



HBA DISPUTE AVOIDANCE AND SETTLEMENT PROCEDURES REPORT

*A Selection of Arrangements Extracted from
Current Federal Public Sector
WorkChoices and Transition to Fairness Agreements*

**January
2009**

Administrative Appeals Tribunal Attorney-General's Department Australian Agency for International Development Australian Centre for International Agricultural Research Australian Communications and Media Authority Australian Competition and Consumer Commission Australian Crime Commission Australian Federal Police Australian Industrial Registry Australian Institute of Criminology Australian Institute of Health and Welfare Australian Institute of Marine Science Australian Law Reform Commission Australian National Audit Office Australian National Maritime Museum Australian Public Service Commission Australian Radiation Protection and Nuclear Safety Agency Australian Research Council Australian Securities and Investments Commission Australian Taxation Office (EL2) Australian Taxation Office (General Employees) Australian Transaction Reports and Analysis Centre Australian Valuation Office Australian War Memorial Child Support Agency Comcare Commonwealth Director of Public Prosecutions ComSuper CRS Australia CSIRO Customs Department of Agriculture, Fisheries And Forestry Department of Communications Information Technology and the Arts Department of Defence Department of the Environment and Heritage Department of Families, Housing, Community Services and Indigenous Affairs Department of Foreign Affairs and Trade	Department of Health and Ageing Department of Immigration and Citizenship Department of Industry, Tourism and Resources Department of Parliamentary Services Department of the Prime Minister and Cabinet Department of Transport and Regional Services Department of Veterans' Affairs Family Court of Australia Federal Court of Australia Food Standards Australia and New Zealand Great Barrier Reef Marine Park Authority High Court Administration Human Rights and Equal Opportunity Commission Insolvency and Trustee Service Australia IP Australia Medicare Australia Members of Parliament Staff National Blood Authority National Film and Sound Archive National Gallery of Australia National Library of Australia National Measurement Institute National Native Title Tribunal Office of National Assessments Office of the Commonwealth Ombudsman Office of the Official Secretary to the Governor-General Office of the Renewable Energy Regulator Office of the Workplace Ombudsman Productivity Commission Questacon Royal Australian Mint Senate Social Security Appeals Tribunal The National Museum of Australia Treasury Workplace Authority
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This is a new publication from HBA Consulting. It is designed to provide a single point of reference for these procedures for Commonwealth Government Departments and Agencies engaged in development of collective agreements. It sits beside other HBA publications that are designed to provide quick and easy access to key elements of agreement making across the federal public sector. HBA has developed this research paper based on the complex nature of Dispute Avoidance and Settlement Procedures being developed, many in response to the CPSU's desire for detailed and full access to the Australian Industrial Relations Commission (AIRC).

Cost: \$880.00 (ex GST)

16 DISPUTE RESOLUTION

16.1 Principles

16.1.1 The Museum and its employees are committed to:

- a. dealing with workplace issues in a frank and transparent manner
- b. avoiding disputes by ensuring that staff affected by decisions and actions are appropriately consulted
- c. resolving disagreements relating to the workplace or the interpretation or implementation of this Agreement as quickly as possible.

Note: Non-SES employees also have a right under s33 of the Public Service Act 1999 to review of actions that relate to their employment, other than termination of employment and actions that are prescribed in regulations. Where this right of review is exercised, and does not fail for want of jurisdiction, the employee will have no right of review with respect to that matter under the Dispute Resolution arrangements under clause 16.

16.2 Process

16.2.1 In the event of a dispute in relation to a matter arising under this agreement, in the first instance the parties to the dispute 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.

- a. Employees may choose to be assisted, or represented, by a person of their choice and employees and any chosen representatives will work cooperatively with the Museum to resolve disputes about the application of this agreement or issues in the workplace as far as is practicable at the local level;
- b. Allegations of a breach of the APS Code of Conduct or alleged or suspected workplace bullying or harassment should be handled under the relevant Museum guidelines¹.
- c. A party to the dispute may appoint another person, organisation or association to accompany or represent them in relation to the dispute.
- d. Independent mediation or other external reference to dispute resolution will not apply in circumstances where an employee has sought review of the action under s.33 of the Public Service Act.

16.3 Independent mediation

16.3.1 If the matter remains unresolved after the above processes have been exhausted, the parties to the dispute may agree to refer the matter to an independent mediator for resolution. The mediator should initially be satisfied that the persons concerned have genuinely undertaken the steps outlined above. Should mediation prove unsuccessful, the mediator may make a recommendation to the Director.

16.4 Referral of dispute to the AIRC

16.4.1 If the parties have not been able to resolve the dispute, and the agreed steps for resolving it have been taken, the dispute may be referred by either party or their representative to the Australian Industrial Relations Commission (AIRC) for conciliation and, if conciliation fails, arbitration.

16.4.2 For the purposes of s711 of the Workplace Relations Act (WR Act) the parties agree that the AIRC may apply the provisions of Divisions 3 and 4 of Part 3 of the WR Act with respect to the AIRC exercising its powers and functions under this Agreement.

16.4.3 Any decision or direction the AIRC makes in relation to the dispute shall be in writing. Any decision or direction of the AIRC, be it procedural or final, shall be accepted by all affected persons and complied with by the parties, subject to any right of appeal or review which may exist.

16.4.4 It is a term of this Agreement that while the dispute resolution procedure is being conducted work shall continue in accordance with the established custom and practice at the workplace, except where there is a reasonable concern about an imminent risk to an employee's health and safety.

¹In relation to breaches of the APS Code of Conduct, the relevant guidelines are the procedures established by the Director in accordance with section 15 of the Australian Public Service Act 1996.