
INDUSTRIAL RELATIONS

IR301*

Industrial Relations Act 1979

**Industrial Relations Commission Amendment
Regulations (No. 3) 2015**

Made by the Chief Commissioner of The Western Australian Industrial Relations Commission after consulting the members of the Commission.

1. Citation

These regulations are the *Industrial Relations Commission Amendment Regulations (No. 3) 2015*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day on which the *Custodial Legislation (Officers Discipline) Amendment Act 2014* Parts 2 and 3 come into operation.

3. Regulations amended

These regulations amend the *Industrial Relations Commission Regulations 2005*.

4. Regulation 5 amended

After regulation 5(1) insert:

- (2A) Any requirement in these regulations for a signature does not apply if a Form is lodged electronically.

5. Parts 9A and 9B inserted

After regulation 88 insert:

Part 9A — Appeals under *Prisons Act 1981* section 106

89A. Terms used

In this Part and in Form 31A —

appeal against removal action means an appeal under the *Prisons Act 1981* section 106;

appellant means a prison officer who institutes an appeal against removal action;

chief executive officer has the meaning given in the *Prisons Act 1981* section 3(1);

prison officer has the same meaning as in the *Prisons Act 1981* Part X Division 3;

removal action has the meaning given in the *Prisons Act 1981* section 101(1).

89B. Notice of appeal against removal action

An appeal by a prison officer against removal action is instituted under the *Prisons Act 1981* section 106(2) if the prison officer completes and files in the office of the Registrar 3 copies of a notice of appeal to the chief executive officer in the form of Form 31A.

89C. Service of notice of appeal against removal action

Within 7 days after an appeal against removal action is instituted, the appellant must serve a stamped copy of the notice of appeal on the chief executive officer.

89D. Response by chief executive officer

- (1) Except as otherwise directed by the Commission, the chief executive officer must respond to the notice of appeal within 28 days of the service of the notice of appeal —
 - (a) by completing and filing in the office of the Registrar 3 copies of —
 - (i) a notice of answer stating the chief executive officer's reasons for deciding to take removal action; and
 - (ii) a list of all documents, as defined in regulation 20(1), that the chief executive officer considered before making the decision; and
 - (iii) a summary of facts or issues of law relied upon by the chief executive officer, including any relevant matters set out in the *Prisons Act 1981* section 107(4); and
 - (iv) a reply containing any matters the chief executive officer wishes to raise in relation to the appellant's case;and
 - (b) by serving a stamped copy of those documents on the appellant.
- (2) The notice of answer must be in the form of Form 5 and have attached to it the list of documents, the summary and the reply.

89E. Documents relied on to be filed and served

- (1) Except as otherwise directed by the Commission, within 14 days of the service on the appellant of the documents referred to in regulation 89D, the chief executive officer must —
 - (a) file in the office of the Registrar 3 copies of every document relied upon by the chief executive officer in the appellant's case; and
 - (b) serve a stamped copy of those documents on the appellant.

- (2) Except as otherwise directed by the Commission, within 14 days of the service on the appellant of all of the documents referred to in subregulation (1), the appellant must —
 - (a) file in the office of the Registrar 3 copies of every document relied upon by the appellant in the appellant's case; and
 - (b) serve a stamped copy of those documents on the chief executive officer.
- (3) If, under an agreement between the chief executive officer and the appellant, one party files a document on behalf of both parties, both parties are taken to have satisfied the requirements under this regulation in relation to that document.

89F. Notice of reformulated reasons under *Prisons Act 1981* s. 110A(4)

- (1) The notice of the reformulated reasons required under the *Prisons Act 1981* section 110A(4)(a) to be given to the Commission by the chief executive officer is to be given —
 - (a) by completing and filing in the office of the Registrar 3 copies of —
 - (i) a statement of the chief executive officer's reformulated reasons; and
 - (ii) a summary of facts or issues of law relied upon by the chief executive officer in reformulating the reasons, including any relevant matters set out in the *Prisons Act 1981* section 107(4); and
 - (iii) a reply containing any matters the chief executive officer wishes to raise in relation to the appellant's case;and
 - (b) by serving a stamped copy of those documents on the appellant.
- (2) The statement, the summary and the reply must be in a form approved by the Chief Commissioner.
- (3) If the notice is not given at least 7 days before the resumption of the appeal, the Commission may adjourn the hearing of the appeal to a further date to allow the Commission or the appellant sufficient time to consider the contents of the notice.

89G. Withdrawal or discontinuance of appeal against removal

An appellant may withdraw or wholly discontinue an appeal against removal action, or withdraw any part of the appeal —

- (a) by completing and filing in the office of the Registrar 3 copies of a notice of withdrawal or discontinuance in the form of Form 14; and
- (b) by serving a stamped copy of the notice on the chief executive officer.

