

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Guide to Preparing for Arbitration of Unfair Dismissals

Where a matter is unable to be successfully conciliated, a date will be set for an arbitration hearing. This is a formal hearing where a Member of the Commission will hear evidence and make a decision.

The Commission will set a timetable for certain actions to be taken by the parties prior to the hearing. The timetable will be based on Practice Direction No. 17. To view a copy of that Practice Direction you can go to the Commission's website www.lawlink.nsw.gov.au/irc or contact the Registry. The Commission will generally make the following 'usual directions':

- The applicant shall file and serve written statements together with any other relevant documentation within 21 days.
- The respondent shall file and serve written statements together with any other relevant documentation within 21 days after the filing and serving of the applicant's documents.
- The applicant shall file and serve any reply to the respondent's documents within 7 days of the filing and service of the respondent's documents.
- The parties shall include in their written witness statements all matters upon which they rely or they allege are relevant to the proceeding.

The Commission may make other directions or vary the above directions to suit the circumstances of the matter.

Prior to fixing the matter for hearing the Commission will need information from the parties about how long the hearing might take. This will depend on the number of witnesses and whether parties have a representative or not. A date for the arbitrated hearing is usually fixed at the conclusion of the unsuccessful conciliation.

The hearing will be conducted in a way which gives each party the opportunity to properly present his or her case, and, challenge the other party's case.

Each person who has something relevant to say about the matter should prepare a "witness statement" in writing (see "Notes to Assist Parties in Preparing Statements for Unfair Dismissal Matters"). A copy should be filed with the Registry and a copy given to the other side in accordance with the timetable.

The Commission will determine how the Arbitration hearing is to be conducted.

If you think that a witness will not attend the hearing voluntarily, please contact the Registry well in advance of the hearing for information about the issue of a summons to attend and give evidence.

At the hearing the parties, their representatives and any witnesses required must be in attendance. At the conclusion of the evidence the parties are given an opportunity to make a final submission to the Commission. That is, a summary of why you say the Commission should find in your favour.

The Commission should be advised if a matter settles or is withdrawn.

If you are uncertain about any of the procedures to be followed in preparing your case or at the hearing, you should seek advice prior to the hearing date from Registry staff.

PARTIES SHOULD NOTE

In the event that a party fails to attend an arbitration hearing, the arbitration may be heard and determined in the absence of that party.

Directions must be complied with. Any application to vary Directions must be in writing and contain full supporting grounds.