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ACTS OF PARLIAMENT ASSENTED TO

Legislative Council Office Sydney 12 December 2023

IT is hereby notified, for general information, that Her Excellency the Governor has, in the name and on behalf of His Majesty, this day assented to the undermentioned Acts passed by the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, viz.:

Act No. 53, 2023 – An Act to make miscellaneous amendments to legislation to increase the vibrancy of the night-time economy; and for related purposes. [**24-Hour Economy Legislation Amendment (Vibrancy Reforms) Bill 2023**]

Act No. 54, 2023 – An Act to provide for the appointment of a 24-Hour Economy Commissioner and the functions and powers of the Commissioner; and for related purposes. [**24-Hour Economy Commissioner Bill 2023**]

Act No. 55, 2023 – An Act to amend the Electoral Funding Act 2018 to increase the cap on electoral expenditure by third-party campaigners for State election campaigns and make other amendments relating to third-party campaigners. [**Electoral Funding Amendment Bill 2023**]

Act No. 56, 2023 – An Act to amend the Biosecurity Act 2015 to provide for an Independent Biosecurity Commissioner. [**Biosecurity Amendment (Independent Biosecurity Commissioner) Bill 2023**]

David Blunt
Clerk of the Parliaments

ACTS OF PARLIAMENT ASSENTED TO

Legislative Council Office Sydney 11 December 2023

IT is hereby notified, for general information, that Her Excellency the Governor has, in the name and on behalf of His Majesty, this day assented to the undermentioned Acts passed by the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, viz.:

Act No. 44, 2023 – An Act to make miscellaneous amendments to building legislation and other legislation administered by the Minister for Better Regulation and Fair Trading and the Minister for Building. [**Building Legislation Amendment Bill 2023**]

Act No. 45, 2023 – An Act to amend the Strata Schemes Development Act 2015 and the Strata Schemes Management Act 2015 to implement various recommendations arising from the statutory review of the Acts; to make related amendments to the Community Land Development Act 2021, the Community Land Management Act 2021 and other legislation; and for other purposes. [**Strata Legislation Amendment Bill 2023**]

Act No. 48, 2023 – An Act to establish guiding principles for action to address climate change; to set 2030 and 2050 targets for the reduction in net greenhouse gas emissions in New South Wales; to set an objective for New South Wales to be more resilient to a changing climate; and to establish the Net Zero Commission to monitor, review and report on progress towards the 2030 and 2050 targets and the objective and to exercise other related functions. [**Climate Change (Net Zero Future) Bill 2023**]

David Blunt
Clerk of the Parliaments

CRIMINAL PROCEDURE REGULATION 2017

Declaration under Criminal Procedure Regulation 2017 regulation 33

Pursuant to regulation 33(2)(b) of the Criminal Procedure Regulation 2017, I hereby declare the following places where the Local Court sits to be a declared place for the Circle Sentencing Intervention Program:

- Moruya
- Narooma.

MICHAEL DALEY
Attorney General

Dated the 17th day of October 2023

Practice Note No.1A

First Issue Date:

14 July 2000

Re-Issue Date:

15 February 2018
Replacing Practice Note 1

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

PRACTICE NOTE NO. 1A

Re-issued pursuant to Section 185A of the Industrial Relations Act 1996 and Section 15 of the Civil Procedure Act 2005

USUAL APPEAL DIRECTIONS

1. The purposes of this Practice Note are: -

- (a) to advise the requirements of the Commission in relation to appropriate procedures for appeals; and
- (b) to facilitate the making of directions as to appeals.

2. This Practice Note has effect from the date of re-issue.

3. Where a Full Bench, or a presiding member of a Full Bench, makes “the usual directions” in relation to an appeal, the directions given will be those set out in Schedule A to this Practice Note, with such modifications (if any) as the Full Bench/presiding member directs.

4. Nothing in this Practice Note or Schedule A affects, or is intended to affect, the powers or discretions of a Full Bench/presiding member in relation to the proceedings.

P M Kite SC
Chief Commissioner
15 February 2018

SCHEDULE A TO PRACTICE NOTE NO. 1

BEFORE A FULL BENCH OF THE INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

USUAL APPEAL DIRECTIONS

The Full Bench/presiding member makes the following directions:—

1. The appellant shall by 4.00 pm on the day six weeks before the hearing date, file 4 copies of, and serve —

- (i) a detailed outline of submissions in relation to the appeal;
- (ii) a chronology which should usually be in the form of the chronology specified in Practice Note SC CA No 1 issued on 27 March 2009 applicable in the Supreme Court of New South Wales in relation to appeals to the Court of Appeal; and
- (iii) a written narrative submission on the question of leave to appeal, which document should not exceed three A4 pages of double-spaced typing.

2. The respondent shall by 4.00 pm on the day four weeks before the hearing date, file 4 copies of, and serve —

- (i) a detailed outline of submissions in reply as to the appeal;
- (ii) if the respondent considers it necessary, a chronology in reply which shall be limited to those areas where the respondent disputes matters set out in the appellant's chronology; and
- (iii) a written narrative submission on the question of leave to appeal, which document should not exceed three A4 pages of double spaced typing.

3. The appellant shall by 4.00 pm on the day two weeks before the hearing date, file 4 copies of, and serve, replies to the documents filed and served by the respondent in accordance with direction 2 above.

4. The appeal is listed for hearing before the Full Bench on, on the basis of an estimate of day(s) for the hearing.

5. Liberty to apply on short notice; such liberty to be exercised by application made to the Associate to the presiding member of the Full Bench and the Full Bench delegates its powers for the purposes of giving directions to the presiding member.

The Full Bench expects that either or both parties will promptly arrange for the matter to be listed before the Commission pursuant to the liberty to apply should there be any non-compliance with the timetable which could result in the Full Bench not receiving all submissions in the appeal not less than 14 days before the date fixed for the hearing.

The term "hearing date" in these directions refers to the date set down for the hearing of the appeal or, if more than one date is set, the first of those dates.

NOTE:

Practice Note No. SC CA 1 of 27 March 2009 applicable in the Supreme Court of New South Wales in relation to appeals to the Court of Appeal provides, *inter alia*:

35. Chronologies prepared in accordance with r 51.35 must be filed in an appeal by the appellant (r 51.34(1)(b)) and may be filed by the respondent (r 51.34(2)). It must contain cross-references to the Appeal Book. The chronology should be an objectively correct statement of “the principal events leading up to the litigation” and should not be a chronology merely of those matters of assistance to one party or the other: *Woods v Harwin* (CA(NSW), Mahoney AP, Clarke and Meagher JJA, 5 November 1993, unreported). The chronology should include key events in the litigation, such as the commencement of the proceedings in the court below. Failure to file a proper chronology may have adverse costs consequences.

