

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Supplementary Budget Estimates 2015 - 2016

Agency - Fair Work Commission

Department of Employment Question No. EMSQ15-000453

Senator McKenzie provided in writing.

Question

FWC - Conciliation process – General Protections and Unfair Dismissal - delegation of powers

Please provide the relevant guidelines for the delegation of powers

Answer

Unfair dismissals

The Fair Work Commission provides administrative conciliation services to support the resolution of unfair dismissal applications made under Part 3-2 of the *Fair Work Act 2009* (the Act) in a timely and flexible manner. Participation in staff-conducted conciliation is voluntary and staff have not been delegated determinative powers or functions. Administrative conciliation is overseen by the Termination of Employment Panel Head, a Member of the Commission.

If a matter does not resolve through administrative conciliation or the parties do not wish to participate, Part 3-2 of the Act gives the Commission powers to determine the matter and these powers and functions are exercised by Members of the Commission.

General protections involving dismissal

The Commission has a more limited role under the Act in resolving disputes about general protections involving dismissal. This role is limited under subsection 368(1) to dealing with the dispute via mediation or conciliation, or by making a recommendation or expressing an opinion.

The Act provides that if the Commission is satisfied that all reasonable attempts to resolve the dispute have been or are unlikely to be successful, then the Commission must issue a certificate to this effect.

The President of the Commission, pursuant to paragraphs 625(1)(b) and 625(1)(c) of the Act, has delegated a limited part of the Commission's functions to specified staff conciliators to deal with disputes under section 368(1) of the Act.

The delegation of powers includes:

- Granting permission under subsection 596(2) of the Act for a person to be represented in the conference by a lawyer or paid agent;
- Informing themselves by requesting information from the parties;
- Mediating or conciliating the dispute; and

- Expressing an opinion, including advising the parties in accordance with paragraph 368(3)(b) of the Act.

The delegation does not include powers or functions of the Commission to:

- Direct a person to attend a conference under subsection 592(1) of the Act;
- Inform itself other than by requesting information, including informing itself in any of the ways specified in paragraphs 590(2)(a), 590(2)(c)-(e), 590(2)(g) and 590(2)(i) of the Act;
- Give directions in relation to procedural matters, except as required to conduct a conciliation or mediation conference;
- Make any decision in relation to a non-procedural matter;
- Make any recommendation or order; or
- Issue a certificate under paragraph 368(3)(a) of the Act.