

## **Part 6-2—Dealing with disputes**

### **Division 1—Introduction**

#### **735 Guide to this Part**

This Part is about dealing with disputes between national system employees and their employers.

Division 2 deals with the powers of the FWC and other persons to deal with a dispute if a modern award, enterprise agreement or contract of employment includes a term that provides for the FWC or the person to deal with the dispute.

#### **736 Meanings of *employee* and *employer***

In this Part, *employee* means a national system employee, and *employer* means a national system employer.

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

### **Division 2—Dealing with disputes**

#### **Subdivision A—Model term about dealing with disputes**

##### **737 Model term about dealing with disputes**

The regulations must prescribe a model term for dealing with disputes for enterprise agreements.

#### **Subdivision B—Dealing with disputes**

##### **738 Application of this Division**

This Division applies if:

- (a) a modern award includes a term that provides a procedure for dealing with disputes, including a term in accordance with section 146; or
- (b) an enterprise agreement includes a term that provides a procedure for dealing with disputes, including a term referred to in subsection 186(6); or
- (c) a contract of employment or other written agreement includes a term that provides a procedure for dealing with disputes between the employer and the employee, to the extent that the dispute is about any matters in relation to the National Employment Standards or a safety net contractual entitlement; or
- (d) a determination under the *Public Service Act 1999* includes a term that provides a procedure for dealing with disputes arising under the determination or in relation to the National Employment Standards.

### **739 Disputes dealt with by the FWC**

- (1) This section applies if a term referred to in section 738 requires or allows the FWC to deal with a dispute.
- (2) The FWC must not deal with a dispute to the extent that the dispute is about whether an employer had reasonable business grounds under subsection 65(5) or 76(4), unless:
  - (a) the parties have agreed in a contract of employment, enterprise agreement or other written agreement to the FWC dealing with the matter; or
  - (b) a determination under the *Public Service Act 1999* authorises the FWC to deal with the matter.

Note: This does not prevent the FWC from dealing with a dispute relating to a term of an enterprise agreement that has the same (or substantially the same) effect as subsection 65(5) or 76(4) (see also subsection 55(5)).

- (3) In dealing with a dispute, the FWC must not exercise any powers limited by the term.
- (4) If, in accordance with the term, the parties have agreed that the FWC may arbitrate (however described) the dispute, the FWC may do so.

Note: The FWC may also deal with a dispute by mediation or conciliation, or by making a recommendation or expressing an opinion (see subsection 595(2)).

- (5) Despite subsection (4), the FWC must not make a decision that is inconsistent with this Act, or a fair work instrument that applies to the parties.
- (6) The FWC may deal with a dispute only on application by a party to the dispute.