



PRACTICE NOTE 8 OF 2021

Concurrent expert evidence

Introduction

This Practice Note 8 of 2021 replaces Practice Note 1 of 2006, issued on 28 June 2006.

1. Practice Note 8 of 2021 is issued by The Western Australian Industrial Relations Commission (**the Commission**) to provide guidance in relation to the process adopted by the Commission when dealing with concurrent expert evidence.
2. In accordance with s 113(1) of the *Industrial Relations Act 1979* and reg 39(3) of the *Industrial Relations Commission Regulations 2005*, Practice Note 8 of 2021 is effective 14 days after the date of its publication in the Western Australian Industrial Gazette, being 23 March 2021, and remains in force until such time as it is replaced.

Practice of Commission

3. Where more than one expert witness is to be called in a matter and the Commission decides that the evidence of the expert witnesses will be heard together, unless the Commission otherwise determines, the procedures set out below in *Prior to the hearing* and *At the hearing* should be followed.

Prior to the hearing

4. As soon as possible after the filing of the experts' reports prior to the hearing, the Commission will advise the parties' legal practitioners or agents of the intention of the Commission to hear the evidence of expert witnesses together and direct the parties to advise the expert witnesses to be called by them:
 - (a) that the Commission requires the experts to meet and confer with one another in the absence of the parties and their legal practitioners or agents;
 - (b) that the object of the experts conferring is for them to prepare a written statement containing the matters in their respective reports about which they agree, and to identify any matters in their respective reports about which they disagree and the reasons for that disagreement;
 - (c) that the expert witnesses are to use their best endeavours to reach an agreement;
 - (d) that the expert witnesses are to each sign the written statement and



arrange for one of them to lodge it with the Commission, and give copies of it to the parties, no less than three days before the commencement of the hearing; and

- (e) that if any of the expert witnesses considers that further work is required to be done before the written statement can be finalised, the expert witnesses should prepare and sign the written statement in relation to those matters which are able to be agreed and identify in that document what further work is required to be done. The expert witnesses should complete any further work as quickly as possible and complete, sign and lodge with the Commission a further written statement and give copies of it to the parties.

At the hearing

5. The Commission will call the expert witnesses to give evidence together and each will be sworn in by the Associate.
6. The Commission will arrange for the expert witnesses to be seated at a table where their evidence may be conveniently transcribed and heard by the Commission and each of the parties and their legal practitioners or agents.
7. The Commission will then explain the procedure to be followed and ask the expert witnesses if they have any questions regarding that procedure.
8. The Commission will then mark the filed written statement as an exhibit.
9. The Commission will then ask questions of the expert witnesses.
10. The Commission will then give the expert witnesses an opportunity to ask each other any questions which they consider might assist the Commission.
11. The Commission will then provide an opportunity for the expert witnesses to be asked questions by the parties or their legal practitioners or agents.
12. The Commission will then ask the expert witnesses if any matters arise from the questions asked by the parties or their legal practitioners or agents upon which any of them wishes to comment and give them an opportunity to do so.
13. That will then complete the evidence given by the expert witnesses and they will then be discharged from giving evidence.



Relevant legislation

Industrial Relations Act 1979, ss 27, 28, 33, 113.

Industrial Relations Commission Regulations 2005, regs 39, 45.

Useful resources

14. The Commission's website contains additional [resources](#).

S J Kenner
SENIOR COMMISSIONER