

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Additional Estimates 2015 - 2016

Agency - Fair Work Commission

Department of Employment Question No. EMSQ16-000217

Senator Bridget McKenzie provided in writing.

Question

FWC - Conciliation of matters - EMSQ15-452 - General Protections and Unfair Dismissal - advice

EMSQ15-452 asked whether there is a requirement for the conciliator to advise parties in unfair dismissal cases that do not have reasonable prospects of success of that fact – the answer from the Commission implies that there is no requirement for conciliators tell parties if they don't have reasonable prospects - but the answer is not explicit on this point.

Can you confirm, are conciliators obligated to tell unfair dismissal applicants that don't have reasonable prospects of that fact or not?

Answer

There is no such legal requirement in respect of unfair dismissal applications.

Staff conciliators are expected, in private session with applicants as part of 'reality-testing', to raise with them issues or obstacles if the matter proceeds, such as poor prospects of success. Similarly, in private session with respondents, staff conciliators are expected to not encourage monetary settlements where it appears the application has no merits (based on the applicant's case).