



PRACTICE NOTE NO 37

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

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

WORK HEALTH AND SAFETY DISPUTES

PURSUANT TO DIVISION 7A OF PART 5 OF THE *WORK HEALTH AND SAFETY ACT 2011*

COMMENCEMENT

1. This Practice Note will commence on 1 June 2026.

APPLICATION

2. This Practice Note applies to all Work Health and Safety Disputes (WHS Disputes) pursuant to Division 7A of Part 5 of the *Work Health and Safety Act 2011* (WHS Act) from the date of commencement, regardless of when the proceedings commenced.
3. The purpose of this Practice Note is to set out the manner in which notice of WHS Disputes will be received and published and the proceedings listed and determined

COMMENCEMENT OF PROCEEDINGS

4. A WHS Dispute may be notified by filing [Form 65 – Notification of a WHS Dispute](#) by email to IRC.Registry@courts.nsw.gov.au. Alternatively, a Form 65 may be filed in person or by post in accordance with r 2.5 of the Industrial Relations Commission Rules 2022 (NSW) (the Rules). It is intended that the Notification of a WHS Dispute will be able to be filed using the Online Registry, and once that is possible it can only be filed by email if, by reason of system error, it cannot be filed using the Online Registry.
5. In accordance with section 102C(3) *WHS Act*, the Industrial Registrar must immediately publish the WHS Dispute notice on the NSW industrial relations website.
6. Nothing should be attached to a WHS Dispute Notice. In circumstances where the Notifier wishes to provide documents that are relevant to the conciliation of the WHS dispute, those documents should be provided after the WHS Dispute Notice has been filed, either by separate correspondence or by filing them separately on the Online Registry. Documents provided in this way will not be published on the NSW industrial relations website.
7. Pursuant to s 102C(4) of the *WHS Act* if a relevant union for a worker affected by the WHS matter is not named as a party to the dispute in the notice, the union may notify the Industrial Registrar, in writing, that the union wants to participate in the resolution

of the dispute. The Union will thereafter be taken to be a party to the dispute: s 102C(5).

ALLOCATION OF A LISTING DATE

8. After a Notification of a WHS Dispute has been filed it will be listed for conciliation, usually within 1-7 days.
9. A WHS Dispute may be listed on the same day it is filed, if the dispute is urgent.
10. If a dispute is urgent, the basis of the urgency should be clearly articulated at the top of the section titled 'Description of dispute and relief sought'. Any views of the other party or parties as to the urgency should also be included.

CONCILIATION

11. Pursuant to s 166(2) of the *Industrial Relations Act 1996* a party is not entitled to be represented at the conciliation by a person who is an Australian legal practitioner or an agent who is an industrial agent without leave of the Commission.
12. Parties, legal practitioners, industrial agents and others who appear before the Commission shall do all they can to facilitate the fair and prompt disposal of matters before the Commission.
13. Parties are expected to have a person present at the conciliation with sufficient authority to make decisions to enable the resolution of the matter.
14. Parties and their representatives should:
 - a. identify the real issues in dispute prior to the conciliation;
 - b. establish parameters in which they are willing to resolve the matter at 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;
 - c. 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
 - d. 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.
15. Ordinarily, there should be one conciliation. A Commission member may permit further conciliation conferences at their discretion.

DIRECTIONS FOR ARBITRATION

16. When the Commission determines that all reasonable attempts have been made to achieve a conciliated resolution, the Commission will ordinarily set a date for an 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. This includes the dates of any legal representatives who will appear in the matter.
17. If a party wishes to exercise its right under s 173 of the *Industrial Relations 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.
18. If a party wishes to raise a preliminary issue, such as a jurisdictional challenge, it should be raised by way of a Notice of Motion with an affidavit in support.
19. 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.

JUSTICE I TAYLOR
PRESIDENT
1 JUNE 2026

AMENDMENT HISTORY

1 June 2026: This Practice Note was first issued on 1 June 2026.