The following is the suggested form for chronologies:

APPELLANT (OR RESPONDENT'S) CHRONOLOGY

DATE	EVENT	VOLUME	PAGE AND EXHIBIT NO.
22.09.2001	Arrangements in Wagga between Smith and Co for financing of wheat purchases	Vol 2	15
23.11.2001	First request by Brown to Smith and Co for drawdown to pay for wheat purchases	Vol 2	58
30.11.2001 at 0930 hrs	Fax Smith and Co to Brown re above	Vol 2	58-59 (Exhibit 5)
30.11.2001 at 1145 hrs	Telex Brown to Smith and Co requesting drawdown to pay for further wheat	Vol 2	33
01.12.2001	“Warehouse receipt” from Jones to Smith and Co	Vol 2	60-61 (Exhibit 6)
06.01.2002	Letter Jones to Smith and Co concerning method of carrying out financial arrangements for barley	Vol 2	61 (Exhibit 7)
07.01.2002	Internal memorandum of Smith and Co re meeting Allen in Wagga	Vol 2	143-144 (Exhibit 8)

Practice Note No.2A

First Issue Date:	16 December 1998
Re-Issue Date	1 February 2010
Further Re-Issue Date	15 November 2017 Replacing Practice Note 2

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

PRACTICE NOTE NO. 2A

Re-issued pursuant to Section 185A of the Industrial Relations Act 1996 and Section 15 of the Civil Procedure Act 2005

LISTS OF AUTHORITIES AND LEGISLATION

1. The purpose of this Practice Note is to enable the timely provision of lists of authorities and legislation so as to facilitate the efficient hearing of all matters before the Commission, both at first instance and on appeal.
2. This Practice Note has effect from the date of re-issue.
3. Each party appearing in proceedings shall file a typewritten list of authorities and legislation, in sufficient copies for each member of the Commission concerned, with the Industrial Registry no later than 10.00 am on the last working day before the hearing of the matter. Filing may be effected by email, other electronic means or hard copy.
4. A supplementary list of no more than four authorities and legislation may be filed, by email, other electronic means or hard copy, no later than 4.00 pm on the last working day before the hearing.
5. A copy of the list or lists of authorities and legislation should be served on the other parties, by email, other electronic means or hard copy, no later than 4.00 pm on the last working day before the hearing.
6. Lists should be divided into two parts. Part "A" should contain only the authorities and legislation from which passages are to be read or to which specific reference will be made. Part "B" should contain the authorities and legislation which might be referred to generally but from which passages are not to be read or referred to specifically. The relevant sections of legislation should be specified.
7. Parties shall make available sufficient photocopies of cases and extracts of legislation referred to in Part "A" of their list(s) for each member of the Commission concerned in hearing the proceedings and the other parties.

8. It is the responsibility of a party intending to refer at any length to additional cases (that is, cases not included in Part "A" of a list of authorities filed in accordance with this Practice Note) to provide photocopies of those cases (or relevant parts of them) to be made available to the Commission and the other parties during the argument.
9. It is the responsibility of a party intending to rely upon any material (including a decision/judgment) contained in a loose-leaf service, an unreported decision/judgment, or any text book, reference book, published article or dictionary to provide photocopies of that material, or the relevant extract therefrom, for the use of the Commission and the other parties during the proceedings.
10. As a matter of preference, copies of authorities should be provided at the time of filing the list in accordance with paragraph 3 above. In the alternative, the authorities may be provided to the Commission and the other parties at the commencement of the hearing.
11. For the purpose of awarding costs, the costs of providing photocopies of authorities to the Commission or to other parties for the purposes of a hearing before the Commission (where such photocopies are provided pursuant to this Practice Note) shall not be allowed as part of the costs of any party in the proceedings or charged, unless permitted by a costs agreement made in accordance with Division 4 of Part 4.3 of the Legal Profession Uniform Law (NSW), by any legal practitioner to their client, without a specific order being made by the Commission or the Registrar which provides for the allowance of such costs or charge as the case may be.

P M Kite SC, Chief Commissioner
October 2017

PRACTICE NOTE No.4

Issue Date: 17 December 1999

Reissue Date: 18 December 2023

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

PRACTICE NOTE NO. 4

Issued pursuant to Section 185A of the *Industrial Relations Act 1996* and Section 15 of the *Civil Procedure Act 2005*

VIRTUAL HEARINGS

1. The purpose of this Practice Note is to inform parties about the process to seek leave to have certain hearings conducted by way of virtual facilities (via teleconference or AVL).
2. This Practice Note has effect from the date of re-issue.
3. Hearings undertaken using virtual facilities are still formal proceedings, and all usual etiquette, protocols, procedures, and restrictions apply. The *Court Security Act 2005* prohibits the use of recording devices in court and this applies to proceedings using virtual facilities. Practitioners should advise clients, witnesses and others that the access details are to be used for the purposes of the hearing only and are not to be published by those persons for any other purpose. Persons accessing the system for inappropriate purposes or in a way that interferes with the proper administration of justice may be referred to the Supreme Court or the Attorney General for contempt of court.

Seeking leave to conduct a virtual hearing

4. Any party may request leave for the Commission to conduct a hearing using virtual facilities, rather than by personal appearance, where it is not, or may not be, practicable for a party to attend in-person. A request should be made as soon as practical after the party is notified of the proposed date of the hearing. The party proposing to make a request for leave to the Commission must, before doing so, make reasonable attempts to obtain the consent of all other parties. The request should indicate whether the application is by consent of the other parties to the matter and, if not, what response to the request for consent was given by the other parties.
5. The application should set out the grounds on which the request is made. Leave may be granted for reasons of:
 - a. costs;

- b. distance;
 - c. medical reasons;
 - d. the nature of the relationship between the parties; or
 - e. such other reason as appears appropriate to the Commission.
6. The Commission may, if it thinks appropriate that the hearing be held by virtual means, agree to the request, with or without conditions. The Commission will notify the parties of the result of the application but will not be obliged to give reasons for its decision.

Joining a virtual hearing

7. It is the responsibility of each party to have dialled in at the time specified by the Commission. Each party must ensure that they are at a quiet and private location with reception to conduct a virtual hearing. Internet access is required for video conferencing and parties are responsible for ensuring reliable connectivity. Video conferencing via AVL requires all parties to have a working camera enabled.
8. When joining a telephone hearing, parties are immediately audible in the Virtual Courtroom. Parties are requested to mute the audio on their devices until their matter has been called. Representatives from a party may dial into the proceedings from separate phone numbers or on a single line. Once called upon, it is important to identify who is present on the phone.
9. It is the parties' responsibility to address technical issues prior to the commencement of the virtual hearing. The Commission does not provide a technical support service. The Commission may require the parties to attend an informal test of the technology prior to the time that the matter is listed.
10. Parties should ensure that any documents to which they wish to refer in a virtual hearing are served on the other parties to the hearing, prior to the date of the hearing. Documents should be filed in the Registry at least two full business days before the hearing.

Chief Commissioner Constant
18 December 2023

PRACTICE NOTE NO. 6

First Issue Date:

14 July 2000

Re-issue Date:

15 December 2023

Re-issued pursuant to Section 185A of the *Industrial Relations Act 1996* and Section 15 of the *Civil Procedure Act 2005*.

