

Alternative Dispute Resolution (ADR) processes – Getting the most value in resolving disputes between your employees.

Those responsible for dealing with grievances and disputes in their organisation will be well aware of the need for a prompt action to deal with these issues once they have been raised.

While most grievances and disputes are dealt with either informally by local management or by formal investigations if more serious, a number could be more effectively resolved using ADR processes. The question is, how to identify grievances and disputes more suited to ADR as a means of settlement?



What is ADR?

ADR, or alternative dispute resolution, can be distinguished from other way of resolving disputes by its consensus-orientated focus.

Unlike more traditional forms of resolving workplace disputes such as having the matter referred to the NSW Industrial Relations Commission for conciliation and/or arbitration, ADR is a positive problem solving process which aims to assist staff resolve their own differences.

Types of ADR currently used within Australian workplaces include:

- ⇒ Mediation
- ⇒ Arbitration
- ⇒ Conciliation
- ⇒ Negotiation
- ⇒ Expert evaluation

Mediation

Of is the most commonly used mode of ADR used within the NSW public sector, including local government.

Mediation is a structured, goal-directed process that allows the parties to follow clearly delineated steps to hopefully reach a mutually agreed solution to the issue in conflict.

An independent third party respected by both parties, the mediator, is assigned to help the parties through their discussions – focusing the discussions on problem-solving and away from blame and punishment.

It is essential that mediation takes place in an environment that respects and values confidentiality.

Some Advantages of Mediation

Convenience

- ⇒ Mediation can commence at relatively short notice and at a time convenient to the parties – no need to lodge dispute notifications and wait for a date.

Savings in time and costs

- With a skilled mediator, the parties can normally identify the issues quickly and concisely.
- Parties can dispense with many of the preliminary steps usually required for a referral of the matter to the NSW IRC or AIRC

Flexibility of process

- A skilled mediator can tailor procedures to best suit the dispute and allow the parties to exercise more control over the process.
- Unlike formal litigation in court which is governed by procedural rules, mediation procedures are usually much less formal.

Preservation of relationship and greater chance of satisfaction with outcomes

- Unlike dispute resolutions presided over by industrial tribunals which often result in irreconcilable differences, mediation allows both parties to maintain their existing work relationships and minimise the negative impact once the dispute is settled.
- Disputes settled using mediation also tend to be more accepted by work colleagues of the parties – allowing the workplace to resume to normal much quicker.



More creative solutions

- Mediation opens up the possibility of more creative solutions to a dispute where ongoing relationships exist and work relationships need to be preserved.

What conflict situations suit mediation?

We have found mediation particularly successfully in the following types of situations:

- Conflicts or disagreements about working styles, roles or responsibilities
- Statutory grievances
- Allegations of bullying and/or abuses of power or authority
- Allegations of discrimination and harassment in all forms
- Conflicts arising from the allocation or distribution of resources, rewards, bonuses, salaries, etc
- Conflicts arising from the management of change, mergers, acquisitions, growth or downsizing
- Cultural conflicts arising from the culture of the firm or wider cultural differences between the parties
- Return to work situations following sickness or suspension.

When mediation or other forms of ADR are not suitable

Despite its many relative advantages, mediation is not a suitable means of resolving disputes in all circumstances. It is important that before assigning parties to mediation of their dispute, the following issues be considered.

If any of the following is present, the chances of success of the mediation, even with the assistance of a skilled mediator, will be greatly reduced and other means of dispute settlement used.

From our experience, the following are key indicators that mediation is not a suitable means of resolving a dispute:

- Parties are not prepared to act in “good faith”
- Parties are unwilling to negotiate
- There is a current fear, or high risk of violence by one party
- Sexual harassment or assault has been alleged by one party

How we can assist

Our staff are accredited with ACDC and the Law Society of NSW to conduct mediations and other forms of ADR in workplaces.

For more information on using mediation or other forms of ADR in your organisation, contact us for fuller details of our mediation and ADR services and in-house training courses.

Contact us for more information on how we could assist your workplace deal with this issue.

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