



## PRACTICE NOTE 17A

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### INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

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

#### UNFAIR DISMISSAL APPLICATIONS

##### COMMENCEMENT

1. This Practice Note shall commence on the date of issue.

##### APPLICATION

2. This Practice Note applies to unfair dismissal (including threatened dismissal) applications made under s 84 of the *Industrial Relations Act 1996* (NSW) (**the Act**).

##### COMMENCEMENT OF PROCEEDINGS

3. An unfair dismissal application is commenced by filing [Form 7A – Unfair Dismissal](#) using the Online Registry. Alternatively, an unfair dismissal application can be filed in person or by post in accordance with r 2.5 of the *Industrial Relations Commission Rules 2022* (NSW) (**the Rules**). An unfair dismissal application can only be filed by email if it cannot be filed using the Online Registry.

##### RESPONSE TO UNFAIR DISMISSAL APPLICATION

4. The employer response to an unfair dismissal application must be filed at least 48 hours before the commencement of the first listing of the application before the Commission.
5. The response to an unfair dismissal application should be made by filing [Form 7B – Employer's response to unfair dismissal](#) in the Online Registry. Alternatively, the response to an unfair dismissal application can be filed in person or by post in accordance with r 2.5 of the Rules. The response to an unfair dismissal application can be filed by email only if it cannot be filed using the Online Registry.

##### PROCEDURAL APPLICATIONS

6. In this Practice Note to make “a written application” means to make an application pursuant to UCPR Part 18 or to make a request in writing addressed to the Industrial Registrar sent to [IRC.Registry@courts.nsw.gov.au](mailto:IRC.Registry@courts.nsw.gov.au) or by post.

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##### REVISION HISTORY

First Issue Date: 9 October 2019

Re-issue Date: 14 August 2025

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7. A written application can only be made after a party has informed the other party of the application and sought their agreement to the request in the application.
8. A written application must:
  - a. identify the matter number;
  - b. set out in succinct terms what is requested;
  - c. provide short reasons; and
  - d. state the other party's view of the application.
9. All written communications to the Industrial Registrar must be copied to the other party at the time they are sent.
10. A written application that does not comply with these requirements will ordinarily be rejected and required to be resubmitted.
11. Some procedural applications need to be supported by evidence and require a formal determination. Where that is the case, the Commission will make directions for the application to be heard and determined. That can include requiring the applicant to file a notice of motion with a supporting affidavit where that was not done.

#### **ALLOCATION OF LISTING DATE FOR CONCILIATION**

12. An unfair dismissal application will be listed for conciliation before a member of the Commission within 14 days after the application is filed.
13. A request to delay or change the date or time set for the conciliation requires a written application and will be granted only on clear and compelling grounds. The consent of the other party to the adjournment will be a factor taken into account in the determination of such an application but is not determinative.

#### **LISTING LOCATION AND AVL REQUESTS**

14. The parties will be sent a notice of listing with the time and location of the conciliation.
15. The conciliation of an unfair dismissal application is ordinarily listed before the Commission at Level 10, 10 Smith Street, Parramatta. Where the parties are located in the Newcastle region a conciliation proceeding may be listed before the Commission in Newcastle in the Local Court building at 343 Hunter Street, Newcastle (usually in Court 1.1 or 1.2). A conciliation may also be listed before the Commission at 47 Bridge Street, Sydney.
16. The Commission prefers to have conciliations listed in person, however where one or more parties are located in a regional or remote area a conciliation may be listed to occur via audio/visual link (**AVL**).
17. A written application may be made for the conciliation to be listed via AVL. Such an application is to be made by the applicant at the time the unfair dismissal application is filed and by a respondent as soon as practicable.