APPLICATIONS FOR NEW AWARDS OR VARIATIONS TO AWARDS ON A CONSENT BASIS HAVING REGARD TO SECTIONS 23 AND 146(2) OF THE INDUSTRIAL RELATIONS ACT 1996

1. The purpose of this Practice Note is to provide an appropriate procedure for the making of consent awards and variations by consent to existing awards (collectively "Consent Applications") having regard to:
 - (a) the requirements of s 23 of the *Industrial Relations Act 1996* ("Act") and cl 6.8 of the Industrial Relations Commission Rules 2022,
 - (b) the decision of the Full Bench of the Industrial Relations Commission of 30 June 2000 in *Re Equal Remuneration Principle* [2000] NSWIRComm 113, and
 - (c) the requirements of s 146(2) of the Act.
2. This Practice Note has effect from the date of re-issue.
3. In *Re Equal Remuneration Principle*, the Full Bench said at [155]:

"Operation of s23 of the Act

Finally, and having in mind the cases advanced by the parties as to the proper construction of the Act which we have dealt with, we announce that a Practice Note will, in due course, issue to require parties seeking a consent award to file with the application an affidavit stating the basis upon which it is contended that the proposed award provides for equal remuneration and other conditions of employment for men and women doing work of equal or comparable value. This material will form the evidentiary basis upon which the Commission will in future base its consideration of the requirements of s23 of the Act."

4. When a Consent Application is made, the parties must file an affidavit setting out the basis upon which it is contended that:
 - (a) the proposed new or varied award provides for equal remuneration and other conditions of employment for men and women doing work of equal or comparable value; and
 - (b) the making of the new award or variation of the existing award is in the public interest having regard to the matters set out at s 146(2) of the Act.
5. The affidavit referred to in paragraph 4 of this Practice Note will usually form the evidentiary basis upon which the Commission will consider the requirements of ss 23 and 146(2) of the Act; however the parties may tender other evidence if they consider this to be necessary.

6. In the absence of agreement between the parties, the obligation to file the affidavit referred to in paragraph 4 of this Practice Note will be the responsibility of the applicant.
7. The affidavit is to be filed either with the Consent Application or within seven (7) days of the date on which the Consent Application is filed.

**Nichola Constant
Chief Commissioner**

15 December 2023

Practice Note 10

Notices of Motion

Issued pursuant to Section 185A of the *Industrial Relations Act 1996* and Section 15 of the *Civil Procedure Act 2005*

Commencement

1. This Practice Note commences on 13 March 2023.

Application of Practice Note

2. For the purposes of this Practice Note the 'Commission' means the Industrial Relations Commission of New South Wales, an Industrial Committee, the Contract of Carriage Tribunal and the Industrial Registrar.
3. This Practice Note applies to all proceedings in the Commission.
4. This Practice Note should be read in conjunction with other Practice Notes of the Commission, specifically those setting out procedures for particular types of proceedings.

Interlocutory Applications

5. Unless leave is otherwise granted by the Commission, interlocutory applications must be brought by a notice of motion (UCPR Form 20 - <https://www.ucprforms.nsw.gov.au/>), supported by an affidavit which sets out briefly and concisely the facts relied upon in support of the orders sought in the motion.
6. Parties must file any motions as soon as practicable, and not wait until the next occasion when the matter is before the Commission. Leave is not required to file a motion, although the Commission may direct that a foreshadowed motion must be filed by a certain date.
7. Motions will be returnable before the Industrial Registrar or the Commissioner managing the matter.
8. Generally, at the first return of the motion, directions will be made to prepare the motion for hearing, including the filing and service of any evidence in response to the motion. However, urgent applications, applications by consent, or applications where there is no appearance by the respondent to the motion and service of the motion and supporting affidavit is established, may be dealt with on the first return date. Parties should be ready to argue the motion on the first return date.
9. All affidavits filed and served in connexion with a notice of motion must comply with Practice Note 32A.

N J Constant
Chief Commissioner
14 February 2023

Amendment History:

14 February 2023: This Practice Note replaces former Practice Note 10, Notices of Motion, which was issued on 26 November 2002 and reissued on 1 February 2010.

Practice Note No.14A

Issue Date:
Replacing Practice Note 14

15 February 2018

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

PRACTICE NOTE No. 14A

Re-issued pursuant to Section 185A of the Industrial Relations Act 1996 and Section 15 of the Civil Procedure Act 2005

Conciliation of applications referred by the Supreme Court

1. The purpose of this Practice Note is to facilitate the resolution of matters commenced in the Supreme Court pursuant to Part 9 of Chapter 2 or Part 2 of Chapter 7 of the Industrial Relations Act 1996 and referred to the Commission for conciliation by making standard directions to ensure that:

- such proceedings are conducted before the Commission in an efficient and expeditious manner; and
- practitioners and others who appear before the Commission, do all they can to facilitate the just, quick and cost effective disposal of such proceedings.

2. This Practice Note replaces Practice Note No. 14 and has effect from the date of issue.

3. The purpose of conciliation is to resolve the proceedings by agreement and without proceeding to a full hearing. Conciliation provides the parties with an opportunity to reach agreement about some or all of the issues in dispute. It is essential that the parties clearly identify the issues between them prior to the conciliation.

Standard directions

4. The following standard directions apply in respect of matters listed for conciliation.

(1) Conciliation is to be attempted by means of a conciliation conference conducted after reasonable notice to the parties.

(2) Conciliation conferences follow a structured process in which the Commission endeavours to assist the parties to:

- (a) communicate effectively with each other, and
- (b) reach agreement on the issues in dispute.

(3) Subject to any direction of the Commission the following provisions apply to the conduct of a conciliation conference:

- (a) each party must file and serve at least 7 days prior to the conciliation an outline, not exceeding 3 pages, of their case;

- (b) each party may be represented, but only by a person who is fully conversant with the matter and has full authority in relation to the settlement of the matter,
- (c) each party must attend the conciliation with information as to:
 - (i) the costs incurred by the party to date, and
 - (ii) an estimate of the number of hearing days that would be involved, and of the costs that the party would incur, if the matter were to proceed to a hearing,
- (d) a party who believes that there is a matter of fact or law:
 - (i) that has not already been identified in the pleadings (or outline required by paragraph (a), and
 - (ii) that would require determination if the matter were to proceed to a hearing, must document the matter, and file and serve a copy of the relevant documentation, not less than 7 days before the date fixed for conference,
- (e) a party who contends that any term of a written contract or industrial instrument is in issue must file and serve a copy of the document, together with a brief summary as to the nature of the issue, not less than 7 days before the date fixed for the conference,
- (f) in unfair contract proceedings, the applicant must file and serve a statement as to mitigation of damage or loss not less than 7 days before the date fixed for the conference,
- (g) during the week prior to the conference, the parties must consult with each other for the purpose of clearly identifying all issues and matters in dispute.

