

WAGE AND SUPERANNUATION RECOVERY APPLICATIONS

PN 7

22 July 2003

PRACTICE NOTE

This Practice Note operates subject to the unfettered and overriding discretion of the Member of the Commission who has been allocated a Wage and/or Superannuation Recovery Application.

OBJECTIVE

The objective of this Practice Note is to provide guidance on certain procedural issues associated with applications made under s. 278 Power to recover unpaid wages and superannuation contribution etc. of the *Industrial Relations Act 1999*.

SCOPE

This Practice Note is to be read in conjunction with:

- s. 278 of the *Industrial Relations Act 1999*; and
- rules 62, 63 and 73 of the *Industrial Relations (Tribunals) Rules 2000*.

PROCEDURE

1. In ordinary circumstances the Vice President will allocate an application filed under s. 278 of the Act to a Member of the Commission for conference.
2. A conference may not be allocated in the following circumstances:
 - (i) where an applicant (or the applicant's agent) has had discussions with the respondent prior to the application being filed and the applicant (or the applicant's agent) believes a conference before the Commission is unlikely to settle the matter; or
 - (ii) where discovery is required in order to finalise the claim.

In either of these circumstances, the applicant or the applicant's agent may request the conference be waived. The request is to be addressed in writing to the Industrial Registrar, briefly state the reason for it and must be submitted at the time the application is filed. The Vice President will then decide whether to allocate the application for conference or send it to Call Over.

3. The following persons are required to attend the conference:
 - the applicant;
 - the applicant's agent (not a lawyer) (see s. 319 of the Act);
 - where an industrial organisation of employees is the applicant, the member on whose behalf the application is made;
 - where the applicant is an Inspector of the Department of Industrial Relations, the Inspector who has carriage of the application. It is not necessary for the Inspector who investigated the claim to attend provided the Inspector who has carriage of the matter is fully briefed;
 - the respondent, that is, a person who is authorised to make decisions for and on behalf of the respondent;
 - the respondent's agent (not a lawyer) (see s. 319 of the Act).
4. A conference of the parties conducted in relation to a s. 278 application will not generally be recorded on transcript.
5. Admissibility into evidence of communications made and/or documents produced at conference will be on the same basis as Practice Note No. 3 (PN3) "Admissibility of Evidence of Matters raised in s. 75 Conference".
6. Where an application is settled at a conference, the settlement may be recorded:
 - in a private deed of settlement to be signed by both parties; or
 - on the internal form used by the Commission; or

- as consent orders at the request of a party to the Member chairing the conference. A consent order will only issue in circumstances where the parties prepare a draft written order, at the conclusion of the conference chaired by a Member of the Commission, and that draft written order is signed by all parties.
7. A Member will advise the Vice President of any application that is not settled at conference. The application will then be listed on the next available Call Over.
 8. An applicant who wishes to consider the applicant's position after the conference or who does not wish the matter to immediately proceed must so notify the Member at the conclusion of the conference. The application will then not be listed for Call Over until written advice is received from the applicant.
 9. At the Call Over, the Vice President will issue directions about the conduct of the matter including the dates of hearing. The directions must be complied with.

EX PARTE HEARINGS

1. Where a respondent does not attend the scheduled hearing of the s. 278 application and service has been proved, an applicant may request the application be heard *ex parte* pursuant to r. 62 of the Rules.
2. In such circumstances, the application must contain sufficient particulars to enable the Member to grant the application.
3. It will not be necessary for the Member to have a deponent of an affidavit give oral evidence unless the Member requires further information or clarification of matters raised in the affidavit.
4. Where statements of evidence are provided, the person who made the statement will be required to swear the contents of the statement at the hearing. Oral evidence will not be required unless the Member requires further information or clarification of matters raised in the statement of evidence.
5. Where an application has been heard in the respondent's absence, the respondent may apply to the Commission to rehear the matter in accordance with r. 63 of the Rules.

WAGE RECOVERY CLAIMS AND AWARD INTERPRETATIONS

An application for the recovery of wages may involve an interpretation of an award. Where a Member considers that the interpretation being contended for could disturb the accepted interpretation of the Award, major Award parties may be heard by the Member in a manner so determined by the Member. In deciding whether to hear from the major Award parties, the Commission Member may take into account such factors as the time and cost implications for the parties to the s. 278 application.

This Practice Note will be effective as and from 15 August 2003.

Dated 22 July 2003.

D.M. LINNANE
Vice President.