



Australian Government

**Department of Employment and
Workplace Relations**

Alternative Dispute Resolution Assistance Scheme

Operational Arrangements

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ADRAS OPERATIONAL ARRANGEMENTS

Notes for reading the Arrangements

- To assist readers, terms in the Arrangements which start with a capital letter are defined at clause 15.
- Headings, titles and notes are intended for guidance only. Readers should refer to the text of each clause to understand the Arrangements. Notes underneath a sub-clause refer to that subclause.
- A reference to the singular also includes the plural and vice versa.
- We/us refers to officers and agents of the Department of Employment and Workplace Relations (DEWR) or the Australian Government Department administering the Alternative Dispute Resolution Assistance Scheme (ADRAS) from time to time.

PART 1 — INTRODUCTION

1) Commencement

- a) These Operational Arrangements (Arrangements) start on 27th March 2006 (the commencement date of the *Workplace Relations Amendment (WorkChoices) Act 2005*).
- b) We will review the Arrangements from time to time. The most recent version will be available on the WorkChoices website (www.workchoices.gov.au) and the Australian Workplace website (www.workplace.gov.au).

2) Authority

- a) Under the *Workplace Relations Act 1996*, Employers and Employees have a choice between referring certain disputes to a private alternative dispute resolution (ADR) practitioner or the Australian Industrial Relations Commission (AIRC) for assistance. To facilitate genuine choice in dispute resolution, the Australian Government has established the Alternative Dispute Resolution Assistance Scheme (ADRAS).
- b) These Arrangements are the primary document which we use to set out how the Government's policy is administered.
- c) For the purposes of ADRAS, the Secretary of the Department of Employment and Workplace Relations or his or her delegate is the Decision Maker. The Secretary may delegate any or all powers and functions under these Arrangements, other than the power to authorise delegations.
- d) The Decision Maker may make any decisions necessary and incidental to the operation of ADRAS.

3) Purpose of the Arrangements

- a) The purpose of the Arrangements is to set out how ADRAS will be administered and to help Employers, Employees and ADR Providers consider whether they are eligible to apply for assistance or to provide ADR services under the Scheme.

PART 2 — INFORMATION FOR APPLICANTS

4) Objects and Principles of ADRAS

- a) ADRAS is intended to provide a grant of financial assistance to Eligible Parties in dispute to assist them in accessing services from a private ADR Provider and enable them to resolve their workplace dispute.
- b) In administering ADRAS we apply the following principles:
 - i) as a publicly funded Scheme, ADRAS is only available to Employers and Employees who meet the eligibility criteria as set out in clause 6;
 - ii) we will not provide ADRAS assistance if Employers and Employees do not provide sufficient information to determine eligibility; and
 - iii) we will not make payments direct to Eligible Parties under the Scheme. Applicants will receive an ADRAS Voucher Letter, which they can use to obtain ADR Services up to the value of \$1,500 (inclusive of GST) from an agreed ADR Provider, and to meet reasonable travel expenses up to \$500 (inclusive of GST) where the ADR Provider is required to travel to assist parties located in regional and remote areas.

5) General operation of ADRAS

- a) Applications for ADRAS assistance will be assessed against these Arrangements.
- b) The Decision Maker will decide all matters relating to applications for assistance.

6) Eligibility for ADRAS

- a) Employers and Employees to a dispute may be eligible for ADRAS assistance if we can verify that:
 - i) They are 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.
- ii) They have an eligible dispute, which includes a dispute:
- about:
 - entitlements (excluding wages) under the Australian Fair Pay and Conditions Standard (see section 175 of the *Workplace Relations Act 1996*);
 - the application of an award that is binding on the parties to the dispute (see section 514 of the *Workplace Relations Act 1996*);
 - 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 (see section 504 of the *Workplace Relations Act 1996*);
 - legislated minimum entitlements to parental leave, meal breaks and public holidays (see Part 12 of the *Workplace Relations Act 1996*);
 - the terms of a preserved State agreement that is binding on the parties to the dispute (see clause 15A in Schedule 8 of the *Workplace Relations Act 1996*); or
 - the terms of a notional agreement preserving a State award that is binding on the parties to the dispute (see clause 36 in Schedule 8 of the *Workplace Relations Act 1996*);
 - 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 (see sections 432 and 433 of the *Workplace Relations Act 1996*);
 - where the AIRC or the Minister 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 (see sections 430 and 498 of the *Workplace Relations Act 1996*).
- iii) They 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).
- iv) They have agreed to use the private ADR process.