Part 9B — Appeals under *Young Offenders Act 1994* section 11CH

89H. Terms used

In this Part and in Form 31B —

appeal against removal action means an appeal under the *Young Offenders Act 1994* section 11CH;

appellant means a custodial officer who institutes an appeal against removal action;

chief executive officer has the meaning given in the *Young Offenders Act 1994* section 3;

custodial officer has the meaning given in the *Young Offenders Act 1994* section 3;

removal action has the meaning given in the *Young Offenders Act 1994* section 11CA.

89I. Notice of appeal against removal action

An appeal by a custodial officer against removal action is instituted under the *Young Offenders Act 1994* section 11CH(2) if the custodial officer completes and files in the office of the Registrar 3 copies of a notice of appeal to the chief executive officer in the form of Form 31B.

89J. Service of notice of appeal against removal action

Within 7 days after an appeal against removal action is instituted, the appellant must serve a stamped copy of the notice of appeal on the chief executive officer.

89K. Response by chief executive officer

- (1) Except as otherwise directed by the Commission, the chief executive officer must respond to the notice of appeal within 28 days of the service of the notice of appeal —
 - (a) by completing and filing in the office of the Registrar 3 copies of —
 - (i) a notice of answer stating the chief executive officer's reasons for deciding to take removal action; and
 - (ii) a list of all documents, as defined in regulation 20(1), that the chief executive officer considered before making the decision; and
 - (iii) a summary of facts or issues of law relied upon by the chief executive officer, including any relevant matters set out in the *Young Offenders Act 1994* section 11CI(4); and
 - (iv) a reply containing any matters the chief executive officer wishes to raise in relation to the appellant's case;
 - and
 - (b) by serving a stamped copy of those documents on the appellant.
- (2) The notice of answer must be in the form of Form 5 and have attached to it the list of documents, the summary and the reply.

89L. Documents relied on to be filed and served

- (1) Except as otherwise directed by the Commission, within 14 days of the service on the appellant of the documents referred to in regulation 89K, the chief executive officer must —
 - (a) file in the office of the Registrar 3 copies of every document relied upon by the chief executive officer in the appellant's case; and
 - (b) serve a stamped copy of those documents on the appellant.
- (2) Except as otherwise directed by the Commission, within 14 days of the service on the appellant of all of the documents referred to in subregulation (1), the appellant must —
 - (a) file in the office of the Registrar 3 copies of every document relied upon by the appellant in the appellant's case; and
 - (b) serve a stamped copy of those documents on the chief executive officer.

- (3) If, under an agreement between the chief executive officer and the appellant, one party files a document on behalf of both parties, both parties are taken to have satisfied the requirements under this regulation in relation to that document.

89M. Notice of reformulated reasons under *Young Offenders Act 1994* s. 11CL(4)

- (1) The notice of the reformulated reasons required under the *Young Offenders Act 1994* section 11CL(4)(a) to be given to the Commission by the chief executive officer is to be given —
 - (a) by completing and filing in the office of the Registrar 3 copies of —
 - (i) a statement of the chief executive officer's reformulated reasons; and
 - (ii) a summary of facts or issues of law relied upon by the chief executive officer in reformulating the reasons, including any relevant matters set out in the *Young Offenders Act 1994* section 11CI(4); and
 - (iii) a reply containing any matters the chief executive officer wishes to raise in relation to the appellant's case;
 - and
 - (b) by serving a stamped copy of those documents on the appellant.
- (2) The statement, the summary and the reply must be in a form approved by the Chief Commissioner.
- (3) If the notice is not given at least 7 days before the resumption of the appeal, the Commission may adjourn the hearing of the appeal to a further date to allow the Commission or the appellant sufficient time to consider the contents of the notice.

89N. Withdrawal or discontinuance of appeal against removal

An appellant may withdraw or wholly discontinue an appeal against removal action, or withdraw any part of the appeal —

- (a) by completing and filing in the office of the Registrar 3 copies of a notice of withdrawal or discontinuance in the form of Form 14; and
- (b) by serving a stamped copy of the notice on the chief executive officer.

6. Regulation 107 amended

- (1) In regulation 107(1) delete “Form 11.” and insert:

Form 11 that has attached to it a schedule that includes such particulars as are approved by the Chief Commissioner from time to time.

- (2) In regulation 107(2) after “decision,” (each occurrence) insert:

finding,

- (3) Delete regulation 107(3) and (4) and insert:

(3) The notice of appeal and the attached schedule must be signed by the appellant.

(4) At the time of filing the notice of appeal the appellant must lodge in the office of the Registrar 3 copies of the notice for use of the Board and one copy for the respondent.

- (4) After regulation 107(5) insert:

(6A) A respondent that is served with the notice of appeal and that wants to respond to it may file a notice of answer in the form of Form 5 within 21 days of being served with the notice of appeal.

