



Dispute resolution procedures in agreements

This publication deals with the role of the Australian Industrial Relations Commission (the Commission) in dispute resolution procedures contained in workplace agreements. It provides some ideas and options concerning the drafting of procedures and gives parties information about what to expect when a dispute comes before the AIRC. Experience shows that parties often do not give much attention to the contents of dispute resolution procedures until a dispute actually arises. If the procedure has been poorly drafted it can make the dispute much more difficult to resolve. The following advice is intended to assist parties to agree on procedures which are simple, clear and effective.

Choosing the AIRC

The [Workplace Relations Act 1996](#) (the Act) provides that a workplace agreement must include procedures for resolving disputes about matters arising under the agreement between the employer and the employees whose employment will be subject to the agreement. It is up to the parties to decide what kind of dispute resolution procedures to include in the agreement. They can provide for reference of disputes to a third party of their choosing. If parties want the Australian Industrial Relations Commission to conduct any dispute resolution process under the agreement they can include a provision in the agreement which makes the Commission the forum for resolving disputes.

Specific terms appropriate to individual circumstances may need to be included in an agreement's dispute settlement provision. In the building and construction industry, for example, commercial reasons may require compliance with the Australian Government [Implementation Guidelines for the National Code of Practice for the Construction Industry](#) (refer to section 8.7).

Referring disputes to the AIRC

The Commission cannot conduct a dispute resolution process in relation to a dispute under a workplace agreement unless two conditions are fulfilled.

The first condition is that under the terms of the agreement the dispute may be resolved by the Commission. It is not necessary that the AIRC be referred to in the dispute resolution provision; it is sufficient that there is nothing which excludes the AIRC. Parties can choose to include specific reference to the Commission (or a particular member or members of it) if they wish to avoid doubt.

The second condition is that any preliminary steps required under the agreement have been taken.

Example *If a dispute in relation to a matter arising under this agreement is unable to be resolved at the workplace, and all agreed steps for resolving it have been taken, the dispute may be referred to the Australian Industrial Relations Commission for resolution.*

When can disputes be referred to the AIRC?

It is not mandatory that dispute resolution procedures in workplace agreements require the parties to attempt to resolve the dispute themselves before seeking outside assistance, but it is desirable they should. If specific provisions are included they usually provide for an escalation of discussions within the enterprise. In most cases the provisions can be quite simple. Where large organisations are concerned there may be more than one level to which the dispute can be taken. In those cases it might be desirable to identify the particular levels of management more precisely to avoid confusion, but it is not necessary to do so.

Example *In the first instance the parties will genuinely attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor and, if such discussions do not resolve the dispute, by discussions between the employee or employees concerned and more senior levels of management as appropriate.*

Representatives

Parties might also wish to specifically provide for representatives to be appointed for the purposes of the dispute settling procedure.

Example *A party to the dispute may appoint another person, organisation or association to accompany or represent them in relation to the dispute.*

Privacy and confidentiality

Generally speaking the dispute resolution process is a private one. Information and documents are to be kept confidential. Information may be disclosed if it is to be used to conduct the dispute resolution process, if the parties consent, or if disclosure is required or permitted by law. Nothing said or done in the process is admissible in other proceedings unless the parties agree or the regulations permit.

Functions and powers of the AIRC

When a dispute is referred to it, the Commission has the functions and powers given to it by the terms of the workplace agreement or those that are otherwise agreed by the parties. However there are a number of general requirements on the AIRC:

- it is prohibited by legislation from making an order;
- it must act quickly and in a way that avoids unnecessary technicalities and legal forms; and
- it must comply with any procedures the parties have agreed on.

It is open to the parties to a workplace agreement to nominate the powers and functions to be conferred on the Commission for the purpose of the dispute resolution procedure. Those powers could be **mediation, conciliation** and /or **arbitration**.

Example (1) If a dispute in relation to a matter arising under the agreement is unable to be resolved at the workplace, and all agreed steps for resolving it have been taken, the dispute may be referred to the Australian Industrial Relations Commission for resolution by mediation or conciliation.

Example (2) If a dispute in relation to a matter arising under this agreement is unable to be resolved at the workplace, and all agreed steps for resolving it have been taken, the dispute may be referred to the Australian Industrial Relations Commission for resolution by mediation and/or conciliation and, if the dispute remains unresolved, by arbitration. If arbitration is necessary the Commission may exercise the procedural powers in relation to hearings, witnesses, evidence and submissions which are necessary to make the arbitration effective.

To ensure the effectiveness of a dispute resolution procedure parties usually prefer to nominate the powers and functions that the Commission is to exercise during the dispute resolution process in the procedure itself. If the parties prefer not to specify the powers and functions in advance, it is desirable that the procedure include provision for the parties to decide what powers should be exercised at the time a dispute arises.

Example On a dispute being notified to it, the Australian Industrial Relations Commission may exercise such powers and functions as the parties agree are appropriate at the time.

