

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Additional Estimates 2015 - 2016

Agency - Fair Work Commission

Department of Employment Question No. EMSQ16-000219

Senator McKenzie provided in writing.

Relates to previous Employment Question No EMSQ15-000481

Question

FWC - Conciliation of matters - EMSQ15-481 - Delegations

1. In EMSQ 15-481 the Commission provided an overview of the process of how members of staff conduct general protections conciliations and how the certificate, which can only be issued by a member of the Commission, is issued by a Commissioner. The response indicates that the staff member prepares a written report for the member who then determines whether to issue the certificate or not.

- a. Are the parties given access to the report which goes to the Commission member in order to check its accuracy?
- b. If not, how can the parties be confident the report is accurate?

2. Can the Commission indicate which member of the Commission sign off on the certificates?

3. The response to question EMSQ15-481 states that the member of the Commission can attempt further dispute resolution by conducting another conference rather than just relying on the report.

- a. How many times has the member of the Commission chosen to attempt further conciliation rather than just rely on the report.

Answer

1. The report that is given to a Member of the Commission, where a general protections matter cannot be resolved by the parties, is made up of responses to questions asked by the conciliator to both the applicant and respondent. The parties are advised of the purpose of the questions in providing a report to a Member. The conciliator explains and seeks agreement from each party on each section of the report. The report is not provided to the parties as the information has been verified by them, but a party could request a copy of the report from the matter file at any time. A copy of the conciliator's closing statement, including the information gathered to form the report, is included at Attachment A.
2. Deputy President Kovacic oversees the general protections program and is assisted by Deputy President Lawrence and Commissioner Cirkovic.
3. It is open to the Member considering the conciliator's report to consider conducting another conference where a matter has not resolved via conciliation. For instance, this may occur when the Member is not satisfied that all reasonable attempts to resolve the dispute have been exhausted.

Data has not yet been compiled on the number of times a Member of the Commission chose to attempt further conciliation. While further data collection is being considered as the pilot program is embedded, feedback from Deputy President Kovacic is that parties rarely seek Member assisted conciliation in circumstances where the dispute has not resolved in conciliator facilitated conciliation.