7. Schedule 1 Form 5 amended

Delete the reference after the heading to Schedule 1 Form 5 and insert:

[r. 14, 48(5), 50(6), 61(4), 63A(4), 89D(2), 89K(2), 99D(6), 99E and 107(6A)]

8. Schedule 1 Form 11 replaced

Delete Schedule 1 Form 11 and insert:

Form 11 — Notice of appeal to Public Service Appeal Board

[r. 107(1)]

Industrial Relations Act 1979

In the Western Australian Industrial Relations Commission

No. of 20.....

To:
.....
.....

(name, postal address and telephone number of the employing authority who made the decision, finding, determination or recommendation — attach statement if more space is needed)

TAKE NOTICE THAT
.....
.....

(name, street address and telephone number of person making the appeal — attach statement if more space is needed)

has this day instituted an appeal against the decision, finding, determination or recommendation given on the day of 20

.....
(signature of appellant)

NOTE 1: This form must be completed by the appellant and a schedule that includes such particulars as are approved by the Chief Commissioner from time to time must be attached. This form and the attached schedule must be signed by the appellant.

NOTE 2: The fee payable with this notice of appeal must be paid at the time it is filed, or within 7 days of filing, or the appeal will not proceed.

NOTE 3: Unless the Public Service Appeal Board otherwise directs, after this notice of appeal is filed, the appellant must serve (e.g. by posting or delivering it personally) a stamped copy of it and the attached schedule on the respondent as soon as reasonably practicable and complete and file a Form 4 statutory declaration of service declaring that this has been done.

NOTE 4: A respondent that is served with this notice of appeal and that wants to respond to it may file a notice of answer in Form 5 within 21 days of being served with this notice of appeal. There is no fee payable.

All Forms are available from the Registry or downloadable at www.wairc.wa.gov.au.

(Stamp of Commission)

9. Schedule 1 Form 14 amended

Delete the reference after the heading to Schedule 1 Form 14 and insert:

[r. 16(1) and (4), 89G(a), 89N(a), 99 and 99E]

10. Schedule 1 Forms 31A and 31B inserted

After Schedule 1 Form 30 insert:

Form 31A — Notice of appeal against a decision to take removal action under *Prisons Act 1981*

[r. 89B]

Industrial Relations Act 1979

In the Western Australian Industrial Relations Commission

No. of 20

To the chief executive officer

TAKE NOTICE THAT

.....

(name, street address and telephone number of appellant — attach statement if more space is needed)

has this day instituted an appeal under the *Prisons Act 1981* section 106 against your decision under section 101 of that Act to take removal action against the appellant with effect from the day of 20.....

The details of the decision and reasons for the decision being harsh, oppressive or unfair are:

.....

(give details of the decision and reasons for the decision being harsh, oppressive or unfair — attach statement if more space is needed)

The appellant seeks:

- an order that the appellant’s removal is, and is to be taken to have always been, of no effect; or
- an order that the chief executive officer is to pay the appellant an amount of compensation for loss or injury caused by the removal.

(please tick one box only)

.....

(signature of appellant)

NOTE: Unless the Commission otherwise directs, within 7 days after the notice is filed, the appellant must serve (e.g. by posting or delivering it to the person personally) a stamped copy, together with its attachments, on the chief executive officer and as soon as reasonably practicable file a Form 4 statutory declaration of service declaring that this has been done.

All Forms are available from the Registry or downloadable at www.wairc.wa.gov.au.

(Stamp of Commission)

Form 31B — Notice of appeal against a decision to take removal action under *Young Offenders Act 1994*

[r. 89I]

Industrial Relations Act 1979

In the Western Australian Industrial Relations Commission

No. of 20

To the chief executive officer

TAKE NOTICE THAT

.....

.....
(name, street address and telephone number of appellant — attach statement if more space is needed)

has this day instituted an appeal under the *Young Offenders Act 1994* section 11CH against your decision under section 11CC of that Act to remove the appellant from office with effect from the day of 20.....

The details of the decision and reasons for the decision being harsh, oppressive or unfair are:

.....

.....
(give details of the decision and reasons for the decision being harsh, oppressive or unfair — attach statement if more space is needed)

The appellant seeks:

- an order that the appellant’s removal is, and is to be taken to have always been, of no effect; or
- an order that the chief executive officer is to pay the appellant an amount of compensation for loss or injury caused by the removal.
(please tick one box only)

.....
(signature of appellant)

NOTE: Unless the Commission otherwise directs, within 7 days after the notice is filed, the appellant must serve (e.g. by posting or delivering it to the person personally) a stamped copy, together with its attachments, on the chief executive officer and as soon as reasonably practicable file a Form 4 statutory declaration of service declaring that this has been done.

All Forms are available from the Registry or downloadable at www.waive.wa.gov.au.
(Stamp of Commission)

A. R. BEECH, Chief Commissioner,
The Western Australian Industrial Relations Commission.
