

WorkChoices increases focus on ADR (Alternative Dispute Resolution) to settle disputes

WorkChoices has radically changed the way workplace relations is managed in Australia – the new system is quite different from the old and requires a new way of thinking – from employers and employees.

One of the major areas of change is in the resolution of disputes.

WorkChoices has moved the venue of resolving disputes from tribunals located remote from those involved to the actual workplace. It has also made substantial change in those responsible for resolving the dispute – from external conciliators and arbitrators such as Judges and Commissioners to those actually involved in the dispute – assisted if necessary by trained experts. It has also moved the resolution of disputes from being a public affair and subject to wide reporting to a much more private and confidential process.

This decentralised approach of dispute resolution is mandated by a new Part 13 of the Workplace Relations Act 1996 (the Act) which provides for a clear focus on resolving disputes at the workplace using flexible and private processes. The parties to disputes are encouraged to use Alternative Dispute Resolution (ADR) processes of their own choice, with a mandated model dispute resolution process being the fallback if no choice is made.



WorkChoices provides for the parties to disputes to have ADR experts appointed to assist them. If all ADR processes fail, the parties still retain access to rights to litigate their grievances before the Commission.

Types of ADR provided for by WorkChoices

Sections 698 of the Act provide that the following forms of ADR will be available to employees and employers to assist them resolve workplace disputes. These include:

- (a) conferencing
- (b) mediation
- (c) assisted negotiation
- (d) neutral negotiation
- (e) case appraisal
- (f) conciliation
- (g) arbitration
- (h) other procedures or services specified by the regulations.

Details of the differences of these forms of ADR are set out in the Explanatory Memorandum to the Act.

Who needs to approve of ADR?

Section 699 of the Act provides that a party to a dispute may apply to the Commission to have ADR processes applied provided:

- the dispute is about an allowable issue (see below)
- the parties have been unable to resolve the dispute at the workplace level

Types of disputes that ADR will be approved for

These are limited to disputes related to the follow issues:

- entitlements under the Australian Fair Pay & Conditions Standard
- the application of:
 - an award
 - a workplace determination
- the terms of a:
 - workplace agreement (Collective or AWA)
 - NAPSA or preserved State agreement
- the application of legislated minimum entitlements to:
 - meal breaks
 - parental leave, or
 - public holidays
- a dispute arising during negotiations for a collective agreement
- where the AIRC has suspended a bargaining period to provide a “cooling off” period
- where the AIRC or the Minister has terminated the bargaining period due because industrial action is threatened or would threaten to endanger life, safety, health, or welfare of the population or of part of it; or cause significant damage to an important part of the Australian economy.



Government assistance

The Federal Government has established the Alternative Dispute Resolution Assistance Scheme (ADRAS) to provide the parties of eligible disputes with up to \$1,500 (gst inclusive) towards the cost of private ADR services – plus up to \$500 (gst inclusive) towards reasonable travel expenses to rural or remote areas.

How we can assist

The ADR specialists at TELS have extensive experience at resolving a wide range of workplace disputes. Mediation is a proven method to assist parties in dispute to discuss their differences and reach a mutually agreeable resolution. In many cases, this can be a quick and cost effective process.

TELS mediators are accredited and registered with the Australian Commercial Disputes Centre and are accredited by the NSW Law Society. They are also approved by the Federal Government to provide services under ADAS.



For more information on mediation or other ADR processes to resolve disputes under WorkChoices, contact us for fuller details of our services.

The Employment Law Specialists

Level 20, 99 Walker St, North Sydney NSW

Phone: 02 9510 0066

Fax: 02 9510 0067

Web: www.tels.com.au