Procedural matters

There are a number of procedural matters which might require discussion when disputes are referred to the Commission. These matters might include the location and timing of meetings, whether presentations should be oral, written or both, and

whether the parties should be represented and if so by whom. It might also be necessary to specify whether the Commission member is able to meet separately with the parties and, if so, what confidentiality rules should apply. Another matter which can arise is whether the parties agree that the Commission member should be free to make suggestions or recommendations for resolution. Although there is nothing to prevent the parties including such matters in the agreement itself, there is no need to do so.

Appeal mechanisms

In a case in which the parties agree that the Commission should exercise powers of arbitration they may also wish to provide for an appeal mechanism. Unless the agreement specifically provides for an appeal to a Full Bench the decision of the member concerned cannot be appealed except on jurisdictional grounds.

Example *The decision of the member will bind the parties, subject to either party exercising a right of appeal against the decision to a Full Bench.*

Providing for normal work during dispute resolution

An agreement might also include a provision requiring that work continue as normal while a dispute is being dealt with under the dispute resolution procedure.

Example *It is a term of this agreement that while the dispute resolution procedure is being conducted work shall continue normally unless an employee has a reasonable concern about an imminent risk to his or her health or safety.*

Nominating a particular AIRC member

It is not necessary to nominate a particular member of the Commission and usually dispute resolution procedures simply refer to the Australian Industrial Relations Commission. If a dispute is referred to the Commission a member will be assigned to the matter through the normal allocation process.

If they wish, parties may nominate a particular member of the Commission or set out a procedure for nominating a member when a dispute arises. If a particular member is nominated, it is advisable to provide for a substitute in case that member is not available.

Example (1) Any dispute referred to the Australian Industrial Relations Commission under the clause should be dealt with by e.g. Senior Deputy President X, Deputy President Y or Commissioner Z or, should that member not be available within a reasonable time, a member nominated by the President.

Example (2) Any dispute referred to the Australian Industrial Relations Commission under this clause should be dealt with by a member agreed by the parties at the time or, in default of agreement, a member nominated by either the head of the relevant panel or the President.

Conclusion

Subject to the Act, there is no limit on the matters which may be included in defining the Australian Industrial Relations Commission's powers and functions for the purpose of dispute resolution procedures. The examples set out above are collected in

Appendix A.

The Commission will endeavour to deal with disputes in the manner which best suits the needs of the parties. So far as practicable, it will meet with the parties at the time and place which are most convenient to them and deliver any decisions in a timely way. Unless there is anything in the agreement to the contrary, the parties are free to choose at the time the dispute arises the level of assistance which the Commission is to provide, the powers it should exercise and the procedure it will follow.

Assistance

If you need help in deciding on a dispute resolution procedure the Commission can assist you in designing and reaching agreement on a provision that meets your needs and the needs of the enterprise. The Commission can also provide advice about other issues in dispute resolution.

Further information

Some further information is available in a separate guide titled *Dispute resolution procedures - additional material*.

Appendix A

This appendix contains a model dispute resolution procedure suitable for inclusion in workplace agreements. It contains examples only.

1. In the event of a dispute in relation to a matter arising under this agreement, in the first instance the parties will attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor and, if such discussions do not resolve the dispute, by discussions between the employee or employees concerned and more senior levels of management as appropriate.
2. A party to the dispute may appoint another person, organisation or association to accompany or represent them in relation to the dispute.
3. If a dispute in relation to a matter arising under the agreement is unable to be resolved at the workplace, and all agreed steps for resolving it have been taken, the dispute may be referred to the Australian Industrial Relations Commission (the Commission) for resolution by mediation and/or conciliation.

OR

3. If a dispute in relation to a matter arising under the agreement is unable to be resolved at the workplace, and all agreed steps for resolving it have been taken, the dispute may be referred to the Australian Industrial Relations Commission (the Commission) for resolution by mediation and/or conciliation and, where the matter in dispute remains unresolved, arbitration. If arbitration is necessary the Commission may exercise the procedural powers in relation to hearings, witnesses, evidence and submissions which are necessary to make the arbitration effective.
4. It is a term of this agreement that while the dispute resolution procedure is being conducted work shall continue normally unless an employee has a reasonable concern about an imminent risk to his or her health or safety.

Optional clauses concerning member selection

5. Any dispute referred to the Commission under this clause should be dealt with by (e.g.) *Senior Deputy President X, Deputy President Y or Commissioner Z* or, should that member not be available within a reasonable time, a member nominated by the President.

OR

5. Any dispute referred to the Commission under this clause should be dealt with by a member agreed by the parties at the time or, in default of agreement, a member nominated by either the head of the relevant panel or the President.

Optional clause concerning appeals from arbitrations:

6. The decision of the Commission will bind the parties, subject to either party exercising a right of appeal against the decision to a Full Bench.