



## PRACTICE NOTE 23A

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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)

#### PUBLIC SECTOR DISCIPLINARY APPEALS

##### COMMENCEMENT

1. This Practice Note commences on the date of issue.

##### APPLICATION

2. This Practice Note applies to proceedings before the Commission under Part 7 of Chapter 2 of the *Industrial Relations Act 1996* (**the Act**).

##### COMMENCEMENT OF PROCEEDINGS

3. A public sector employee who wishes to appeal a decision of the kind listed in s 97(1) of the Act may commence a public sector disciplinary appeal by filing [Form 4A - Notice of appeal - Public sector discipline](#) in the Online Registry. Alternatively, a [Form 4A - Notice of appeal - Public sector discipline](#) can be filed in person or by post in accordance with r 2.5 of the *Industrial Relations Commission Rules 2022* (NSW) (**the Rules**). The [Form 4A - Notice of appeal - Public sector discipline](#) can be filed by email, to [IRC.Registry@courts.nsw.gov.au](mailto:IRC.Registry@courts.nsw.gov.au), only if the form cannot be filed using the Online Registry.
4. Notice of a disciplinary appeal must be filed within 28 days after the employee is notified of the decision against which the appeal is to be made.
5. The Commission has no power to hear public sector disciplinary appeals which are filed outside this timeframe.

##### RESPONSE TO A PUBLIC SECTOR DISCIPLINE APPLICATION

6. The employer's response to a Notice of a disciplinary appeal must be filed within 7 days of being served with a Notice of appeal – Public sector discipline.
7. The employer's response to a Notice of a disciplinary appeal should be made by filing [Form 4B - Employer's response - Public sector discipline](#) using the Online Registry. Alternatively, [Form 4B - Employer's response - Public sector discipline](#) can be filed in person or by post in accordance with r 2.5 of the Rules. The [Form 4B - Employer's response - Public sector discipline](#) can be filed by email, to

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##### REVISION HISTORY

First Issue Date: 9 October 2019

Re-issue Date: 14 August 2025

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[IRC.Registry@courts.nsw.gov.au](mailto:IRC.Registry@courts.nsw.gov.au), only if the form cannot be filed using the Online Registry.

### PROCEDURAL APPLICATIONS

8. In this Practice Note to make “a written application” means to make an application pursuant to Part 18 of the *Uniform Civil Procedure Rules 2005* (NSW) 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.
9. 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.
10. 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.
11. All written communications to the Industrial Registrar must be copied to the other party at the time they are sent.
12. A written application that does not comply with these requirements will ordinarily be rejected and required to be resubmitted.
13. 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 a notice of motion with a supporting affidavit to be filed where that was not done.

### ALLOCATION OF LISTING DATE FOR CONCILIATION

14. Public sector disciplinary appeals will be listed for conciliation before a member of the Commission within 21 days after the Notice of a disciplinary appeal is filed.
15. 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 LOCATIONS AND AVL REQUESTS

16. The parties will be sent a notice of listing with the time and location of the conciliation.
17. The conciliation of public sector disciplinary appeal is ordinarily listed before the Commission at Level 10, 10 Smith Street, Parramatta. Where the parties are located in the Newcastle region, a conciliation 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.

18. The Commission prefers to have conciliations listed in person, however where the parties are all located in a regional area a conciliation may be listed to occur via audio/visual link (**AVL**). Such an application is to be made by the appellant at the time the public sector disciplinary appeal is filed and by the respondent as soon as practicable.

## **CONCILIATION**

19. 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.
20. Appellants 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.
21. 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.
22. At the conciliation, parties and their representatives will be expected to:
  - a. identify to the Commission the real issues in dispute;
  - b. express to the Commission the basis on which they are willing to resolve the matter; and
  - c. use their best efforts to resolve the issues in dispute.
23. Ordinarily there is only one conciliation. A Commission member may list further conciliations at their discretion.
24. If an appellant 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**

25. 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 appellant has standing to bring the matter, 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.
26. 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.
27. In deciding whether a preliminary issue will be determined prior to conciliation, the Commission member will consider the overruling objective of the just, quick and cheap resolution of the real issues in dispute and the interests of justice.

28. Upon deciding that a preliminary issue needs to be determined the Commission will set a date to hear that question and issue directions.
29. The Commission can, however, determine that a preliminary question be determined at the same time as the substantive issues in the matter.

#### **DIRECTIONS FOR ARBITRATION**

30. 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. Unless there is a good reason to make different directions, the Commission will make directions similar to the "Usual Directions" which can be found on the Commission's website. However, as the respondent is required by s 100G(2) of the Act to present its case first, it will be directed to file its material first, the appellant will be required to respond to this material, with the respondent having an opportunity to reply to the appellant's material, ie the usual sequence is reversed. Parties should attend the conciliation with their available dates for an arbitration hearing.
31. If a party wishes to exercise its right under s 100E(2) 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 but may result in arbitration hearing dates being vacated impeding the Commission's ability to provide a just, quick and cheap resolution of the proceedings. 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 100E(2) of the Act.

#### **FURTHER CONCILIATION**

32. 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.
33. Usually, the Commission will only accede to the request for a further conciliation if the parties consent to the application.
34. Further conciliation will usually be conducted by the Commission member who presided in respect of the first conciliation.
35. 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.

#### **REQUEST TO VARY DIRECTIONS**

36. Parties are required to comply with any directions made by the Commission.
37. 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 [8]-[13]. 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**

38. An application to vary hearing dates must be made by notice of motion, supported by evidence, and must strictly comply with the requirements for a procedural application at [8]-[13]. It will be granted only on clear and compelling grounds.
39. 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**