



ADRAS Alternative Dispute Resolution Assistance Scheme

INFORMATION BROCHURE

ADRAS BACKGROUND

The Australian Government is committed to encouraging employers and employees to resolve disputes between themselves at the workplace level. Under the *Workplace Relations Act 1996*, employers and employees have a choice between referring certain disputes to a private alternative dispute resolution (ADR) provider or the Australian Industrial Relations Commission (AIRC) for assistance.

To facilitate genuine choice in dispute resolution, the Government has established the Alternative Dispute Resolution Assistance Scheme (ADRAS). Under the Scheme, employers and employees (parties) to eligible disputes will be able to receive Government assistance for ADR services.

ADRAS is administered by the Department of Employment and Workplace Relations (DEWR) in accordance with the ADRAS Operational Arrangements. The Operational Arrangements set out the Scheme eligibility requirements and assistance limits. The Operational Arrangements can be found by visiting the WorkChoices website www.workchoices.gov.au or the Australian Workplace website www.workplace.gov.au.

Under the Scheme, parties to eligible disputes will be able to access up to \$1,500 (inclusive of GST) towards the cost of ADR services per eligible dispute. Additionally, if the parties are located in remote or regional areas, up to an additional \$500 (inclusive of GST) will be available to the parties to cover the ADR provider's reasonable travel expenses under the Scheme. Any fees or costs in excess of these amounts will need to be paid by the parties to the dispute.

WHAT IS ADR?

ADR refers to any way in which an impartial person (an ADR provider) assists parties in a dispute to resolve the matters between them.

The Scheme does not impose limits on the type of ADR that can be used to resolve a dispute. There are many types of ADR, providing parties with a wide range of choices for dispute resolution. The following outlines a number of the common types of ADR:

Conferencing: refers to meetings in which the parties and/or their advocates and/or third parties discuss the issues in dispute with the assistance of a dispute resolution specialist (this process can also occur without an ADR practitioner).

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: a process in which 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: a process in which at an early stage in attempting to resolve the matter, the parties to the dispute present arguments and evidence to a dispute resolution practitioner. The practitioner makes a determination on the key issues in dispute, and most effective means of resolving the dispute. However, they will not advise on the facts of the dispute.

Case Appraisal: a process in which a dispute resolution practitioner (the case appraiser) investigates the dispute and provides advice on possible and desirable outcomes and how they may be achieved.

Conciliation: a process in which the parties to a dispute, with the assistance of a neutral third party (conciliator), identify the issues in dispute, develop options, consider alternatives and try to reach an agreement. The conciliator may have an advisory role on the content of the dispute and its resolution, but not a determinative role. The conciliator may advise on or determine the process of conciliation; suggestion possible solutions, give expert advice; and actively encourage the parties to reach an agreement. However, the conciliator cannot make determinations on these matters.

Arbitration or other determination of the parties' rights and obligations: a process in which the parties present arguments and evidence to a neutral third party (arbitrator) who makes a binding determination. The parties usually agree beforehand to abide by the terms of the determination.

ADVANTAGES OF ADR

ADR can have a number of advantages over more traditional methods of resolving disputes, such as:

Cost and Time Savings: Parties do not use many of the initial steps usually required for a hearing and can identify the issues quickly and concisely.

Confidentiality: ADR is conducted in private and the decisions remain confidential.

Convenience: ADR can be conducted at reasonably short notice and at a time that suits the parties.

Flexibility: ADR procedures are usually less formal than court proceedings. Processes can be customised to suit the dispute and the parties, allowing the parties to exercise more control over the process.

Sustains relationships between parties: Parties are more likely to gain a greater understanding of each other's interests. They are more likely to keep their relationship intact and reduce any negative feelings toward the other parties.

Suitability for multi-party dispute: ADR offers all parties the opportunity to be heard on all relevant issues. This avoids the need for a separate process for each disputing party and the expense associated with separate actions.

More creative solutions: Solutions to a dispute can be more creative under ADR, enabling the parties to find more unique solutions suited to their specific situation. This is particularly important where parties need to maintain their relationship.

Future use: Participants can utilise the process for resolving this dispute for application to future disputes.

