



25 August 2016

Committee Secretary  
Senate Standing Committees on Education and Employment  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Committee Secretary

**Request to correct responses to questions on notice EMSQ16-00218 and EMSQ16-000219**

The Fair Work Commission is seeking to correct its response to questions on notice EMSQ16-00218 and EMSQ16-000219.

Question EMSQ16-00218 asked the Commission:

*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?*

The Commission provided the following response:

**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.

Attachment A is the instrument of delegation of powers for general protections disputes dated February 2015. The Commission seeks to correct its response by attaching the correct delegation dated the 24<sup>th</sup> day of July 2015.

Question EMSQ16-000219 asked:

*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.*

The Commission provided the following response:

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.

The Commission seeks to correct its response to amend the attachment referred to in point 1 (Attachment A) to provide a copy of the Conciliator Report as referred to in the Commission's response to EMSQ16-000219.

The Commission would like to apologise for any inconvenience this has caused.

Yours sincerely

A handwritten signature in black ink that reads "Louise Clarke". The signature is written in a cursive, flowing style.

Louise Clarke  
Director, Client Services  
Fair Work Commission