

Practice Note No.21A

Issue Date:

15 February 2018

Replacing Practice Note 21

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

PRACTICE NOTE No. 21A

Pursuant to Section 185A of the Industrial Relations Act 1996 and Section 15 of the Civil Procedure Act 2005

Disclosure of Experts Reports and Medical and Hospital Reports

1. This Practice Note applies to any proceedings in which the Commission, on the application of a party or of its own motion, directs that it is to apply.
2. This Practice Note has effect from the re-issue date.

3. Definitions.

In this Practice Note

(a) ***expert's report*** means a statement by an expert in writing which sets out the expert's opinion and the facts on which the opinion is formed and which contains the substance of the expert's evidence which the party serving the statement intends to adduce in chief at the hearing,

(b) ***hospital report*** means a statement in writing concerning a patient made by or on behalf of a hospital which the party serving the statement intends to adduce in evidence in chief at the hearing,

(c) ***medical report*** means a statement in writing concerning a patient made by or on behalf of a registered medical practitioner which the party serving the statement intends to adduce in evidence in chief at the hearing.

4 Procedure

4.1 Unless the Commission otherwise orders, in proceedings to which this Practice Note applies, each party in the proceedings must, at least 21 days before the date set down for hearing, serve experts' reports, medical reports and hospital reports on each other party who has an address for service in the proceedings.

4.2 An application to the Commission for an order under clause 4.1 (other than an order solely for abridgment or extension of time) may be made without serving notice of the motion.

4.3 In proceedings to which this Rule applies, except with the leave of the Commission or by consent of the parties:

(a) the oral expert evidence in chief of any expert is not admissible unless that evidence is covered by the expert's report served in accordance with this Practice Note, and

(b) neither an expert's report nor a medical or hospital report is admissible when tendered under section 63 or section 64 or section 69 of the Evidence Act 1995, unless it has been served in accordance with this Practice Note.

4.4 For the purpose of clause 4.3 of this Practice Note, evidence is covered by a report if the report contains the substance of the matters sought to be adduced in evidence.

5. Expert's report admissible at hearing

5.1 Where an expert's report is served in accordance with this Practice Note or an order is made under clause 4.1, the report is admissible as evidence of the expert's opinion and, where the expert's direct oral evidence of a fact upon which the opinion was formed would be admissible, as evidence of that fact, without further evidence, oral or otherwise.

5.2 A party may, unless the Commission otherwise orders, not later than 7 days before the date set down for hearing, require the attendance for cross-examination of the expert.

5.3 The parties may not by consent abridge the time fixed by or under clause 5.2

5.4 A requirement under clause 5.2 must be made to the party who served the report.

5.5 Where the attendance of an expert is required under clause 5.2, the expert's report must not be tendered or otherwise used unless the person attends or is dead or the Commission grants leave to use it.

5.6 Where an expert attends pursuant to a requirement under clause 5.2, the party using the report may re-examine that expert.

P M Kite SC
Chief Commissioner
15 February 2018