

ARBITRATION PRACTICE NOTE

Consent orders seeking adjournment or re-listing of hearings

Introduction


1. The Workers' Compensation Arbitration Service has noticed an increase in parties (or their representatives) filing applications for consent orders requesting that hearings be vacated, adjourned or re-listed. These requests for orders frequently lack explanation as to why such orders are requested.
2. There is no guarantee that consent orders seeking to vacate, adjourn or re-list a hearing will be made by the Arbitrator especially where the Arbitrator is not informed of the reasons why the orders are sought.
3. This practice note sets out the expectations of the Arbitration Service in relation to consent orders requesting that hearings be vacated, adjourned or re-listed and the Arbitration Service's response to receiving such requests for orders.

Practice and procedure relating to consent orders

4. In order to assist the efficient administration of the Arbitration Service, the following procedures should be adopted where parties file applications for consent orders requesting to vacate, adjourn or re-list a hearing:
 - (a) The party filing the consent order should provide an explanation why the parties request the hearing be vacated, adjourned or re-listed and include the combined unavailable dates of the parties to assist the Arbitrator in accommodating the parties' request.
 - (b) Such information should be provided in a separate document (i.e. a cover letter) and should not form part of the "orders sought" to be executed by the Arbitrator.
5. For the avoidance of doubt, explanations as to why an order is sought need not be lengthy or elaborate but must be sufficient to allow an Arbitrator to form a view as to the merits of the proposed order and as to how the matter can be best progressed. Where consent orders are sought due to the unavailability of a representative, the explanation ought to explain why the representative is unavailable especially where the hearing has been listed with regard to the parties' known unavailable dates.
6. Provision of such explanation does not guarantee execution of the consent order but better allows an Arbitrator to form a view as to whether the order ought to be issued at the request of, and in the absence of, the parties.
7. Reiteration of the mere fact that the parties consent to the order sought is not sufficient explanation.
8. This practice note does not apply to consent positions that parties may reach in the course of a hearing as the Arbitrator will then have the ability to seek an explanation direct from the parties. Rather, this practice note is intended to apply to written applications for orders by consent filed with the Arbitration Service that are determined in the absence of the parties.

Consent orders received without explanation as to why the order is sought

9. Applications for consent orders seeking to vacate, adjourn or re-list a hearing that are received without an explanation as to why the parties seek such orders may result in the:
- (a) application for an order being rejected at the time of filing (rule 13);
 - (b) matter being called on at short notice for the parties to show cause why the orders ought to be granted; or
 - (c) application for consent orders being refused and the matter proceeding at the scheduled time.



The image shows a handwritten signature in blue ink, which appears to be 'Sam Nunn', written over a circular stamp. The stamp contains the text 'WORKERS' COMPENSATION ARBITRATION SERVICE' around the perimeter and 'WEST AUSTRALIA' at the top.

Sam Nunn
Registrar
Workers' Compensation Arbitration Service
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