PM Kite SC
Chief Commissioner

15 February 2018

PRACTICE NOTE No. 17A

Issue date:
Re-issue date:

9 October 2019
27 October 2023

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

PRACTICE NOTE NO. 17A

Issued pursuant to s 185A of the *Industrial Relations Act 1996* and s 15 of the *Civil Procedure Act 2005*

APPLICATIONS PURSUANT TO SECTION 84 OF THE *INDUSTRIAL RELATIONS ACT 1996* (UNFAIR DISMISSALS)

1. The purpose of this Practice Note is to facilitate the resolution of unfair dismissal matters in a just, quick and cost-effective manner and to ensure that practitioners and others who appear before the Commission do all they can to facilitate such an outcome.
2. This Practice Note has effect from the date of issue, and amendments have effect from the date of re-issue.
3. **Allocation of Listing Date**

When an application under s 84 of the *Industrial Relations Act 1996* ('Act') is filed, the matter will be listed for conciliation by a Commissioner. As a general rule, the conciliation will be listed not more than 21 days after the application is filed.
4. **Conciliation**
 - a. Parties, legal practitioners, industrial agents and others who appear before the Commission should do all they can to facilitate the fair and prompt disposal of matters before the Commission.
 - b. In order to ensure there is a genuine opportunity to resolve matters at the conciliation, applicants are expected to attend the conciliation in person, and respondents, including those who are legally represented, must ensure that there is a person in attendance at the conciliation with the power to make decisions to enable the resolution of the matter.
 - c. Parties and their representatives should:
 - i. identify the real issues in dispute prior to the conciliation;
 - ii. establish parameters in which they are willing to resolve the matter at the conciliation. Such parameters do not need to be divulged nor maintained at the conciliation but will assist the Commission in assisting the parties to resolve the matter;

- iii. make contact with the opposing party prior to the conciliation to attempt to narrow the issues in dispute and to explore the basis on which the matter might be resolved; and
 - iv. both before and during the conciliation, use their best endeavours to resolve the issues in dispute, including by ensuring the participation in the conciliation by individuals with authority to settle proceedings.
- d. Ordinarily there should be only one conciliation, however, a Commissioner may permit further conciliation conferences at their discretion.
- e. If an applicant fails to appear at a conciliation conference and has not provided a clear and compelling reason for non-attendance, this may result in the matter being dismissed.

6. **Preliminary Issues**

- a. If a preliminary issue such as a jurisdictional challenge is raised at or before the conciliation, the Commissioner to whom the matter is allocated in order to undertake the conciliation will determine whether the issue will be heard as a threshold issue or will be dealt with after conciliation.
- b. If the Commissioner determines that the issue should be heard before conciliation, then the Commissioner may make appropriate directions for the arbitration of the issue and determine the question or issue in advance of any conciliation.
- c. In cases where the Commissioner conducts a conciliation before the hearing of the preliminary issue, and the conciliation fails, the Commissioner may make directions for the hearing of the preliminary issue.

7. **Directions for Arbitration where No Preliminary Issue Raised**

- a. When a conciliation is unsuccessful, the Commissioner will make directions for the arbitration of the matter. The Commissioner may make such directions as it considers appropriate for the just resolution of the issues between the parties. The Commission has issued "Usual Directions" which, in the ordinary course, will be made by the Commission. These can be found on the Commission's website.
- b. The Commissioner who conducted the conciliation will ascertain an estimate of the number of days required for arbitration. Arbitration date(s) will usually form part of the directions made by the Commissioner following the unsuccessful conciliation.
- c. To assist in the timely and efficient allocation of arbitration date(s), parties are encouraged to consider at an early stage whether they intend to exercise their rights under s 173 of the Act and, if so, to do so expeditiously.

8. **Further Conciliation**

- a. Parties are encouraged to continue their attempts to resolve matters once the matter is listed for arbitration and particularly prior to the time for compliance with directions in order to minimise the costs. Even after compliance with directions, further timely attempts by the parties to resolve matters are encouraged.

- b. To assist the parties in circumstances where such settlement attempts are positive but inconclusive, a further conciliation conference with the same Commissioner who conducted the first conciliation may be requested, preferably not less than seven days prior to the arbitration. A party may make such an application for a further conciliation conference only by consent of the other party and by writing to the Industrial Registrar.
- c. Nothing in this Practice Note prevents the Commission from undertaking further conciliation at the arbitration of the matter.
- d. Any further conciliation process does not excuse the parties from complying with directions made in the proceedings unless an order is made by the Commission to that effect.

9. **Compliance with Directions**

Parties **must** comply with any directions made by the Commission unless the Commission determines to vary the directions. An application to vary the directions must be made prior to the date for compliance. Such an application must be in writing and contain full supporting grounds and the other party's view of the request for variation.

10. **Adjournments**

- a. In accordance with the Commission's function to provide a forum for the resolution of unfair dismissal matters in a fair and prompt manner, as a general rule, an adjournment of the date that is allocated for conciliation will not be granted unless there are clear and compelling reasons for the adjournment to occur. Consent of the opposing parties does not guarantee an adjournment will be granted by the Commission, although it will be a factor taken into account in the determination of such application.
- b. The day (or days) in which the application will be dealt with by arbitration is definite. Any application for an adjournment of an unfair dismissal matter fixed for arbitration must be made in a timely way, following consultation with the other party, be in writing and contain full grounds including the other party's view of the request for adjournment. Applications will be considered and determined by the Commissioner allocated the arbitration of the unfair dismissal application and will be granted only on clear and compelling grounds, supported by evidence.
- c. In the event that a party fails to attend the arbitration, the matter may, in appropriate circumstances, be heard and determined in the absence of that party.

N J Constant
Chief Commissioner
27 October 2023

Practice Note No.21A

Issue Date:

15 February 2018

Replacing Practice Note 21

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

PRACTICE NOTE No. 21A

Pursuant to Section 185A of the Industrial Relations Act 1996 and Section 15 of the Civil Procedure Act 2005

Disclosure of Experts Reports and Medical and Hospital Reports

1. This Practice Note applies to any proceedings in which the Commission, on the application of a party or of its own motion, directs that it is to apply.
2. This Practice Note has effect from the re-issue date.

3. Definitions.

In this Practice Note

(a) ***expert's report*** means a statement by an expert in writing which sets out the expert's opinion and the facts on which the opinion is formed and which contains the substance of the expert's evidence which the party serving the statement intends to adduce in chief at the hearing,

(b) ***hospital report*** means a statement in writing concerning a patient made by or on behalf of a hospital which the party serving the statement intends to adduce in evidence in chief at the hearing,

(c) ***medical report*** means a statement in writing concerning a patient made by or on behalf of a registered medical practitioner which the party serving the statement intends to adduce in evidence in chief at the hearing.

4 Procedure

4.1 Unless the Commission otherwise orders, in proceedings to which this Practice Note applies, each party in the proceedings must, at least 21 days before the date set down for hearing, serve experts' reports, medical reports and hospital reports on each other party who has an address for service in the proceedings.

4.2 An application to the Commission for an order under clause 4.1 (other than an order solely for abridgment or extension of time) may be made without serving notice of the motion.

4.3 In proceedings to which this Rule applies, except with the leave of the Commission or by consent of the parties:

(a) the oral expert evidence in chief of any expert is not admissible unless that evidence is covered by the expert's report served in accordance with this Practice Note, and

(b) neither an expert's report nor a medical or hospital report is admissible when tendered under section 63 or section 64 or section 69 of the Evidence Act 1995, unless it has been served in accordance with this Practice Note.

4.4 For the purpose of clause 4.3 of this Practice Note, evidence is covered by a report if the report contains the substance of the matters sought to be adduced in evidence.

5. Expert's report admissible at hearing

5.1 Where an expert's report is served in accordance with this Practice Note or an order is made under clause 4.1, the report is admissible as evidence of the expert's opinion and, where the expert's direct oral evidence of a fact upon which the opinion was formed would be admissible, as evidence of that fact, without further evidence, oral or otherwise.

5.2 A party may, unless the Commission otherwise orders, not later than 7 days before the date set down for hearing, require the attendance for cross-examination of the expert.