ADRAS ELIGIBILITY

To be assessed as eligible for assistance under the Scheme, you and the other parties to the dispute must meet a number of conditions. Specifically, parties must:

1. Be an employer or employee covered by the *Workplace Relations Act 1996*, which includes:
 - trading, financial and foreign corporations (constitutional corporations);
 - employers and employees in the internal territories (the ACT and NT) and Christmas and Cocos Islands;
 - the Commonwealth, including its authorities;
 - waterside, maritime and flight crew employers in relation to activities taken in connection with interstate and overseas trade and commerce; and
 - most employers and employees in Victoria.
2. Have an eligible dispute, being a dispute:
 - about:
 - entitlements (excluding wages) under the Australian Fair Pay and Conditions Standard;
 - the application of an award that is binding on the parties to the dispute;
 - the terms of a workplace agreement that is binding on the parties to the dispute (provided the agreement contemplates the use of a private ADR provider);
 - the application of a workplace determination that is binding on the parties to the dispute;
 - legislated minimum entitlements to parental leave, meal breaks and public holidays;

- the terms of a preserved State agreement that is binding on the parties to the dispute; or
- the terms of notional agreement preserving a State award that is binding on the parties to the dispute
- arising during negotiations for a collective agreement involving all parties to the dispute;
- where the AIRC has suspended a bargaining period to provide a "cooling off" period, or because industrial action is threatening to cause significant harm to a third party;
- 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, the personal safety or health, or the welfare, of the population or of part of it; or
 - cause significant damage to the Australian economy or an important part of it.

3. Have genuinely attempted to solve the dispute at the workplace level, except where the dispute relates to the suspension or termination of a bargaining period (as described above).
4. Have agreed to use the private ADR process.
5. Have not received previous Government assistance under ADRAS for the same dispute.

WHO IS NOT ELIGIBLE?

Assistance is not available for disputes relating to:

- unfair dismissal;
- unlawful termination;
- matters concerning trade union right of entry;
- protected industrial action which has been terminated in the public interest; and
- unprotected industrial action.

You will also not be able to gain assistance under the Scheme if the matter in dispute has previously been heard by the AIRC and a binding decision has been handed down. Furthermore, ADRAS will not be available to you where providing assistance would be contrary to the agreed terms of your workplace agreement.

If you are deemed ineligible for assistance under ADRAS, you will be sent a letter outlining the reasons for this decision.

If you are ineligible for assistance under the Scheme you can still seek the services of an ADR provider to assist you to resolve your dispute, however you will be responsible for any costs. You may also apply for your case to be heard by the AIRC.

APPLYING FOR ASSISTANCE

Any one party, but only one party, to the dispute may apply for assistance under the Scheme. To apply for the Scheme you must submit an ADRAS application form. Application forms are available through one of the contact methods listed at the bottom of this brochure. All of the other parties to the dispute must provide their details and sign the application form to verify that a dispute exists and that they wish to proceed with private ADR.

PROCESSING THE APPLICATION

When the Department receives your completed application form, it will be assessed against the Scheme's eligibility criteria (as outlined above).

If you are assessed as being eligible for assistance under the Scheme, you will receive an approval voucher letter, which will entitle you to gain up to \$1,500 (inclusive of GST) of Government assistance towards the cost of ADR services. You must present this voucher letter to the ADR provider at your first consultation to verify that you have been granted approval under the Scheme.

Where you are located in a remote or regional area, up to an additional \$500 (inclusive of GST) will be available to cover the ADR provider's reasonable travel expenses under the Scheme. Where applicable, ADR providers will include a claim for these expenses with their invoice to the Department at the completion of the service.

Attached to the voucher letter will be a list of professional organisations (whom the Department accepts as a professional organisation) that can assist you to source an ADR provider. You can only gain assistance under the Scheme where the ADR provider is a member, sessional provider, sourced panel member, employee or any other ADR provider (Member) of one of these professional organisations.

Some professional organisations charge a referral or registration fee for their services. When initially contacting a professional organisation, it is recommended that you ask whether the organisation charges a fee and if so, the amount of this fee. If you choose to use an organisation with these fees, this amount may be paid from the \$1,500 Government assistance or covered by yourself and the other parties to the dispute.

The *Workplace Relations Act 1996* requires the ADR process be conducted by a person agreed between all of the parties in dispute. Before commencing the dispute resolution process, you and the other parties in dispute must select and agree upon an ADR provider and then complete and return the ADR Provider Agreement form to the Department.

Assistance under the Scheme will only be available if you and the other eligible parties choose an ADR provider who agrees to provide dispute resolution services in accordance with the terms and conditions of the Scheme.

If you gain services from an ADR provider that is not a Member of an accepted professional organisation or if

the ADR provider that you select has not agreed to the terms and conditions of the Scheme, the Department will not provide you with assistance under the Scheme.

All parties nominated on the application form will be advised of the outcome of their application.

SELECTING AN ADR PROVIDER

All parties to the dispute must agree on the ADR provider who will conduct the ADR process. There are a number of factors that you may wish to consider when selecting the ADR provider.

Nationally Agreed Standards: Within Australia there are currently no nationally agreed standards for ADR providers. ADR providers are qualified in a range of dispute resolution services and have different levels of experience in providing these services. When selecting an ADR provider you should consider each ADR provider's level of qualification and experience.

ADR Provider Fees: When selecting an ADR provider you should be aware that the rates charged are individually set by each provider. Therefore, the fees charged may vary significantly between each provider. To ensure you gain the best value for your assistance amount you may wish to investigate the fees charged by ADR providers. If the fees charged by the ADR provider are more than the assistance amount provided under the Scheme, you and the other parties to the dispute will be required to pay the excess amount.

