



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: ELC/GUel:1091323

22 February 2016

Ms Bernadette O'Neill
General Manager
Fair Work Commission
PO Box 1994
Melbourne VIC 3001

By email: amod@fwc.gov.au

Dear Ms O'Neill,

Draft Practice Note – Orders to attend and orders to produce

The Law Society of NSW appreciates the opportunity to comment on draft *Practice Note – Orders to attend and orders to produce* ("Practice Note").

The Law Society has reviewed the Practice Note and makes the following comments.

Orders to attend and orders to produce

Paragraph 15 of the Practice Note refers to requests for orders to attend. The Law Society suggests that the Practice Note be amended to require that the requesting party provide concise reasons why the order is sought. That is, why the attendance at the conference or hearing by the person to whom the order will apply will assist in the resolution of the matter.

Paragraphs 20 and 33 refer to serving the order. The Law Society suggests that the third sentence in this paragraph be amended to replace the word "should" with "must". If the Fair Work Commission ("Commission") is of the view that the word "must" cannot be included in the Practice Note because the service of other parties is not required by Rules 53 and 54 of the *Fair Work Commission Rules 2013* (Cth) ("Rules"), the Law Society suggests that consideration be given to amending the Rules.

Including the word "must" in the Practice Note or amending the Rules to require an order to be served on any other parties to the matter would create greater transparency for the parties and avoid situations where parties find out just prior to the hearing that certain people have been ordered to give evidence or produce documents.

Paragraph 38 refers to the inspection of copies of documents produced to the Commission. The Law Society considers that it would assist all parties in a matter, not just the requesting party, if they were to be notified by the Commission when documents have been produced.

Thank you for considering this submission. If you have any queries please contact Emma Liddle, Policy Lawyer at emma.liddle@lawsociety.com.au or on (02) 9926 0212.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Gary Ulman', with a small dot at the end.

Gary Ulman
President