5.3 The parties may not by consent abridge the time fixed by or under clause 5.2

5.4 A requirement under clause 5.2 must be made to the party who served the report.

5.5 Where the attendance of an expert is required under clause 5.2, the expert's report must not be tendered or otherwise used unless the person attends or is dead or the Commission grants leave to use it.

5.6 Where an expert attends pursuant to a requirement under clause 5.2, the party using the report may re-examine that expert.

P M Kite SC
Chief Commissioner
15 February 2018

PRACTICE NOTE No.23A

Issue date: 9 October 2019

Re-issue date 18 December 2023

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

PRACTICE NOTE NO. 23A

Issued pursuant to s 185A of the *Industrial Relations Act 1996* and s 15 of the *Civil Procedure Act 2005*

PROCEDURES: PUBLIC SECTOR DISCIPLINARY APPEALS

1. This Practice Note applies to proceedings before the Commission under Part 7, Chapter 2 of the *Industrial Relations Act 1996* ("Act").
2. This Practice Note has effect from the date of issue, and amendments have effect from the date of re-issue.
3. The purpose of this Practice Note is to facilitate the resolution of public sector disciplinary appeals by ensuring that such proceedings are conducted in a just, quick and efficient manner and that all those who appear before the Commission do all they can to facilitate the just, quick and cost-effective disposal of proceedings before the Commission.
4. **Procedure generally**
 - a. A public sector employee who wishes to appeal a decision of the kind listed in s 97(1) of the Act made by their employer must complete and file in the Office of the Industrial Registrar an Application for Public Sector Disciplinary Appeal within 28 days after the employee is notified of the decision. The Commission has no power to hear appeals which are filed outside this timeframe and no discretion to extend the timeframe.
 - b. An Application for Public Sector Disciplinary Appeal may be filed via the Online Registry, in person at the Registry or by post.
 - c. Within 7 days of being served with a Notice of Appeal the employer must complete and file in the Office of the Industrial Registrar an Employer's Response to a Public Sector Disciplinary Appeal
 - d. In relation to the production of documents or the attendance of witnesses before the Commission, the provisions of s 165 of the Act and Part 33 of the *Uniform Civil Procedure Rules 2005* apply.
 - e. In accordance with s 100G(2) of the Act the employer's case is to be presented first.

5. **Allocation of Listing Date**

When a disciplinary appeal is filed, the matter will be listed for conciliation. As a general rule, the conciliation will be listed not more than 21 days after the appeal is filed.

6. **Conciliation**

- a. Parties, legal practitioners, industrial agents and others who appear before the Commission should do all they can to facilitate the fair and prompt disposal of matters before the Commission.
- b. In order to ensure there is a genuine opportunity to resolve matters at the conciliation, applicants are expected to attend the conciliation and respondents, including those who are legally represented, must ensure that there is a person in attendance at the conciliation with the power to make decisions to enable the resolution of the matter.
- c. Parties and their representatives should:
 - i. identify the real issues in dispute prior to the conciliation;
 - ii. establish parameters in which they are willing to resolve the matter at the conciliation. Such parameters do not need to be divulged nor maintained at the conciliation but will assist the Commission in assisting the parties to resolve the matter;
 - iii. make contact with the opposing party prior to the conciliation to attempt to narrow the issues in dispute and to explore the basis on which the matter might be resolved; and
 - iv. both before and during the conciliation, use their best endeavours to resolve the issues in dispute, including by ensuring the participation in the conciliation by individuals with authority to settle proceedings.
- d. Ordinarily, there should be one conciliation, however, a Commissioner may permit further conciliation conferences at their discretion (see section 9 below).
- e. If a party fails to appear at a conciliation conference and does not provide a clear and compelling reason for non-attendance, this may result in the appeal being determined in their absence.

7. **Preliminary Issues**

- a. If a preliminary issue such as a jurisdictional challenge is raised at or before the conciliation, the Commissioner conciliating will determine whether the matter will be heard as a threshold issue or be dealt with after conciliation.
- b. If the Commissioner determines that the issue should be heard before conciliation then the Commissioner may make appropriate directions for the hearing of the issue and determine the question or issue in advance of any conciliation.

- c. In cases where the Commissioner conducts a conciliation before the hearing of the preliminary issue, and the conciliation fails, the Commissioner may make directions for the hearing of the preliminary issue.

8. Objections pursuant to s 100E(2)

- a. To assist in the allocation of hearing date(s), any objection to the Commissioner who conducted a conciliation hearing the appeal made pursuant to s 100E(2) of the Act, should be lodged within seven days of the date of such conciliation.
- b. For the purposes of s 100E(2) of the Act, a Commissioner is not taken to have attempted conciliation merely because:
 - i. the Commissioner attempted conciliation after commencing the hearing; or
 - ii. the Commissioner arranged or gave directions for a conference of the parties involved in the matter, or their representatives, to be presided over by the Commissioner, but the conference did not take place or was not presided over by the Commissioner; or
 - iii. the Commissioner arranged or gave directions for the parties or their representatives to confer among themselves at a conference at which the Commissioner was not present.
- c. If a party exercises its rights under s 100E(2) of the Act the Commissioner will forward the file to the Industrial Registrar for reallocation by the Chief Commissioner.

9. Further Conciliation

- a. Parties are encouraged to continue their attempts to resolve matters once the matter is listed for hearing and particularly prior to the time for compliance with directions, in order to minimise costs. Even after compliance with directions, further timely attempts by the parties to resolve matters are encouraged.
- b. To assist the parties in circumstances where such settlement attempts are positive but inconclusive, a further conciliation conference with the same Commissioner who conducted the first conciliation may be requested, preferably not less than seven days prior to the hearing of the appeal. A party may make such an application for a further conciliation conference only by consent of the other party and by writing to the Industrial Registrar.
- c. Nothing in this Practice Note prevents the Commission from undertaking further conciliation at the hearing of the matter.
- d. Any further conciliation does not excuse the parties from complying with directions made in the proceedings unless an order is made by the Commission to that effect.

10. Listed for Hearing of the Appeal

- a. When conciliation before the Commission is unsuccessful, the Commission will make directions for the hearing of the appeal. The Commission may make such

directions as it considers appropriate for the just resolution of the issues between the parties. The Commission has issued “Usual Directions” which, in the ordinary course, will be made by the Commission, adjusted so that the employer’s case is presented first. The “Usual Directions” can be found on the Commission’s website.

- b. Parties should attend the conciliation and/or any subsequent directions hearing with a reasonable estimate of the time required for the hearing of the appeal and available dates for the hearing, as the setting of arbitration date(s) will usually form part of the directions made by the Commissioner following the unsuccessful conciliation.

11. Compliance with Directions

Parties must comply with any directions made by the Commission unless the Commission determines to vary the directions. An application to vary the directions must be made prior to the date for compliance. Such an application must be in writing and contain full supporting grounds and the other party’s view of the request for variation.

12. Adjournments

- a. In accordance with the Commission’s function to provide a forum for the resolution of appeal matters in a fair and prompt manner, as a general rule, an adjournment of the date that is allocated for a conciliation or hearing will not be granted unless there are clear and compelling reasons for the adjournment to occur. Any applications for adjournment must be made in a timely way, following consultation with the other party, be in writing and contain full grounds including the other party’s view of the request for adjournment. Applications will be considered and determined by the Commissioner hearing the appeal. Consent of the other party does not guarantee that an adjournment will be granted by the Commission, although it may be a factor taken into account in the determination of such an application.
- b. In the event that a party fails to attend at an appeal hearing, the appeal may, in appropriate circumstances, be heard and determined in the absence of that party.