Type of ADR Services Provided: Before deciding on the ADR provider, you may need to consider which type of ADR service you wish to use. ADR providers can be qualified in a number of different types of ADR services. When selecting an ADR provider, you may wish to enquire as to the ADR services that they are qualified to perform to ensure these services are those which you wish to use.

Location of ADR Provider: ADR providers may be located anywhere within your state. Although up to \$500 (inclusive of GST) may be available to cover the ADR provider's reasonable travel expenses where you are located in a regional or remote area, any additional costs incurred in relation to travel will need to be paid by the parties to the dispute.

WHAT HAPPENS IF WE CANNOT AGREE ON AN ADR PROVIDER?

If your dispute is one which uses the model dispute resolution process, as set out in Part 13 of the *Workplace Relations Act 1996* and you and the other parties in dispute cannot agree on the provider that will conduct your dispute resolution process, any party may notify the Australian Industrial Registrar of this fact.

The categories of disputes covered by the model dispute resolution process are those about entitlements (excluding wages) under the Australian Fair Pay and Conditions Standard; the application of an award; the terms of a workplace agreement; the application of a workplace determination; legislated minimum entitlements to parental leave, meal breaks and public holidays; the terms of a preserved State agreement; or

the terms of notional agreement preserving a State award.

Upon receiving this notification, the Australian Industrial Registrar will provide parties with prescribed information. After the Australian Industrial Registrar provides you with this information, you have a consideration period of 14 days to try to reach agreement about who should conduct your ADR process. If you and the other parties are unable to reach an agreement, any party may apply to the AIRC to have the ADR process conducted by the AIRC.

A dispute notification to the Australian Industrial Registrar would not be available:

- for disputes arising from the suspension or termination of a bargaining period under Part 9 of the *Workplace Relations Act 1996*;
- for disputes arising during collective bargaining negotiations under Division 4 of Part 13 of the *Workplace Relations Act 1996*; or
- if a workplace agreement has a dispute resolution process that does not allow notification or referral of a dispute to the AIRC.

PAYMENT OF FINANCIAL ASSISTANCE

At the completion of your dispute resolution process, the ADR provider will invoice the Department directly for services rendered up to \$1,500 (inclusive of GST) and any reasonable travel expenses where applicable up to \$500 (inclusive of GST). You and the other parties to the dispute will be responsible for the payment of any costs that exceed the cap and any excess costs will be recovered from you directly by the ADR provider.

To verify the ADR services provided, you and the other eligible parties must sign the Services Rendered Declaration which the ADR provider will supply to you together with an invoice detailing the services provided.

Prior to commencing the ADR process, it is recommended that you and the other parties to the dispute discuss the cap on the Government's assistance and make arrangements for payment of any costs exceeding these amounts. ADR providers are required to explain their fee structure to you and the other parties to the dispute and outline whether they expect that you will need to pay any additional fees above the amount of the Government assistance.

CONDUCT DURING DISPUTE

Employees involved in a dispute are required to continue to work in accordance with their contract of employment while the dispute is being resolved, unless the employee has a reasonable concern about an imminent risk to their health or safety. Employees must also comply with any reasonable direction given by their employer to perform other available work.

When directing an employee to perform other available work, an employer must have regard to the Commonwealth or State or Territory occupational health and safety legislation. The employer must also consider

whether that work is appropriate for the employee to perform.

REPRESENTATION

Representation may be allowed during ADR, if the ADR provider conducting the process believes it is appropriate. The ADR provider may set necessary limits on the representative's conduct. If a workplace agreement provides a party with a right to representation then this right cannot be removed by the ADR provider.

OUTCOME OF DISPUTE RESOLUTION PROCESS

The settled outcomes of your dispute resolution process must comply with the provisions of the *Workplace Relations Act 1996*. Furthermore, the outcome of your dispute cannot be contrary to any provision contained within a relevant award or workplace agreement that covers the parties in dispute.

For further information concerning compliance with the *Workplace Relations Act 1996* contact the WorkChoices Infoline on 1300 363 264.

PRIVACY REQUIREMENTS

ADR providers are required to conduct your dispute resolution process in private. ADR providers are unable to disclose any information concerning your dispute unless they do so in accordance with the additional requirements of the *Workplace Relations Act 1996*.

FOR MORE INFORMATION:

Phone: 1300 363 264
 Fax: (02) 6121 6478
 Email: ADRAS@dewr.gov.au
 Websites: WorkChoices website: www.workchoices.gov.au
 Australian Workplace website: www.workplace.gov.au or the
 Mail: ADRAS (LC 64N22)
 Department of Employment and
 Workplace Relations
 GPO Box 9879
 CANBERRA ACT 2601