

Industrial Relations Act 1979

Industrial Relations Commission Amendment Regulations (No. 2) 2002

Made by the Chief Commissioner of the Western Australian Industrial Relations Commission after consultation with the members of the Commission.

1. Citation

These regulations may be cited as the *Industrial Relations Commission Amendment Regulations (No. 2) 2002*.

2. Commencement

These regulations come into operation on the day on which section 4 of the *Labour Relations Reform Act 2002* comes into operation.

3. The regulations amended

The amendments in these regulations are to the *Industrial Relations Commission Regulations 1985**.

[* Reprinted 24 March 1998.

For amendments to 5 September 2002 see 2001 Index to Legislation of Western Australia, Table 4, p. 176 and Gazette 2 August 2002.]

4. Part XVA inserted

After regulation 110 the following Part is inserted —

“

Part XVA — Applications and appeals under Part VID Division 9 of the Act

Division 1 — Applications

110A. Establishing that proposed representative is qualified and consents to an application under section 97WV or 97XM

- (1) Where an application is made under section 97WV or 97XM of the Act the Registrar is to meet with the person sought to be approved as a representative for the purpose of satisfying himself that the person —
 - (a) fulfils the requirements of section 97WY; and
 - (b) consents to the application being made.

- (2) The consent of the person that forms part of the application is to be signed by him in the presence of the Registrar and the Registrar is to sign an attestation on the application form that this has occurred.
- (3) The person must also supply such information and evidence for the purposes of subregulation (1)(a) as the Registrar may request.

110B. Notice of application for approval to be given to employer

- (1) If an application under section 97WV of the Act identifies a person who will be the employer of the person with a mental disability if a proposed EEA takes effect, the Registrar must give notice in writing to that prospective employer of the making of the application.
- (2) If an application under section 97XM of the Act identifies a person who —
 - (a) is the employer of the person with a mental disability under an EEA; or
 - (b) will be the employer of the person with a mental disability if a proposed EEA takes effect,

the Registrar must give notice in writing to that employer or prospective employer of the making of the application.

- (3) A notice under subregulation (1) or (2) is to be given within 7 days after the application is filed.

110C. Application to Guardianship and Administration Board for revocation of approval

- (1) An application to the Guardianship and Administration Board for a revocation order under section 97XI of the Act is to be made in accordance with this regulation, and not otherwise.
- (2) A completed application in accordance with Form 38 is to be lodged in the office of the Registrar.
- (3) The Registrar is to send to the Guardianship and Administration Board —
 - (a) the application referred to in subregulation (2);
 - (b) the Registrar's file relating to the making of the order that is sought to be revoked; and
 - (c) any other document in the possession of the Registrar that he considers relevant.
- (4) The Registrar is to ensure that the documents referred to in subregulation (3) are received by the Guardianship and Administration Board not later than

the fifth day after the application was lodged on which the office of the Registrar is open to the public for the transaction of business.

- (5) The application is made to the Guardianship and Administration Board when it receives the documents referred to in subregulation (3).

110D. Notice of application for revocation of approval to be given to employer

- (1) If an application under section 97XI of the Act identifies a person who is the employer of the person with a mental disability, the Registrar must give notice in writing to that employer of the making of the application to the Guardianship and Administration Board.
- (2) A notice under subregulation (1) is to be given within 7 days after the Registrar is informed that the application has been received by the Board.

110E. Notice of order or refusal to make order to be given to employer

- (1) If notice of an application was required to be given to an employer or a prospective employer under regulation 110B or 110D, the Registrar must give notice in writing to that employer or prospective employer of —
 - (a) the making of an order under section 97WZ(1), 97XK(1) or 97XN(1) on the application; or
 - (b) a refusal under section 97XA, 97XK(3) or 97XP to make an order on the application.
- (2) A notice under subregulation (1) is to be given within 7 days after the order is made or refused.

Division 2 — Appeals

110F. Appeal against refusal to give approval

An appeal to the Commission under section 97XB or 97XQ is to be commenced by the filing in the office of the Registrar of an appeal notice in the form of Form 39.

110G. Service of appeal notice

- (1) If an appeal notice is filed the Registrar is to serve a copy of the notice on each of the following persons (“an interested person”) —
 - (a) the person with a mental disability if he is not the appellant;

- (b) the applicant in the application to which the appeal relates if he is not the appellant;
 - (c) the proposed representative; and
 - (d) an employer or a prospective employer to whom notice of the application to which the appeal relates was given.
- (2) The appeal is not to be listed for hearing until each interested person has been served with a copy of the appeal notice.

110H. Person served entitled but not required to be heard

- (1) An interested person is entitled to be heard at the hearing of the appeal, but it is not necessary for him to file any document in the proceedings or to appear or be heard at the hearing unless he wishes to do so.
- (2) If an interested person wishes to be heard at the hearing of the appeal he must —
- (a) file a notice of intention to be heard; and
 - (b) serve a copy of the notice on the appellant and any other interested person,
- within 14 days after he is served with a copy of the appeal notice.
- (3) An interested person who has not given notice under subregulation (2) is not to be heard at the hearing of the appeal without leave of the Commissioner hearing the appeal.

110I. Registrar to provide records to Commissioner

Where an appeal is brought against the refusal of the Registrar to approve a representative, the Registrar is to give to the Commissioner hearing the appeal the Registrar's file relating to the application to which the appeal relates.

