

# SOME EXAMPLES OF DISPUTE RESOLUTION CLAUSES UNDER COMMONWEALTH WORKPLACE AGREEMENT OR MODEL DISPUTE RESOLUTION CLAUSE

## Contents

Description.....	1
Commission’s Dispute Resolution.....	1
Commission’s Functions.....	2
Order of Declaration/Right of Appeal .....	2

## Description

Pursuant to s 29 of the [Employment Dispute Resolution Act 2008](#) the Commission is empowered to exercise such functions with respect to the resolution of an employment dispute which are conferred on it by the model dispute resolution process in the *Workplace Relations Act 1996 (Cth)* ("the WRA") in Division 2 of Part 13 and in any other provision of the WRA.

## Commission’s Dispute Resolution

If employer/s and employee/s seek that the Commission provide the dispute resolution they could include the following clauses in an agreement:

A. *Where an employment dispute in respect of a matter arises under this agreement is unable to be resolved at a workplace level and the parties have undertaken all agreed steps within this agreement to resolve the dispute, the matter may be referred to the Western Australian Industrial Relations Commission ("the WAIRC") for resolution.*

OR (if they wish all employment matters that arise during the term of the agreement and which are not resolved at the workplace level to be referred)

A. *Where any question, dispute or difficulty arises out of or in the course of employment, including any industrial matter and is unable to be resolved at a workplace level and the parties have undertaken all agreed steps within this agreement to resolve the matter, the matter may be referred to the Western Australian Industrial Relations Commission ("the WAIRC") for resolution.*

## Commission's Functions

In relation to the functions of the Commission, the parties could provide in their agreement:

- B. (a) *Where a matter has been referred to the WAIRC in accordance with the terms of this agreement, the parties agree that the WAIRC may exercise any of its relevant statutory powers under the Industrial Relations Act 1979 (WA), the Employment Dispute Resolution Act 2008 (WA) and the Workplace Relations Act 1996 (Cth) which are necessary to make the arbitration effective, including its powers:*
- (i) *of conciliation, mediation or arbitration;*
  - (ii) *which are procedural, in relation to hearings, witnesses, production of documents, evidence and submissions;*
  - (iii) *to make a determination, order or declaration to determine the matter ("a decision").*
- (b) *In making a decision the parties agree that the WAIRC is to have regard to equity, good conscience and the substantial merits of the case, is not bound by the rules of evidence and must act without regard to technicalities and legal forms.*

OR (if the parties prefer not to be prescriptive)

- B. *Where a matter has been referred to the WAIRC in accordance with the terms of this agreement, the parties agree that the WAIRC may exercise such powers and functions as the parties agree are appropriate at the time.*

## Order of Declaration/Right of Appeal

An order or declaration will not be binding unless the employer/s and employee/s agree that it is. The following clauses can be used:

- C. *The parties agree that any decision made by the WAIRC will bind them. Once the decision is delivered to the parties, the parties shall implement the decision forthwith or within such other time as may be specified by the WAIRC.*

OR (if they wish to have a right of appeal)

- C. (a) *Subject to either party exercising a right of appeal to the Full Bench of the WAIRC the parties agree that any decision made by the WAIRC will bind the parties and once the decision is delivered the decision shall be implemented forthwith or within such other time as may be specified by the WAIRC.*

- (b) *Any appeal must be filed in the WAIRC within the time prescribed by s 49 of the Industrial Relations Act 1979.*
- (c) *Where an appeal is made, the parties agree that any party to this agreement may apply to the President of the WAIRC within 21 days of the decision being made, for a stay of the decision. The parties agree that the President may exercise the statutory power to stay the decision that is conferred on the President under s 49 of the Industrial Relations Act 1979.*
- (d) *In hearing and determining the appeal, the parties agree that the Full Bench of the WAIRC may exercise all of its statutory powers under s 49 of the Industrial Relations Act 1979 and any regulations made under the Industrial Relations Act 1979 that apply to Full Bench appeals, or practice directions that apply to Full Bench appeals.*

Applications for the Commission to conduct a dispute resolution process or a model dispute resolution process under a Commonwealth workplace agreement or model dispute resolution clause can be made on [Form 1 - Application to conduct dispute resolution process or model dispute resolution process.](#)