

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Additional Estimates 2015 - 2016

Agency - Fair Work Commission

Department of Employment Question No. EMSQ16-000216

Senator McKenzie provided in writing.

Question

FWC - Conciliation of matters - EMSQ15-450 General Protections and Unfair Dismissal - staff

EMSQ15-450 asked a series of questions on conciliation processes. The Commission indicated in that answer that parties can opt to have a member of the Commission do the conciliation rather than a staff member.

- a. How does the Commission let parties know they can have a member of the Commission do the conciliation?
- b. If it is included in a pack of information provided to employee applicants and employer respondents, please provide a copy highlighting where this is indicated?
- c. How many exercise the option of having a member of the Commission conduct the conciliation rather than a member of staff?
- d. Do you have a break-down of the number of employers and employees that have asked?
- e. Do both parties need to agree to a member of the Commission doing the conciliation?

Can parties to General Protections conciliations choose to have member conduct the conciliation rather than a staff member?

- a. If there is a different position to unfair dismissal conciliations – why is it different for general protections?

Answer

Unfair dismissal

- a. The response provided in EMSQ15-000450 included the paragraph:

Participation in administrative conciliation is a voluntary process and a party may elect to have the application dealt with by a member of the Commission. Parties are however encouraged to participate in the conciliation process as an efficient way of dealing with the matter.

Where a party elects to have the application dealt with by a member of the Fair Work Commission (FWC), this does not mean a party may elect to have the application *conciliated* by a Member of the FWC. If a party elects to not participate in the voluntary administrative conciliation process, the matter will be referred to a Member who will determine how the matter will be dealt with.

- b.-e. Not applicable.

General protections

Please see response to EMSQ15-000481, where it was explained that the contents of the staff conciliator report must include: *"confirmation that the applicant and respondent were informed that they could request a further conciliation conference, conducted by a Member of the Commission; and whether or not the applicant or the respondent requested a conciliation conference conducted by a Member of the Commission."*

General protections applications are dealt with differently to unfair dismissal applications because the legislative provisions differ. For example, the *Fair Work Act 2009* does not *require* conciliation of unfair dismissal applications, whereas in relation to general protections applications involving a dismissal, the FWC is required to deal with these applications by means such as mediation, conciliation, making a recommendation or expressing an opinion (other than where parties consent to the dispute being arbitrated).