencing**: meetings in which the parties and/or their advocates and/or third parties discuss the issues in dispute.
- **mediation**: a process in which the parties to a dispute, with the assistance of a neutral third party (mediator), identify the issues where there is disagreement, develop options, consider alternatives and endeavour to reach an agreement. The mediator cannot advise on, or determine matters related to the content of the dispute or its outcome. However, they may advise on or determine the process of mediation.
- **assisted negotiation**: where the parties to a dispute, who have identified the issues to be negotiated, utilise the help of a neutral third party (the facilitator), to negotiate the outcome. The facilitator cannot advise on or determine the content of the matters discussed or the outcome of the process. However, they may advise on or determine the process of assisted negotiation.
- **neutral evaluation**: at an early stage in attempting to resolve the matter, the parties to a dispute present arguments and evidence to a dispute resolution practitioner. That practitioner makes a determination on the key issues in dispute and the most effective means of resolving the dispute, without determining the facts of the dispute (that is they will not make findings about what did or did not happen).
- **case appraisal**: a process where a person investigates the dispute and provides advice on possible and desirable outcomes and how they may be achieved.
- **conciliation**: where the parties to a dispute, with the assistance of a neutral third party (the conciliator), identify the issues in dispute, develop options, consider alternatives and try to reach an agreement. The conciliator may: advise on or determine the process of conciliation; suggest possible solutions; give expert advice; and actively encourage the parties to reach agreement. However, the conciliator cannot make determinations on these matters.
- **arbitration or other determination of the parties' rights and obligations**: where the parties agree, they may present arguments and evidence to a person who makes a determination. The parties usually agree beforehand to abide by the terms of the determination.

ADR avenues

The AIRC

If a dispute is referred to the AIRC, the AIRC is required to take appropriate action to assist the parties to resolve their dispute. This may include arranging conferences between the parties and/or their representatives. Also, the parties can request the AIRC to make recommendations if they cannot reach agreement.

There is no fee charged to the parties if the dispute is referred to the AIRC.

A private ADR provider

It is up to the parties to decide how a private ADR provider should help settle their dispute.

Funding arrangements and assistance for parties choosing a private ADR provider are set out below.

Safeguards for those attempting ADR

There are safeguards for parties who refer a dispute to either the AIRC or a private ADR provider, including that:

- dispute resolution be held in private;
- parties may be represented;
- information or documents given during the course of dispute resolution must not be used or disclosed, except (for example) if the parties agree or it is for the purpose of conducting the dispute resolution process; and
- evidence of anything said or done during dispute resolution is not admissible in related proceedings, unless the parties agree.

ADR Assistance Scheme

The Australian Government has established the ADR Assistance Scheme to help those who have agreed to refer a dispute to a private ADR provider. The ADR Assistance Scheme is administered by the Department of Employment and Workplace Relations.

Under this Scheme, employers and employees may be eligible to receive up to \$1,500 (inclusive of GST) towards the cost of ADR services per eligible dispute. If the parties are located in remote or regional areas, funds up to \$500 (inclusive of GST) will also be available to cover the ADR provider's reasonable travel expenses under the Scheme.

To be eligible to receive assistance under the Scheme, employers and employees must be covered by WorkChoices and have an eligible dispute, being a dispute:

- about the application of awards, agreements, the Australian Fair Pay and Conditions Standard, workplace determinations and legislated minimum entitlements to meal breaks, parental leave and public holidays;
- arising during negotiations for a collective agreement;
- arising where a bargaining period has been suspended to provide a 'cooling off' period; or
- where a bargaining period has been terminated in the public interest and before the 21 day negotiation period (and any extension of that period) has expired.

Parties assessed as eligible under the Scheme will receive an approval voucher letter which must be presented to their selected ADR provider at the commencement of their ADR services. Eligible parties will receive a list of professional ADR organisations, from which they can gain a referral to an ADR provider. Subsidised services can only be provided by ADR practitioners that are sourced through these professional ADR organisations. Eligible parties must agree on an ADR provider before commencing their ADR services.

At the completion of the ADR services, the ADR provider will invoice the Department directly for the services rendered up to \$1,500 (inclusive of GST) and where applicable, include a claim for up to \$500 (inclusive of GST) for reasonable travel expenses. Payment for any fees or costs in excess of the capped amounts \$1,500 (and \$500 for travel) will be the responsibility of the parties to the dispute.

For more information about how to apply for funding for private alternative dispute resolution, contact the ADR Assistance Scheme at the following:

Phone: 1300 363 264

Email: ADRAS@dewr.gov.au

Mail: Alternative Dispute Resolution Assistance Scheme

Department of Employment and

Workplace Relations

GPO Box 9879

CANBERRA ACT 2601

Alternatively, visit the following websites:

WorkChoices website: www.workchoices.gov.au

Australian Workplace website: www.workplace.gov.au