



Government of **Western Australia**
Department of the Registrar,
Western Australian Industrial Relations Commission

10 November 2021

By email: chambers-cosentino@wairc.wa.gov.au

Dear Senior Commissioner Cosentino,

**RE: ISSUING OF SUMMONSES UNDER S 33 OF THE ACT FOR PROCEEDINGS BEFORE
THE PUBLIC SERVICE APPEAL BOARD**

Background

On 21 October 2021 Senior Commissioner Cosentino, Chair of the Public Service Appeal Board (**PSAB**) in PSAB 31 of 2020, referred the question to the Registrar for determination as to the power of the Registrar to issue a summons to any person to appear and give evidence in proceedings before the Public Service Appeal Board (**the PSAB**) under s 33 of the *Industrial Relations Act 1979* (WA) (**the Act**).

The power of the Registrar to summons a witness stems from s 33(1)(a) of the Act. That subsection specifically deals with the power of the Registrar to summons witnesses at the request of a party or by direction of the Commission, but only with respect to proceedings before the Commission.

Section 33 of the Act falls under Part II Division 2 – General jurisdiction and powers of the Commission. It is helpful to refer to s 22A of the Act which clarifies the terms used for this Division. Specifically, it states:

'In this Division [2] and Division 2A to 2G –

Commission means the Commission constituted otherwise than as a constituent authority;'

The above is a clear statement that specifically excludes the sections from those referenced divisions from applying to a constituent authority.

The PSAB is a constituent authority established under s 80C of the Act, as defined under s 7 of the Act where within 'terms used' the Public Service Appeal Board is expressly identified as a constituent authority.

Therefore, I conclude that the powers conferred on the Registrar by s 33 do not apply to proceedings before the PSAB and as such, there is no authority for the Registrar to summons a witness to give evidence before the PSAB under this section.

Decision

On that basis, I have determined that I do not hold the authority to summons a witness to give evidence before the Public Sector Appeal Board pursuant to s 33 of the Act.

Yours faithfully,

Susan Bastian

Registrar of the Western Australian Industrial Relations Commission