

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Supplementary Budget Estimates 2015 - 2016

Agency - Fair Work Commission

Department of Employment Question No. EMSQ15-000450

Senator McKenzie provided in writing.

Question

FWC - Conciliation process – General Protections and Unfair Dismissal - staff

What are the current arrangements in relation to conciliations of unfair dismissal applications? In particular, are these conciliations typically conducted by members of the Commission or members of staff?

a) How many of these are staff and how many are Commission members?

4. What type of staff conduct these conciliations?

5. Were these staff recruited for this purpose because of their particular expertise in conciliations?

6. How often, if at all, do Members of the Commission handle unfair dismissal conciliations?

7. Has any training been undertaken, or is any training planned to be undertaken to train staff members, in relation to conciliations?

8. Have you recruited any new staff members specifically for this purpose?

9. How is it decided whether conciliations are done by members of the Commission or by staff?

Answer

Current arrangements in relation to conciliations of unfair dismissal applications. In particular, are these conciliations typically conducted by members of the Commission or members of staff? How is it decided whether conciliations are done by members of the Commission or by staff?

Applications to the Commission for unfair dismissal jurisdiction represent a significant portion of the work of the Commission. In 2014–15, over 40 per cent of all applications made to the Commission were applications made under Part 3–2 of the *Fair Work Act 2009* (the Act).

The Commission introduced an administrative conciliation stream in 2009 to assist manage this volume of work following the commencement of the Act on 1 July 2009. The President of the Commission has appointed a Member of the Commission to act as Termination of Employment Panel Head to oversee this process since that time.

Unfair dismissal applications are managed by staff of the Commission upon lodgment. They perform an initial assessment of the application details and contact the applicant to highlight any application deficiencies.

Some applications are allocated to Members directly after this assessment. Where an application is made outside the statutory time limit of 21 days from the date of effect of the dismissal, the application is first allocated to a Member of the Commission and the Member makes a decision to grant or refuse an extension of time request under subsection 393(3) of the Act.

Otherwise, all applications are initially referred to the administrative conciliation stream. A support team of staff make arrangements for telephone conferences with a staff conciliator and liaise with the parties up to the time of the conference. Staff and conciliators perform these duties in accordance with a detailed procedures guide approved by the panel head.

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.

During this administrative process, respondents to a claim may make objections to the application on jurisdictional grounds and request for the objection/s to be dealt with by a Member of the Commission. In these circumstances, a member of staff will contact the respondent to explain how this process would operate, for example, that some objections will be dealt with by Members at the same time as the substantive merits.

If a matter is not finalised in the administrative conciliation stream, the application is referred to the Member stream. A number of applications are discontinued prior to conciliation, or after conciliation but before a conference/hearing before a Member.

The table below shows the stage of finalisation for applications completed in 2014–15

Unfair dismissal – finalisation. Fair Work Commission Annual Report, Table G6, p 190

Claims settled, withdrawn or determined	Number	Percentage
Prior to conciliation	2,156	14%
At conciliation	8,788	58%
After conciliation and before a conference/hearing before a Fair Work Commission Member	2,654	17%
Withdrawn after conference/hearing and before decision/order	52	<1%
By final decision/order	1,527	10%
TOTAL	15,177	100%

*How many of these are staff and how many are Commission members?
What type of staff conduct these conciliations?*

At 31 October 2015, the Commission employed 26 staff conciliators and one Conciliation Manager at the EL1-EL2 level. Some staff are engaged on a part time basis. Conciliators conduct conferences for applications involving claims of unfair dismissal, general protections disputes involving dismissal and perform mediation for a limited number of applications for orders relating to workplace bullying.

Most members of the Commission deal with termination of employment applications under arrangements administered by the termination of employment panel head.

Were these staff recruited for this purpose because of their particular expertise in conciliations?

Have you recruited any new staff members specifically for this purpose?

Staff are recruited as conciliators for their demonstrable skills and knowledge in dispute resolution and workplace relations. The staff conciliation model was established in 2009 at the commencement of the Act to efficiently manage the jurisdiction and the model was extended to general protections applications in 2014–15. There has been no increase in the number of conciliator positions in the Commission's staff structure since 2012.

How often, if at all, do Members of the Commission handle unfair dismissal conciliations?

As noted above, parties may opt to have a matter referred to Member. There are occasions when a member of the Commission will list a matter for conference and perform conciliation or mediation as part of this conference however Members are typically focused on the determinative work associated with unfair dismissals such as making decisions about whether there are jurisdictional impediments to the application proceeding, and whether the applicant was unfairly dismissed in light of the legislative considerations.

Has any training been undertaken, or is any training planned to be undertaken to train staff members, in relation to conciliations?

Conciliators undergo training in the Commission's model and this training is generally conducted by the Conciliation Manager. The training includes a period of observing conferences and conducting conferences under observation prior to a conciliator being authorised to conduct conferences.

The Commission conducted an internal training program in 2015 for staff who are not assigned a conciliator position to gain skills and experience in conducting conciliation conferences. The training consists of a five day theory and role play program followed by a series of conference observations and conducting conferences under the guidance of senior staff. After this combination of theory and practical training, the Conciliation Manager assesses the staff member and if they demonstrate that they have the required skills she approves them to conduct unobserved conferences.

This program was conducted as a part of the Commission's broader learning and development program. Training staff in other areas of the Commission assists in the management of the volume of lodgments in the unfair dismissal jurisdiction, particularly during peak periods, to cover absences for leave and to help ensure timeliness in the finalisation of these matters.