

## Practice Note No.29

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**Issue Date:**

**10 April 2014**

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INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

### **PRACTICE NOTE No. 29**

Issued pursuant to Section 185A of the Industrial Relations Act 1996 and Section 15 of the Civil Procedure Act 2005

#### **PROCEDURES: CONTRACT DETERMINATIONS**

1. The Practice Note applies to proceedings before the Commission under Part 2 of Chapter 6 of the *Industrial Relations Act 1996* (the Act).
2. This Practice Note shall come into force on the date of issue.
3. The purpose of this Practice Note is to facilitate the resolution of Contract Determination matters by ensuring that such proceedings are conducted in an efficient and expeditious manner and that all those who appear before the Commission do all they can to facilitate the just, quick and cost effective disposal of such proceedings before the Commission.

#### **Contract Determinations**

##### **4. Allocation of Listing Date**

Upon filing of an application the Commission shall cause, within a period of not more than seven days from the date of filing, a date to be fixed for a Conference of the matter pursuant to section 315(1) of the Act to be conducted by the Commission and notify the parties accordingly. The standard or usual time from filing to the first listing for Conference shall be a period of 21 days.

##### **5. Conference**

5.1 Parties who appear before the Commission should do all they can to facilitate the fair and prompt disposal of matters before the Commission. Ways in which this should occur include:

- (a) ready identification of the issues in dispute,
- (b) ensuring readiness for the Conference,
- (c) using their best endeavours to resolve the issues in dispute.

5.2 If the applicant fails to appear at a Conference, and has not provided a clear and compelling reason for non-attendance, this may result in the application being dismissed

5.3 At the Conference, the Commission is to, in accordance with section 315(2):

- (a) ascertain which of the matters with which the application is concerned are in dispute and which are not, and
- (b) ascertain whether there are any special circumstances or problems existing with respect to contracts of the class with which the application is concerned, and
- (c) take all reasonable steps to effect an amicable settlement of any matters in dispute

5.4 After conferring on an application, the Commission may, pursuant to s 315(3):

- (a) dismiss the application, or
- (b) proceed to hear the application or specify a time and place at which it will be heard, or
- (c) adjourn the application for such period or periods as it thinks fit

## **6. Listed for Hearing**

6.1 When a Conference before the Commission is unsuccessful and the application is to be heard at a future time, the usual directions in Paragraph 7 of this Practice Note shall operate unless, after application by a party to the application, the Commission considers that the "usual directions" should be modified or alternative directions made.

6.2 The Commission shall also ascertain a reasonable estimate of the time required for the hearing of the application, specify in the Commission's opinion the time required for hearing and make any other appropriate directions having regard to paragraphs 7 and 8 of this Practice Note.

6.3 The Commission shall, forthwith, refer the parties to the List Office of the Industrial Registry for the purpose of obtaining a hearing date(s) in accordance with the Commission's opinion of the time required for hearing and directions which are made.

## **7. Usual Directions**

For the purpose of this Practice Note "usual directions" shall mean directions in the following terms or to the following effect: -

7.1 All evidence shall be in the form of signed written statements.

7.2 The applicant shall file and serve any material relevant to their case upon which they will seek to rely within 21 days. The applicant's case shall include all signed written statements (typed with numbered paragraphs and pages) of the intended evidence of each witness upon which they rely.

7.3 The respondent shall file and serve signed written statements (typed with numbered paragraphs and pages) of the intended evidence of each witness together with any other relevant documentation within 21 days of the date fixed for the filing and service of the applicant's documents.

7.4 The applicant shall file and serve any reply to the respondent's documents within 7 days of the date fixed for the filing and service of the respondent's documents.

7.5 The parties shall include in or with their written witness statements all matters and documents upon which they rely or they allege are relevant to the proceedings.

7.6 Parties shall file and serve at the same time as they file their written statements and any other relevant documentation - a short summary of their case.

7.7 Without leave of the Commission, written statements and other documentation filed and served later than the time specified by the Commission in its directions may not be relied upon by the party.

7.8 At the conclusion of any failed conference, the Commission shall determine any issues of leave having regard to the provisions of s.165 of the *Industrial Relations Act 1996* and, in particular, Part 7.3 of the *Uniform Civil Procedure Rules 2005* (issue of summons in certain circumstances requires leave) and make such directions as are necessary in that regard.

7.9 Summonses for production of documents may be made returnable before the Registrar upon any date that the Registrar conducts a list. Where orders are sought other than for photocopy access for both parties or if a claim for privilege or the like is made, those matters will be referred by the Registrar to the Commission to be dealt with on an interlocutory basis. Under these arrangements summonses will be returnable before the Registrar, not the Commission.

## **8. Other Directions**

8.1 The Commission may make such other directions as it considers appropriate for the just resolution of the issues between the parties.

8.2 Such other directions may include directions that:-

(a) without leave of the Commission, a party cannot rely on any matter that is not contained within the documentation filed and served by that party.

(b) proceedings shall be conducted on the written statements and other relevant documentation filed and served by a party except where reasonable notice is given to the other party that a witness is required for cross-examination.

(c) in the absence of any period of reasonable notice being fixed by the Commission, cross-examination of a witness shall not be allowed unless at least 7 days prior to the hearing notice has been given to the opposing party that a witness is required for cross-examination.

### **9. Compliance with Directions**

9.1 Any directions made under paragraphs 7 or 8 of this Practice Note must be complied with and will apply unless:

(a) an application is made after the conference and prior to the hearing;

(b) where applicable, the direction is varied during the course of the hearing of the matter;

(c) any application to vary directions after the conference must be made as soon as possible, in writing and contain full supporting grounds (unless made during the course of the hearing of the matter).

Walton J, *President*  
10 April 2014