Nichola Constant
Chief Commissioner

18 December 2023

Practice Note No.25A

Issue Date:
Re- issue Date:

15 February 2018

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

PRACTICE NOTE NO. 25A

Pursuant to Section 185A of the Industrial Relations Act 1996 and Section 15 of the Civil Procedure Act 2005

PRE-JUDGMENT INTEREST RATES

Commencement

1. This Practice Note commences on 15 February 2018.

Application

2. This Practice Note applies to new and existing proceedings in the Commission.

Introduction

3. The purpose of this Practice Note is to set the rate of pre-judgment interest that may be awarded under s.100(1) and (2) of the *Civil Procedure Act 2005*.

Calculating pre-judgment interest

4. Section 100 of the *Civil Procedure Act 2005* provides for the making of orders for the inclusion of interest in judgments.

5. Practitioners and litigants should expect that where, pursuant to s 100 (1) and (2) of the *Civil Procedure Act 2005*, interest in respect of a pre-judgment period is to be included in a judgment, the Commission will have regard to the following rates, being rates agreed upon by the Discount and Interest Rate Harmonisation Committee established following a referral by the Council of Chief Justices:

- (a) in respect of the period from 1 January to 30 June in any year at the rate that is 4% above the cash rate last published by the Reserve Bank of Australia before that period commenced, and
- (b) in respect of the period from 1 July to 31 December in any year at the rate that is 4% above the cash rate last published by the Reserve Bank of Australia before that period commenced.

P M Kite SC
Chief Commissioner
15 February 2018

PRACTICE NOTE No. 31A

Issued 15 February 2018, replacing Practice Note 31

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

PRACTICE NOTE No. 31A

Issued pursuant to Section 185A of the Industrial Relations Act 1996 and Section 15 of the Civil Procedure Act 2005

Production of and access to summonsed material and returning exhibits and summonsed material in civil proceedings

Application

1. This Practice Note applies to production of documents in compliance with a summons issued in regard to proceedings in the Commission and the return of summonsed documents and exhibits after proceedings have been determined.
2. This Practice Note does not apply to summonses issued pursuant to s 132, s 165(3)(a) or s 332 of the *Industrial Relations Act* 1996 or as a consequence of Part 5.5 or Part 11 of the Industrial Relations Commission Rules 2009, save as to any Order made by the Commission in that regard.
3. This Practice Note takes effect from the date of re- issue.

Definitions

4. In this Practice Note:

UCPR means Uniform Civil Procedure Rules 2005

Issuing party means the party requesting the issue of a summons for production

Summons recipient means the person to whom a summons for production is addressed.

Introduction

5. The purpose of this Practice Note is:
 - to inform the parties of their ability to nominate, on the summons document before filing, a convenient return date for the summons;
 - to inform the parties of the need to endorse a proposed access order on the summons and the procedure that applies in that regard;

- to inform the parties of the Commission's preferred practice in relation to the format of documents being produced in response to a summons; to inform parties of the Commission's practice in relation to accessing summoned material produced in an electronic format; and
- to inform Summons recipients and parties of the Commission's practice in relation to returning exhibits and summonsed material.

Serving the Summons

6. The forms of summons to produce, and to attend and give evidence and produce, have been amended to include the Summons recipient's declaration (in relation to whether the documents produced are originals and whether they need to be returned): see new forms 41 and 42 (based entirely on UCPR forms 26A and 27A). The issuing party should provide a copy of the summons when it is served so that the Summons recipient can retain the original summons and forward the copy with the completed declaration to the registry.

7. The issuing party can nominate a convenient return date for the summons on the document filed at the registry, provided that sufficient time is allowed to serve the Summons recipient. The Commission has a summons list every Wednesday at 9.15am during the Commission term. If the summons does not include a nominated return date, the registry will allocate a date.

Endorsement of Access Orders

8. The issuing party must endorse the proposed access order on the summons. If the issuing party does not propose an access order on the summons the following access order will apply:

"The issuing party to have first access for 7 days; thereafter, in the absence of any further application, access to all parties".

9. Where a different proposed access order is sought the issuing party must attach his or her reasons to the summons. If there is a dispute over access the parties must appear on the return date.

10. An order for access includes an order that, where necessary, the documents may be physically inspected and photocopied.

11. Parties are advised that if they consent to the proposed access orders the Commission will generally make the proposed access orders. There is no need for the parties to appear on the return date if all parties consent to the orders sought thereby saving the parties the cost of an attendance.

12. The issuing party must attend on the return date if it has not notified all the parties of the issuing of the summons. The Commission may make costs orders against parties who have not complied with the Rules or this Practice Note.

13. Any party, or the producer, may object to the issuing party about the proposed access order. The issuing party must notify all the other parties of the objection. Parties who wish to contest the proposed access order must appear on the return date. The matter may be determined on that date or remitted to a Member of the Commission for determination on a future date.

14. If there is no objection to the proposed access order at the return of summons, the order will automatically take effect from the day following the return of summons.

Production of summonsed material

15. The UCPR was updated in 2011 in relation to how to comply with a summons to produce. Specific attention is drawn to UCPR rule 33.6(6) and (7).

16. UCPR rule 33.6(6) allows the Summons recipient to produce a copy of documents, unless the summons specifically requires the original documents to be produced. The issuing party should only specify that the original document is required in those special circumstances where the original document may need to be tendered.

17. UCPR rule 33.6(7) allows the issuing party to permit the production of documents in a format that is acceptable to that party. Most Summons recipients who have access to a photocopier will now also have access to a document scanner. Where documents would otherwise be photocopied to respond to a summons it will normally be as convenient, and less costly for the Summons recipient, to scan those documents and save them in an electronic format. If a document already exists in an electronic format it will also be more convenient and less costly to copy that document in an electronic format rather than print it out on paper. It will also normally be more convenient for the issuing party and the other parties to access summonsed documents in an electronic format.

18. To facilitate the production of summonsed documents electronically (rather than paper copies), the Issuing party should indicate to the Summons recipient that production in an electronic format is acceptable. This should particularly be done where a large volume of material is being summonsed. This information for the Summons recipient can be included on the summons in the schedule describing the documents to be produced. It can also be included in a covering letter.

19. If a document has been scanned, is a word processing document or is a photograph or image, a copy of the document should be saved as, or converted to, a PDF file. Generally it will be sufficient for emails to be provided in a PDF file.

20. If the material is in an electronic format which cannot be conveniently saved as a PDF file, such as a database, a sound or a video recording, it is appropriate for a copy of the document to be

provided in the original electronic format. If the original format is not a current or common format then the issuing party should also consider whether a copy in some other electronic format should also be asked for, so that it can be readily accessed by the parties and the Commission.

21. Electronic summonsed documents can be provided on a DVD, a CD or a USB device.

22. Electronic summonsed documents can also be emailed to the registry at irc.registry@courts.nsw.gov.au provided a scanned copy of the summons is also attached to the email. The subject line of the email should state "Producing summonsed documents" and include the case name and number.

