

FACT SHEET 7

SETTLING DISPUTES

A worker, union or Fair Work inspector can lodge a claim with the Fair Work Divisions within the Federal Court and the Federal Magistrates court if it believes that the Fair Work Act (including the National Employment Standards) or an award has been breached. Claims may also be taken to the State Magistrates Court.

There will be a small claims procedure within the court, for claims up to \$20 000. When dealing with a small claims matter, the court may act in an informal manner. Lawyers will only be allowed with the court's permission, however this rule does not apply to union lawyers.

The courts may refer parties to Fair Work Australia for mediation or conciliation. FWA will only be able to arbitrate where both parties consent.

The courts can make a range of orders, including penalties, reinstatement orders and injunctions. Injunctions can be used to prevent an employer from proceeding with a course of action (eg from implementing a major change when it has not followed the consultation procedure in the award). If the matter could have been resolved

at Fair Work Australia, but one party refuses to participate in conciliation, then the court may award costs against that party.

Disputes about the application of agreements will be dealt with in accordance with the disputes clause in the agreement. There is a model clause set out in the Regulations which allows Fair Work Australia to arbitrate disputes about the agreement. The parties can then build upon, or dilute the model clause, but every dispute clause must provide for a third party to deal with the dispute and for employees to be represented.

