

## **Senate Standing Committee on Education and Employment**

### **QUESTIONS ON NOTICE Additional Estimates 2015 - 2016**

#### **Agency - Fair Work Commission**

**Department of Employment Question No. EMSQ16-000218**

**Senator McKenzie provided in writing.**

#### **Question**

#### **FWC - Conciliation of matters - EMSQ15-453 - General Protections and Unfair Dismissal - delegation of powers**

EMSQ15-453 answered a series of questions on the delegation of powers by the President to staff members in relation to conciliations – including the power to grant permission for lawyers to appear or not granting permission.

- a. Can you please confirm the legislative basis that gives staff the power to determine this question?
- b. Please provide the documents that establish the delegation?
- c. How many times has this purported delegation been exercised by staff?

#### **Answer**

- a. As outlined in EMSQ15-000453, staff-conducted unfair dismissal conciliation is a voluntary process that does not rely on a legislative basis. As also outlined in EMSQ15-000453, specified staff conciliators exercise certain functions in respect of disputes about general protections involving dismissal according to delegations of the President, pursuant to paragraphs 625(1)(b) and 625(1)(c) of the *Fair Work Act 2009*. It would not be appropriate for the Commission to offer an opinion as to the legal effect of the legislation or delegations.
- b. The instrument of delegation for general protections disputes involving dismissal and Directions issued to conciliators by the President are at Attachment A. The names of the specified conciliators have been redacted.
- c. Data is not collected on the number of times a conciliator considers permission for lawyers to appear in general protections applications.