



# DETERMINATION

*Fair Work Act 2009*

ss.202(5), 205(3), 737(1), 768BK(1A) - Commission to determine model terms for enterprise agreements and the copied State instrument model term for settling disputes

## **Model terms for enterprise agreements and copied State instruments**

(AG2024/3500, AG2024/3501, AG2024/3502, AG2024/3503)

VICE PRESIDENT GIBIAN  
DEPUTY PRESIDENT DOBSON  
DEPUTY PRESIDENT BUTLER

SYDNEY, 20 FEBRUARY 2025

*Commission to determine model terms for enterprise agreements and the copied State instrument model term for settling disputes – Model Disputes Term for copied State instruments – s 768BK(1A) Fair Work Act 2009 (Cth).*

Further to our decision in [\[2025\] FWCFB 39](#), we determine that the Model Disputes Term for copied State instruments is as follows:

- (1) This term sets out procedures to settle a dispute about a matter arising under a copied State instrument.
- (2) The parties to a dispute referred to in this procedure may include:
  - (a) an employee or employees covered by the copied State instrument who are, or will be, affected by the dispute;
  - (b) the employer or employers covered by the copied State instrument; and
  - (c) an employee organisation who:
    - (i) has a member who it is entitled to represent and who is an employee referred to in (a); or
    - (ii) is covered by the copied State instrument and entitled to the benefit of, or has a role or responsibility with respect to, the matter in dispute.
- (3) An employee who is a party to the dispute may advise the employer that a person or employee organisation is their representative for the purposes of the procedures in this term.
- (4) In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the relevant employee or employees, relevant supervisors and/or management and any relevant employee organisation.
- (5) If the discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to the Fair Work Commission.
- (6) The Fair Work Commission may deal with a dispute referred to it under subclause (5) even if the requirement for discussions in subclause (4) has not been complied with if the Fair Work Commission is satisfied that it is appropriate in all the circumstances to do so.
- (7) The Fair Work Commission may deal with the dispute in 2 stages:

- (a) the Fair Work Commission will first attempt to resolve the dispute in such manner as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
  - (b) if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
    - (i) arbitrate the dispute; and
    - (ii) make a determination that is binding on the parties.
- (8) If the Fair Work Commission arbitrates the dispute:
- (a) it may also use any of the powers that are available to it under the Fair Work Act 2009 (Cth), including, but not limited to, the power to grant interim relief; and
  - (b) a decision that the Commission makes when arbitrating a dispute is a decision for the purposes of Division 3 of Part 5-1 of the Fair Work Act 2009 (Cth) and a person aggrieved by the decision may seek to appeal the decision as provided for in that Act.
- (9) Subject to any order made by the Fair Work Commission under subclause (8)(a), while the parties are trying to resolve the dispute using the procedures in this term:
- (a) an employee must continue to perform work as the employee normally would unless the employee has a reasonable concern about an imminent risk to health or safety; and
  - (b) an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:
    - (i) the work is not safe; or
    - (ii) applicable occupational health and safety legislation would not permit the work to be performed; or
    - (iii) the work is not appropriate for the employee to perform; or
    - (iv) there are other reasonable grounds for the employee to refuse to comply with the direction.
- (10) The parties to the dispute agree to be bound by a decision made by the Fair Work Commission in accordance with this term.

Note: In addition to this clause, the *Fair Work Act 2009* contains dispute resolution procedures as follows:

Request flexible working arrangements: section 65B

Change casual employment status: section 66M

Request an extension to unpaid parental leave: section 76B

Exercise an employee's right to disconnect: section 333N



VICE PRESIDENT

Printed by authority of the Commonwealth Government Printer

<PR784583>