5. Schedule amended

The Schedule is amended by inserting after Form 37 the following forms —

Form 38

[r. 110C]

Industrial Relations Act 1979

Part VID — Employer-employee agreements

section 97XI

**APPLICATION FOR AN ORDER REVOKING THE
APPROVAL OF A REPRESENTATIVE [AND REQUEST FOR
APPROVAL OF NEW REPRESENTATIVE]¹**

¹ delete words in brackets if approval of a new representative is not sought

To the Guardianship and Administration Board

SECTION A: APPLICATION

1. I HEREBY —

- (a) APPLY for an order under section 97XK of the Act revoking the order made —
- by the Registrar on under section [97WZ(1)] [97XN(1)] of the Act;
 - by the Guardianship and Administration Board on in exercise of the power in section 97XK(2) of the Act, approving the representative specified in Section D to act for [the represented person specified in Section E] *or* [for me]; and
- (b) ²REQUEST the Guardianship and Administration Board to exercise its jurisdiction under section 97XK(2) to appoint a new representative [for the represented person] *or* [for me].

2. I am making this application as the represented person.

OR

I am making this application on behalf of the represented person; and my relationship with him/her is

OR

³I am making this application as a person having a sufficient interest in the matter, *namely*

.....

(set out the nature of the interest)

and accordingly I ALSO APPLY for a determination under section 97XI(2)(b) that I have a sufficient interest to make this application.

3. ⁴I [have] [have not] informed the represented person that I am making this application.
4. The represented person [supports] [does not support] this application.
5. ⁵The consent of the person proposed for approval as the new representative is attached.
6. The person proposed for approval is —
- (a) the spouse of; or
 - (b) closely associated with⁶,
- the represented person specified in Section E.
- OR *(if application is made by the represented person)* —
- The person proposed for approval is —
- (a) my spouse; or
 - (b) closely associated with me⁷.

7. I certify that the information and details given in this application are true and correct.

Signature of applicant

² delete if approval of a new representative is not sought

³ this paragraph does not apply if the application is made by the represented person or a person acting on his or her behalf

⁴ delete this and the following paragraph if the application is made by the represented person

⁵ delete if a request is not made under paragraph 1(b)

⁶ paragraph (b) only applies if the proposed representative —

(a) regularly provides or arranges for domestic services or support to; or

(b) maintains a close personal relationship with,

the represented person (see s. 97XN(1)(d)(i) and 97WY(1)(b) and (2) of the Act)

⁷ see footnote 5

SECTION B: GROUND(S) AND REASONS⁸

1. The application for a revocation order is made on the following ground(s)⁹ —
 - (a) that [the represented person is] *or* [I am] no longer a person who is in general incapable, because of a mental disability, of making reasonable decisions on matters pertaining to an employer-employee relationship;
 - (b) that the representative has failed to act in [the best interests of the represented person] *or* [my best interests];
 - (c) that it is for some other reason no longer in [the interests of the represented person] *or* [my best interests] for the representative to act on [his or her] *or* [my] behalf.
2. The reason(s) for my belief that the ground(s) exist(s) (is) are — ¹⁰

⁸ see section 97XI(3) of the Act

⁹ delete any provision(s) that is (are) not applicable

¹⁰ state the reason(s) briefly and attach relevant documents if desired

SECTION C: DETAILS OF APPLICANT

Full name

Address

Date of birth¹¹

Tel no Fax no

Email address

¹¹ only required if the represented person is the applicant

SECTION D: DETAILS OF REPRESENTATIVE

Full name

Address

Tel no Fax no

Email address

SECTION E: DETAILS OF REPRESENTED PERSON¹²

Full name

Address

Date of birth

Male/female

Tel no Fax no

Email address

¹² delete this section if the application is made by the represented person

SECTION F: DETAILS OF PROPOSED NEW REPRESENTATIVE¹³

Full name

Address

Date of birth

Male/female

Tel no Fax no

Email address

¹³ delete this section if approval of a new representative is not sought

SECTION G: DETAILS OF EMPLOYER¹⁴

Full name

Address

Tel no Fax no

Email address

¹⁴ delete if there is no EEA in force

SECTION H: DETAILS OF ANY OTHER INTERESTED PERSON¹⁵

Full name

Address

Tel no Fax no

Email address

Relationship to the represented person

Have you informed the person of this application? yes/no

Does the person support the application? yes/no/don't know

¹⁵ this applies to any other person who has an interest in or close involvement with the represented person so that the Guardianship and Administration Board can consider if the person should receive notice of the hearing before the Board; if there is more than one such person attach a separate sheet

Form 39

[r. 110F]

*Industrial Relations Act 1979**Part VID — Employer-employee agreements**sections 97XB and 97XQ*

In the Western Australian Industrial Relations Commission

No. of 20

APPEAL AGAINST REFUSAL OF APPROVAL

To the Western Australian Industrial Relations Commission

I,

(name of appellant)

HEREBY APPEAL to the Commission against the refusal of the Registrar on
the day of 20

to approve

(full name of proposed representative)

to act as [my representative] [the representative of
]
(full name of person with a mental disability)

for the purposes of Part VID Division 9 of the Act.

This appeal is brought on the following grounds —

.....

(State the grounds relied on in support of the appeal; attach a separate page if necessary;

THE GROUNDS MUST BE RELATED TO, AND ADDRESS, THE REASONS GIVEN BY THE REGISTRAR FOR THE REFUSAL).

..... Date:
(signature of appellant)

A copy of this appeal notice is to be served on the following persons under regulation 110G of the *Industrial Relations Commission Regulations 1985* —

- the person with a mental disability named above¹
-²
(name of applicant in the application to which the appeal relates)
- the proposed representative named above
-
(name of any [prospective] employer who was given notice of the application to which the appeal relates)

¹ delete if the person with a mental disability is the appellant

² delete if the person who applied for approval is the appellant

.....
 Registrar

”

Dated the 11th day of September 2002.

W. S. COLEMAN, Chief Commissioner,
 The Western Australian Industrial Relations Commission.