- v) They have not received previous Government assistance under ADRAS for the same dispute.
- b) If the matter in dispute has previously been heard by the AIRC and a binding decision has been handed down, parties will not be eligible for ADRAS.
- c) ADRAS will not be available to Employers and Employees to a dispute where providing assistance would be contrary to the agreed terms of their workplace agreement.

7) Information about ADRAS

- a) The Scheme will enable Eligible Parties to a dispute to gain assistance for ADR Services up to the value of \$1,500 (inclusive of GST) from an ADR Provider that has agreed to the ADR Provider Terms and Conditions.
- b) The Scheme may also provide up to \$500 (inclusive of GST) for each eligible dispute to meet reasonable travel expenses, where the ADR Provider is required to travel to assist Eligible Parties located in regional or remote areas.
- c) Under the Scheme Eligible Parties must gain approval for assistance from the Department before commencing the dispute resolution process. Applications lodged retrospectively or after an Employer and Employee have commenced their dispute resolution process will not be accepted.
- d) To gain approval Employers and Employees must meet the eligibility requirement outlined at Clause 6 of these Arrangements.
- e) Eligible Parties will be notified by the Department of their approval for assistance under the Scheme. This notification will include a Voucher Letter which must be given to the selected ADR Provider at the first consultation.
- f) After receiving notification of their approval under the Scheme, Eligible Parties must agree on an ADR Provider, complete the ADR Provider Agreement and return it to the Department before commencing the dispute resolution process.
- g) Assistance under the Scheme will only be given to Eligible Parties where the selected ADR Provider has signed the Undertaking indicating their agreement to the ADR Provider Terms and Conditions.

8) How we provide ADRAS assistance

- a) Where approval has been granted, the Applicant will be sent a Voucher Letter which they will be required to provide to their selected ADR Provider. They will be directed to Professional Organisations from which they can source potential ADR Providers.
- b) After accessing ADR Services, the ADR Provider will bill the Department directly for services rendered up to \$1,500 (inclusive of GST) and up to \$500 (inclusive of GST) to meet reasonable travel expenses where the ADR Provider has been required to travel to assist parties located in regional or remote areas. Eligible Parties will be required to complete a Services Rendered Declaration to verify the services provided by the ADR Provider.

- c) Payments will not be made directly to the Eligible Parties, but to the ADR Provider that supplied the service.

9) Decision making and review

- a) When the Decision Maker makes a decision as to eligibility under the Scheme, we will advise the Applicant in writing of the decision and the reasons for the decision. The Decision Maker will also advise other parties to the dispute as listed in the application.
- b) Applicants may request a review of the decision and provide additional supporting information to us for reassessment within 14 days, if they believe the decision is incorrect.
- c) The review will be undertaken by an officer with no prior involvement in the original decision. The outcome of the review will be decided by a senior DEWR officer who also had no prior involvement in the original decision.
- d) When we receive additional information and a request for review, we will re-evaluate the original decision and write to Applicants advising them of the outcome of our review and the reasons for the outcome.
- e) The outcome of the review is final and we will not consider subsequent correspondence on the same issues.

10) The Commonwealth Ombudsman

- a) If Employers and Employees are dissatisfied with the way in which their application for ADRAS was handled, they may raise their concerns with the Commonwealth Ombudsman. Before Employers and Employees approach the Ombudsman, it is a good idea to attempt to solve the problem with us. As a general rule, the Ombudsman will not investigate complaints until they have been raised with us.

Part 3 – INFORMATION FOR ADR PROVIDERS

11) Terms and Conditions for Participating ADR Providers

- a) Eligible Parties will only be able to gain assistance from an ADR Provider that has agreed to the ADR Provider Terms and Conditions, as set by the Department.
- b) To participate in ADRAS, ADR Providers must, among other things:
 - i) not provide services under ADRAS unless they have accepted the ADR Provider Terms and Conditions and signed the Undertaking;
 - ii) obtain a copy of the Voucher Letter from Applicants prior to commencing any ADR Services;
 - iii) charge according to their normal fee schedule, and invoice the Department only for services provided within the parameters of the Scheme, up to the

value of \$1,500 (inclusive of GST) for ADR Services and up to the value of \$500 (inclusive of GST) for reasonable travel expenses; and

- iv) comply with administrative arrangements for invoicing and payment as set by the Department.

