



THE LAW SOCIETY  
OF NEW SOUTH WALES

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2 April 2013

Fair Work Commission  
GPO BOX 1994  
MELBOURNE VIC 3001

Email: [amod@fwc.gov.au](mailto:amod@fwc.gov.au)

Dear Sir/ Madam,

**Draft Practice Note 1/2013: Appeal proceedings**

I am writing to you at the request of the Law Society's Employment Law Committee ("Committee").

The Committee is pleased to have the opportunity to review draft *Practice Note 1/2013: Appeal proceedings* issued by the Fair Work Commission on 13 March 2013 ("draft Practice Note").

The Committee strongly supports the provision of such practice notes to assist practitioners in this area and encourages the Commission to consider issuing further practice notes in the future.

In reviewing the draft Practice Note, the Committee suggests consideration be given to the following changes which would in the Committee's view, further enhance the utility of the document:

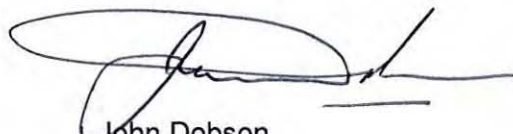
1. The Committee suggests that the flow diagram on page 8 at paragraph 48 could be moved to the beginning of the draft Practice Note. Each of the steps in the appeal process could then be numbered (and possibly colour coded) and discussed by reference to the flow diagram. The sub-headings used could refer back to the flow diagram when explaining the steps in further detail so that readers can easily consider each step in the context of the overall process. The Committee suggests this will enhance the structure of the draft Practice Note and make it easier to navigate.
2. There are several references to service in the draft Practice Note (for example in paragraphs 24, 44 and 47, and Attachment 1). The Committee suggests that it would be useful in these paragraphs to include a reference to Rule 9 ("How service is effected") of the *Fair Work Australia Amendment Rules 2012 (No.1)* which sets out in detail the requirements for the various ways in which service may be validly effected. The Committee notes that these Rules are likely to be amended to become the Fair Work Commission Rules 2013 and Rule 9 is likely

to be retained. Alternatively the draft Practice Note itself could provide further details regarding valid means of service.

3. The Committee suggests that the Stay Orders section (paragraphs 28 to 30) could be improved by inserting an initial paragraph which defines and explains stay orders. Paragraph 29 could also be broken down into smaller and more sequential paragraphs. The section should include a paragraph providing information on the different forms of stay orders available and the various conditions that may be included in a stay order. Another paragraph could detail the types of matters which would ordinarily support an application for a stay order. It would also be very helpful to detail the types of matters that would usually support a challenge to a stay order. This would give practical guidance as to how the Commission would normally make decisions regarding applications for stay orders.
4. The Other directions section (paragraph 49) could also be expanded to include an example or common circumstances where other directions are often made. This will assist practitioners in understanding where an application for varying the standard directions might be appropriate.

Should you wish to discuss any of the matters raised in this letter please contact Gabrielle Lea, Policy Lawyer for the Employment Law Committee by email to [gabrielle.lea@lawsociety.com.au](mailto:gabrielle.lea@lawsociety.com.au) or on (02) 9926 0375.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Dobson', with a long horizontal flourish extending to the right.

John Dobson  
**President**