

Guidelines for Subsidised Alternative Dispute Resolution

Purpose

These guidelines set out the policies and processes for a small business in dispute with another business or government agency to access subsidised alternative dispute resolution (ADR).

About subsidised ADR

Subsidised ADR is available for disputes involving at least 1 small business engaging in an ADR process of conferencing, mediation, conciliation, case appraisal, neutral evaluation or arbitration (where arbitration is administered by the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) under a relevant industry code of conduct).

This service is provided to assist small businesses to maximise their opportunity to resolve their dispute without having to go to court.

Eligibility

Access to the service is through our assistance function that helps with dispute resolution via case management and is determined after considering the circumstances of the matter including in relation to section 68 of the Australian Small Business and Family Enterprise Ombudsman Act 2015.

Who is eligible?

To be eligible for consideration to access subsidised ADR:

- at least 1 entity in the dispute must be a small business in accordance with the definition of a small business under the Australian Small Business and Family Enterprise Ombudsman Act 2015 i.e. fewer than 100 employees or revenue of less than \$5m in the previous financial year
- the parties must be seeking dispute resolution in relation to a relevant action under section 65 of the Australian Small Business and Family Enterprise Ombudsman Act 2015 or relevant industry code of conduct
- at least 1 party must have lodged the matter with us
- the matter must be being managed by an ASBFEO case manager
- we are of the view that the matter may benefit from an alternative dispute resolution (ADR) process to help reach a resolution or it is required under an industry code and that access to the service is warranted taking into account all relevant circumstances.

In determining whether the use of the subsidised ADR service is warranted as an efficient and effective way of resolving a dispute, we may take into consideration all relevant factors that may include:

- whether both parties have expressed a willingness to participate in an ADR process to resolve their dispute and to bring a resolution-mindset, including whether they have accessed small business dispute help low-cost legal advice (if offered)

- the length of time parties has been in dispute and any attempts that they have made to resolve it
- the value of the dispute
- the ability of the small business to effectively participate to an ADR process without subsidisation
- where the dispute is between parties within a small business, whether internal dispute resolution processes are in place and whether these have been exhausted
- other actions of the parties, including indications that the parties are dealing with each other in good faith and that the matter is not considered to be frivolous or vexatious.

Who is not eligible?

An ADR process will not be subsidised if any of the following apply:

- the request for assistance could have been made to another agency of the Commonwealth, State or Territory and that the request could be more conveniently or effectively dealt with by the other agency (with the exception of matters falling under an Industry Code where we have certain powers or obligations)
- the dispute is with an individual in their personal capacity (i.e. not in respect of a business that they operated)
- the business is seeking dispute resolution for a matter that does not relate to a relevant action under the Australian Small Business and Family Enterprise Ombudsman Act 2015 or relevant industry code of practice
- none of the parties to the dispute are a small business as defined by the Australian Small Business and Family Enterprise Ombudsman Act 2015 (e.g. a dispute between a large franchisor and large franchisee).

Access to subsidised ADR

Access to the subsidised ADR process is by selection through case management by us and is subject to the availability of funding.

Any of the following ADR processes are eligible for subsidisation:

- Mediation
- Conciliation
- Conferencing
- Case appraisal
- Neutral evaluation
- Arbitration (where provided by a Code where we administer the dispute resolution process).

ADR subsidised by us can only be through a member of our standing panel arrangement and ADR providers are only able to provide a subsidised service when they are asked directly by us through a formal work order.

ADR processes may be conducted in person or online.



Selection of the ADR practitioner who conducts the process is generally through agreement by the parties, with arrangements for the selection and progression to the process administered by us.

Any party may be legally represented for the ADR process. A represented party is responsible for paying their own legal fees. We will not pay legal fees as part of subsidised ADR.

We will generally not subsidise more than 1 day for an ADR process, unless there are exceptional circumstances (which may include multi-party disputes) and we agree to more than 1 day prior to commencement of the process.

We will determine whether it will subsidise a half or full day ADR process taking into consideration the circumstances of the matter. If parties wish to continue an ADR process beyond the subsidised process, there is no restriction on parties arranging and paying for any additional fees privately.

Payment

Half day Subsidised ADR: The parties in the dispute will be required to make a co-payment towards the half-day ADR process (generally \$250 each per party).

Full day Subsidised ADR: The parties in the dispute will be required to make a co-payment towards the full-day ADR process (generally \$500 each per party).

In the case of multi-party disputes, the Ombudsman will specify the co-payment amount payable by each party (up to the above amounts for each party).

Co-payments must be made directly to the ADR practitioner ideally before the commencement of the ADR process. By agreement with the practitioner this may occur later, such as after any initial intake session/s.

Parties in dispute who do not attend their ADR session may be liable for full cancellation costs.

We do not cover the following costs, and these will be the responsibility of the parties:

- cost of attendance of the parties
- cost of the attendance of any legal representatives
- reasonable costs of the ADR practitioner associated with face-to-face meetings that may include travel, accommodation, and room hire, noting parties can choose online options or a practitioner in their area
- any additional ADR process time we have not agreed to in advance
- interpreter or translator services.

Information to ASBFEO about ADR

Details of discussions in the ADR session will generally be confidential (as agreed between the parties and with the ADR practitioner). We will seek information from the parties about their satisfaction with the service and information from the ADR practitioner such as general outcomes, whether the dispute was resolved and whether the parties acted in good faith.



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

Complaints

Feedback or complaints related to subsidised ADR may be directed to:

Dr Craig Latham, Executive Director

Phone: 02 5114 6100

Email: craig.latham@asbfeo.gov.au