12) Payments to ADR Providers

- a) Once the ADR Service to the Eligible Parties has been conducted, the ADR Provider will invoice the Department directly for services rendered up to \$1,500 (inclusive of GST). Attached to the itemised invoice will be the original Voucher Letter (as provided to the Applicant), as well as a Services Rendered Declaration which must be signed by the Eligible Parties as well as the ADR Provider.
- b) The Department will pay the ADR Provider that provided the service the invoiced amount, providing it does not exceed \$1,500 (inclusive of GST). Any costs exceeding the \$1,500 (inclusive of GST) will be recovered directly by the ADR Provider from the Eligible Parties.
- c) 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. Where applicable, ADR Providers will include a claim for these expenses with their payment for services to the Department on the completion of the service. Any reasonable expenses claimed up to the \$500 (inclusive of GST) amount will be acquitted directly to the ADR Provider.

PART 4 — ADMINISTRATIVE PROVISIONS

13) Our role in administering ADRAS

- a) Our role is to:
 - i) administer ADRAS;
 - ii) provide advice to the Australian Government on ADRAS policy and administration;
 - iii) report to Australian Parliament and other relevant Australian Government agencies on the administration of ADRAS; and
- b) We will measure our performance against the key performance indicators set annually and reported in our annual report to Parliament.
- c) We will comply with our client charter which sets out the quality of services that clients can expect to receive from us. The charter is available at www.dewr.gov.au.

14) Defined terms

ADR means alternative dispute resolution, which refers to any way in which an impartial person (an ADR Provider) assists parties to a dispute to resolve the matters between them outside of the court room.

ADRAS means the Alternative Dispute Resolution Assistance Scheme as administered by us.

ADR Provider means a provider of ADR services under the Scheme.

ADR Provider Agreement means the form which Eligible Parties are required to complete, sign and return to the Department before commencing the dispute resolution process indicating their agreement to an ADR Provider.

ADR Provider Terms and Conditions means the terms and conditions established by the Department that an ADR Provider must undertake to comply with as a condition of providing services under the Scheme.

ADR Services means those services which an ADR Provider process in accordance with the Scheme.

Applicant means a person who has lodged an application for ADRAS assistance in any format approved by us for this purpose.

Arrangements means this document and the policies which govern the administration of ADRAS.

Australian Fair Pay and Conditions Standard means the minimum wages and conditions (annual leave, personal/carers leave, parental leave, and maximum hours of work) established under the *Workplace Relations Amendment (WorkChoices) Act 2005*.

Australian Government means the Government of the Commonwealth of Australia.

AIRC means the Australian Industrial Relations Commission.

Decision Maker means the Secretary of the Department of Employment and Workplace Relations or a person delegated to make decisions under these Arrangements. Decision Maker also includes a person exercising a delegation in accordance with the Chief Executive Instructions under Section 52 of the *Financial Management and Accountability Act 1999*.

Department means the Australian Government Department of Employment and Workplace Relations.

Employee means an employee at common law.

Employer means a person who is usually an employer.

Eligible Parties means the employer and employee/s who meet the eligibility criteria for financial assistance under the Scheme.

Professional Organisation means an organisation that facilitates the provision of ADR Services whom the Commonwealth has selected as a professional organisation.

Services Rendered Declaration means the document signed by the ADR Provider and the Eligible Parties, and returned to the Department, declaring that the services invoiced by the ADR Provider have been supplied.

Scheme means the Alternative Dispute Resolution Assistance Scheme as administered by us.

Secretary means the Secretary of the Department of Employment and Workplace Relations or the Secretary of the Australian Government Department administering ADRAS from time to time.

Undertaking means the document the ADR Provider must sign and return to the Department to confirm their agreement to the ADR Provider Terms and Conditions.

Voucher Letter means the letter which the Department provides to Eligible Parties after approval has been granted setting out details of his or her entitlement to ADR Services under the Scheme.