## CONCILIATION

18. Parties, legal practitioners, industrial agents and others who appear before the Commission should do all they can to facilitate the just, quick and cheap resolution of matters before the Commission.
19. Applicants are to attend the conciliation whether or not they are represented. 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.
20. The Commission expects that the parties or their representatives will 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.
21. At the conciliation parties and their representatives will be expected to:
  - a. identify the real issues in dispute;
  - b. express the basis on which they are willing to resolve the matter; and
  - c. use their best efforts to resolve the issues in dispute.
22. Ordinarily there is only one conciliation. A Commission member may list further conciliations at their discretion.
23. If an applicant fails to appear at a conciliation and has not provided a clear and compelling reason for their non-attendance, this may result in the matter being dismissed.

## PRELIMINARY ISSUES

24. A preliminary issue is a threshold question that a party asserts that the Commission should determine before the substantive merits of the matter can be considered. They include issues such as whether the Commission has jurisdiction, whether an applicant has standing to bring the matter, whether a party should be joined or removed, whether an application is out of time, or whether statutory preconditions have been met. A preliminary issue may be raised by a party or identified by the Commission.
25. A respondent in their response, or any party in their written application, may indicate that they do not object to conciliation taking place prior to the hearing of a preliminary issue.
26. In deciding whether a preliminary issue will be determined prior to conciliation, the Commission member will consider the overriding objective of the just, quick and cheap resolution of the real issues in dispute and the interests of justice.
27. Upon deciding that a preliminary issue needs to be determined the Commission will set a date to hear that question and issue directions. The Commission can, however, determine that a preliminary question be determined at the same time as the substantive issues in the matter.

## **APPLICATIONS FILED OUT OF TIME**

28. An unfair dismissal application must be made not later than 21 days after the dismissal of the employee. However, the Commission has a discretion to accept an application out of time having regard to the circumstances set out in s 85(3) of the Act.
29. The Commission will make directions for the application to accept the unfair dismissal application out of time to be heard and determined and may determine it be heard at the same time as the substantive issues.
30. In determining whether to conduct a conciliation before or after determining whether to accept an application out of time the Commission will have regard to the position of the respondent. The respondent should indicate in its response:
  - a. whether or not they consent to the Commission accepting the application out of time; and
  - b. if they do not consent, whether the out of time application should be determined before or after conciliation.

## **DIRECTIONS FOR ARBITRATION**

31. At the conclusion of an unsuccessful conciliation the Commission will ordinarily set a date for the arbitration hearing and make directions for evidence and submissions to be filed. The Commission will make the "Usual Directions", which can be found on the Commission's website, unless there is good reason to make different directions. Parties should attend the conciliation with their preferred dates for an arbitration hearing.
32. If a party wishes to exercise its right under s 173 of the Act to have a different member of the Commission conduct the arbitration hearing, such an application should be made at or immediately after the conclusion of the conciliation. A failure to do so does not prevent a later application being granted. Ordinarily, the directions made at the conclusion of an unsuccessful conciliation will not be vacated if the matter is allocated to a different member of the Commission pursuant to s 173 of the Act.

## **FURTHER CONCILIATION**

33. A request for further conciliation can be made at any time by written application. If the request is made during arbitration it can be made orally.
34. Usually, the Commission will only accede to the request for a further conciliation if the parties consent to the application.
35. Further conciliation will usually be conducted by the Commission member who presided in respect of the first conciliation.
36. The listing of a 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.

## **REQUEST TO VARY DIRECTIONS**

37. Parties are required to comply with any directions made by the Commission.

38. A request to vary a direction must be made by a written application prior to the date for compliance and must strictly comply with the requirements for a procedural application at paragraphs [6]-[11] above. It must also address whether the hearing dates will be impacted by the proposed amendment. A contested application to vary a direction that will impact on hearing dates must be made by notice of motion with supporting evidence.

#### **APPLICATIONS TO VARY ARBITRATION HEARING DATES**

39. An application to vary arbitration hearing dates must be made by notice of motion, supported by evidence, and must strictly comply with the requirements for a procedural application at paragraphs [6]-[11] above. It will be granted only on clear and compelling grounds.
40. In the event that a party fails to attend the arbitration, the matter may be heard and determined in the absence of that party.

**JUSTICE I TAYLOR**  
**PRESIDENT**  
**14 AUGUST 2025**