Accessing summonsed material produced in an electronic format

23. If an unrestricted order for access is made in relation to summonsed material which has been produced in an electronic format, then, on application by a party entitled to access that material, an electronic copy of the material will be made and provided by the registry.

24. The party applying for access should provide a blank DVD, CD or USB device onto which the copy can be made. In the alternative, upon request, the registry may provide access to the material by sending an email attaching the material to the party applying for access.

25. Access to non-electronic summonsed material will continue to be provided as per the current practice, that is, the material may be copied on the Commission premises unless an order for uplift has been made.

Tendering summonsed material originally produced in an electronic format

26. If directions have not been made to allow the tendering of documents at the hearing in an electronic format, then it is the responsibility of the party intending to tender a document which was originally provided to the registry in an electronic format to provide a printed copy of the document to the Commission at the hearing or to make arrangements for the relevant technology to be available so that the document can be viewed. This requirement may be achieved by including the document in a tender bundle.

Returning exhibits and produced documents

27. Rules 31.16A and 33.10 of the UCPR require the Commission to retain exhibits and summonsed material for specified time frames after the determination of the proceedings, unless the Commission makes a specific order for the return of this material at an earlier date.

28. The Commission's usual practice in relation to exhibits and summonsed material will now be an order when the proceedings are determined that the exhibits and summonsed material be returned forthwith. The Commission will not retain this material unless there is an order by the Member that it remain on the Commission file.

29. When a summons is served, the Summons recipient is asked to complete a declaration stating whether the documents being produced are copies and, if so, acknowledging that they may be destroyed by the Commission when they are no longer required. Summoned documents in an electronic format (produced on a DVD, a CD or a USB device) which have been identified as copies will not be returned to the Summons recipient and will be destroyed (or deleted) by the registry unless the Summons recipient has specifically requested that they be returned.

30. In relation to any exhibits that are returned, those exhibits must be retained intact by the party or person who produced the material until the expiry of the time to file an appeal or until any appeal has been determined. Solicitors should notify their clients of their obligations in relation to this material if it is returned to the clients. If an appeal is filed, the party or persons may be asked to produce the material to the Commission registry for the purposes of the appeal, however, generally, copies held by the appellant can be used for preparing the appeal books.

P M Kite SC, Chief Commissioner
15 February 2018

Practice Note No.32

First Issue Date:

11 February 2021

Re-Issue Date (version 5):

18 December 2023

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

PRACTICE NOTE NO. 32

Issued pursuant to Section 185A of the *Industrial Relations Act 1996* and Section 15 of the *Civil Procedure Act 2005*

USUAL DIRECTIONS REGARDING FILING, LENGTH, PRESENTATION, AND FORMATTING OF DOCUMENTS

1. The purpose of this Practice Note is to facilitate the efficient determination of matters before the Industrial Relations Commission of New South Wales by requiring that documentation filed in the Commission is properly formatted, presented, and limited to a length commensurate with the just, quick and cheap resolution of the real issues in the proceedings.
2. This Practice Note has effect from the date of issue and incorporates aspects of Practice Note 30A dated 15 February 2018, which is rescinded from the date of issue of this Practice Note.
3. Any directions given by the Commission in relation to the filing of evidence and submissions will be taken to be subject to the requirements and limitations set out in Schedule A to this Practice Note, with such modifications (if any) as the Commission directs.
4. The Commission may, on application or on its own initiative, grant a party, on terms determined by the Commission, leave to be excused from compliance with the requirements of this Practice Note. Any application by a party for such leave must be in writing and filed with the Commission no later than seven (7) days prior to the date for filing of that party's evidence and submissions.
5. Nothing in this Practice Note or Schedule A affects, or is intended to affect, the powers or discretion of the Commission in relation to the proceedings.

6. This Practice Note applies to proceedings commenced pursuant to s 174 or s 181E of the *Police Act 1990* (“*Police Act*”) but not to the classes of documents set out in cll 6.1 and 6.2:

6.1. Section 174 applications

- 6.1.1. documents made available to the applicant police officer (“Officer”) pursuant to sub-s 174(5) of the *Police Act*;
- 6.1.2. the notice issued by the Commissioner of Police to the Officer under sub-s 173(5)(a) of the *Police Act*;
- 6.1.3. any response by the Officer provided in accordance with sub-s 173(5)(c) of the *Police Act*; and
- 6.1.4. the Order made by the Commissioner of Police under sub-s 173(2)

6.2. Section 181E applications

- 6.2.1. documents made available to the applicant police officer pursuant to sub-s 181E(3) of the *Police Act* (often referred to as “the Commissioner’s Confidence brief”);
- 6.2.2. the notice issued by the Commissioner of Police to the Officer under sub-s 181D(3)(a) of the *Police Act*;
- 6.2.3. any response by the Officer provided in accordance with sub-s 181D(3)(b) of the *Police Act*; and
- 6.2.4. the Order made by the Commissioner of Police under sub-s 181D(1).

7. This Practice Note does not apply to appeals to the Full Bench.

N J Constant
Chief Commissioner
18 December 2023

SCHEDULE A TO PRACTICE NOTE NO. 32

BEFORE THE INDUSTRIAL RELATIONS COMMISSION
OF NEW SOUTH WALES

**DIRECTIONS REGARDING FILING, LENGTH, PRESENTATION, AND FORMATTING OF
DOCUMENTS**

1. Any witness statement or affidavit must not exceed 50 pages including annexures and/or exhibits.
2. Outline of written submissions must not exceed 10 typed pages.
3. Formatting and presentation of all witness statements, affidavits and submissions must be in typeface that is no smaller in appearance than an Arial font in 11 point size or a Times New Roman font in 12 point size and must be in accordance with cl 4.3 of the Uniform Civil Procedure Rules 2005 which provides:

“4.3 Paper and writing (cf SCR Part 65, rule 2; DCR Part 47, rule 3; LCR Part 36, rule 4)

(1) A document must be on standard A4 paper of durable quality, capable of receiving ink writing.

(2) Subject to the rules—

(a) a document may be one-sided (that is, with writing on one side of each sheet) or two-sided (that is, with writing on both sides of each sheet), but not partly one-sided and partly two-sided, and

(b) the sheets of a document must be securely fastened—

(i) if the document is one-sided, at the top left hand corner, or

(ii) if the document is two-sided, along the left hand side,

without obscuring the writing or the margin, and

(c) a left margin of at least 25 millimetres, and a top margin of 30 millimetres, must be kept clear on each sheet of a document that bears writing, and

(d) the pages of a document (that is, the sides of the sheets that bear writing) must be consecutively numbered.

(3) The spacing between the lines of writing in a document must be at least 3 millimetres.

(3A) The following information in a document must be set out in bold—

(a) the name of the first plaintiff and first defendant in the title of the proceedings,

(b) in the case of a cross-claim, the name of the first cross-claimant and first cross-defendant in the title to the proceedings,

(c) in the case of a notice of motion, the name of the person affected by the orders sought,

(d) in all cases, the name of the person specified in the filing details as the person for whom the document is filed.”

