

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Additional Estimates 2014 - 2015

Agency - Fair Work Commission

Department of Employment Question No. EMSQ15-000020

Senator O'Sullivan asked on 26 February 2015 on proof Hansard page 47

Question

FWC - Application for representation

Ms O'Neill: I have just been provided with the details of the test. It is section 596 of the act. It enables the commission to grant permission for a person to be represented only if, firstly, it would enable the matter to be dealt with more efficiently, taking into account the complexity of the matter or it would be unfair not to allow the person to be represented because the person is unable to represent himself or herself effectively, or it would be unfair not to allow the person to be represented taking into account fairness between the person and other persons in the same matter. That is the main criteria.

Senator O'SULLIVAN: We can take it on notice, if necessary, but do you have a sense, as a percentage of whole, of how many times an individual might make an application where—and it is a default answer—it is either declined or approved as a percentage of whole?

Ms O'Neill: I will have to take the detail on notice. I am not sure. I would be able to obtain information about the number of requests. Could you just bear with me for one moment.

Answer

Representation by lawyers and paid agents is discussed at paragraphs 42–50 of the Commission's Fair Hearings Practice Note. This practice note can be found at: <https://www.fwc.gov.au/at-the-commission/how-the-commission-works/practice-notes/fair-hearings>

Decisions granting or refusing representation by a lawyer or paid agent are made in a wide variety of circumstances during the course of both determinative and non-determinative proceedings before the Commission. Depending upon the context, such a decision may or may not be recorded in writing and/or published. For example, a decision on representation might be given orally in a conference in a matter that does not proceed to any substantive decision, it might be dealt with in oral or written procedural directions, it might be given in a written interim decision delivered in the course of a hearing, or it might be given orally during a hearing and subsequently included in a written and published substantive decision on a matter.

As a result, data is not available to enable the Commission to provide reliable estimates of the overall percentage of matters in which permission for representation is granted or refused. Further, whilst written records of decisions on representation are generated in some contexts, these are unlikely to be representative of decisions on representation overall.