

ACTUS WORKPLACE LAWYERS

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Appeals against FWC decisions – right to appeal v leave to appeal

Dispute settlement clauses in enterprise agreements can readily provide a right of appeal against an arbitrated decision of the Fair Work Commission (FWC), but only if the clause is drafted carefully. Otherwise, an appeal can only proceed if the Commission grants leave to appeal. This issue was canvassed in a recent FWC Full Bench decision.

In a decision of 16 October 2024 ([\[2024\] FWCFB 396](#)), a Full Bench of the FWC explained that whether permission to appeal is required depends on the proper construction of the relevant provision conferring jurisdiction on the Commission. The relevant clause in the enterprise agreement provided that the decision of the Commission will bind the parties *“subject to either party exercising a right of appeal against the decision to a Full Bench of FWC”*. The Full Bench concluded that the language of the clause created an independent right of appeal for which permission to appeal was not required.

When negotiating enterprise agreements, employers should consider whether to include wording in the dispute settling term providing a ‘right of appeal’, rather than taking the risk that leave will not be granted if an appeal is initiated (as has occurred in many cases).

For further advice or assistance on any enterprise bargaining issues, please contact Stephen Smith, Principal of Actus Workplace Lawyers on 0418 461 183 or Email: stephen.smith@actuslawyers.com.au.