4. All parties must comply with cl 2.5 of the Industrial Relations Commission Rules 2022 which provides:

“2.5 Copies to be filed

Unless the Commission directs differently, the documents filed must include the numbers of copies specified in the following table:

Type of Proceedings	Number of copies
General application	Original plus one copy, unless otherwise required in the approved form
Application for award, contract determination, enterprise agreement or contract agreement	Original plus 1 copy
Application for relief from unfair dismissal	Original plus 1 copy
Dispute notification	Original plus 1 copy
Appeals	Original plus 3 copies
Matters before a Full Bench	Original plus 3 copies, or, if the Full Bench consists of more than 3 members, the same number of copies as members of the Full Bench
Contract of Carriage Tribunal	Original plus 3 copies

Note—

Parties will also need a copy for themselves and, if the document has to be served on other parties, enough copies to serve each party plus an additional copy to attach to an affidavit of service.”

5. In addition to the requirements of cl 2.5 of the Industrial Relations Commission Rules 2022, any document filed for the purposes of an arbitration must also be accompanied by an **electronic copy on the same day**.
6. For the purpose of this Practice Note, 'electronic copy' means:
 - a. in the case of text, Microsoft Word (DOCX), or
 - b. text-searchable Portable Document Format (PDF).
7. Subject to paragraph 8, an electronic copy should be provided on a data storage device such as a USB flash drive which bears the matter number (if available), an abbreviated title of the document and the proceeding, and the name of the lodging party.
8. In respect of matters:
 - a. to which Rule 6.3 of the Industrial Relations Commission Rules 2022 applies (which concerns the filing of electronic copies of awards and award variations); or
 - b. where the Commission has given leave for a document to be filed by email; or
 - c. where the Commission has given leave for an electronic copy to be lodged by email;

the document may be sent by email to IRC.Registry@courts.nsw.gov.au, bearing a subject hearing that includes the number and name of the proceeding and information within the email to indicate the nature of the attached document or documents.

9. Although it is essential that all aspects of this Practice Note are strictly observed, it is of particular importance that the requirements under Rule 6.3 (filing of electronic versions of awards) be complied with within the time specified by the Commission when the award or variation is made, to assist the Industrial Registrar to publish the material on the NSW Industrial Relations website.

INDICATIVE DIRECTIONS

These are indicative directions only. The Commission retains the discretion to make whatever directions it considers appropriate.

Section 100G(2) of the *Industrial Relations Act 1996* requires that at the hearing of a public sector disciplinary appeal, the public sector employer's case is to be presented first. The Commission's directions would reflect that order.

FILE NUMBER/NAME:

STANDARD TIMETABLE

1. The **#applicant #notifier** is to file and serve all written statements to be relied on for each witness, an **#an outline of submissions #a Summary of Case** and any other relevant documentation by 4.00pm on:
2. The respondent is to file and serve all written statements to be relied on for each witness, **# an outline of submissions # Response to Summary of Case** and any other relevant documentation by 4.00pm on:
3. The **#applicant #notifier** is to file and serve any evidence and **# submissions in reply # Reply to Response to Summary of Case** to the respondent's documents by 4.00pm on:
4. The matter is listed for a Compliance Check Hearing before the Registrar on:
5. The matter is listed for hearing/arbitration on:

ADDITIONAL OPTIONAL DIRECTIONS

- # A Summary of Case must not exceed 5 pages (including formal parts) and should summarise, plainly, concisely and directly:
 - a) the important facts giving rise to the claim/dispute;
 - b) the relief sought from the Commission (and against whom);
 - c) the primary legal grounds for the relief sought; and
 - d) the alleged harm suffered by the applicant/notifier, including, where applicable, the quantum of any compensation sought.
- # A Response to Summary of Case must not exceed 5 pages (including formal parts) and should summarise, plainly, concisely and directly:
 - a) the facts in dispute and those upon which the respondent relies;
 - b) why the relief sought from the Commission should not be granted; and
 - c) identify any issue in dispute.
- # The parties are directed to confer and to file an Agreed Statement of Agreed and Disputed Facts and Issues by 4.00pm on:

- # Without leave of the Commission no party will be permitted to rely on any evidence which is filed later than the time directed in this timetable.
- # The Registrar is to make arrangements for an interpreter to attend the hearing/arbitration.

USUAL DIRECTIONS

1. All evidence in the proceedings will be given by way of signed written statements and other relevant documents filed and served by a party.
2. The parties must include in or with their written statements all matters and documents on which they rely or which they allege are relevant to the proceedings.
3. Without the leave of the Commission, cross examination of a witness will not be allowed unless, at least 7 days prior to the hearing/arbitration, notice has been given to the opposing party that a witness is required for cross-examination.
4. Without the leave of the Commission, no summons for the production of documents may be made returnable less than 3 weeks prior to the date set for the hearing/arbitration of the matter.

NOTES

The Registrar conducts a list each Wednesday to deal with summonses for production.

Self-represented parties must obtain leave to issue summonses: Rule 7.3 of the Uniform Civil Procedure Rules 2005.

Practice Note 32 sets out the Commission's requirements in relation to the filing, length, presentation and formatting of documents filed with the Commission.

Date Directions and Listing made:

VEXATIOUS PROCEEDINGS ACT 2008

Notification of Orders Concerning Vexatious Litigant

John Patrick McGettigan

On 22 December 2023, His Honour Justice Richmond in Supreme Court proceedings *McGettigan v Estate of the Late Beverley Teresa McGettigan* (Case No 2023/192712) made orders comprising of the following parties:

John Patrick McGettigan (Plaintiff)
Estate of Beverley Teresa McGettigan (First Defendant)
Glenn Patrick Coulter (Second Defendant)
Rhonda Anne Coulter (Third Defendant)

His Honour made Orders under the Vexatious Proceedings Act 2008 (NSW) as follows:

1. The plaintiff's statement of claim in proceedings 2023/192712 is struck out pursuant to r 14.28 of the Uniform Civil Procedure Rules 2005 (NSW).
2. The plaintiff's motions filed on 28 June 2023 and 27 October 2023 are dismissed.
3. Pursuant to s 8(7)(a) of the Vexatious Proceedings Act 2008 (NSW) proceedings 2023/192712 and any other ongoing proceedings brought by the plaintiff against the second or third defendants are stayed.
4. Pursuant to s 8(7)(b) of the Vexatious Proceedings Act 2008 (NSW), the plaintiff, John Patrick McGettigan, is prohibited from instituting proceedings in New South Wales against:
 1. Rhonda Anne Coulter or her spouse; or
 2. Glen Patrick Coulter or his spouse,without first obtaining leave of this Court.
5. Pursuant to s 8(7)(b) of the Vexatious Proceedings Act 2008 (NSW), the plaintiff, John Patrick McGettigan, is prohibited from instituting any proceedings in New South Wales against any person in relation to:
 1. any claims relating to the estate of Brian McGettigan;
 2. any claims relating to the estate of Beverley McGettigan; or
 3. any claims relating to the property known as "Christmas Lodge" situated at 284 Tennyson Road, Tennyson, New South Wales,without first obtaining leave of this Court.
6. The plaintiff pay the defendants' costs of the proceedings as agreed or assessed.
7. Liberty to the defendants to apply for a variation of the costs order within 7 days of the date of this order.

The reasons for judgment are available on NSW Caselaw: **MNC - In the [2023] NSWSC 1641**