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INDUSTRIAL RELATIONS ACT 1979

**INDUSTRIAL RELATIONS
(INDUSTRIAL AGENTS)
REGULATIONS 1997**

WESTERN AUSTRALIA

**INDUSTRIAL RELATIONS
(INDUSTRIAL AGENTS)
REGULATIONS 1997**

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SCHEDULE 1 — CODE OF CONDUCT

INDUSTRIAL RELATIONS ACT 1979

**INDUSTRIAL RELATIONS
(INDUSTRIAL AGENTS)
REGULATIONS 1997**

Made by His Excellency the Governor in Executive Council.

Citation

1. These regulations may be cited as the *Industrial Relations (Industrial Agents) Regulations 1997*.

Commencement

2. These regulations come into operation on the day on which Part 5 of the *Industrial Relations Legislation Amendment and Repeal Act 1995* comes into operation.

Interpretation

3. In these regulations, unless the contrary intention appears —

“**applicant**” means an applicant for a registration as an industrial agent;

“**approved**” means approved by the Registrar;

“**code of conduct**” means the code of conduct set out in Schedule 1;

“**industrial agent**” means a person registered under section 112A of the Act;

“**industrial magistrate**” means a person holding office as an industrial magistrate under section 81B of the Act;

“**officer**”, in relation to a body corporate, includes a director, secretary or executive officer of the body;

“**Registrar**” means the Registrar personally and, during the illness, temporary incapacity, or absence from office of the Registrar, the designated Deputy Registrar within the meaning of section 95 of the Act.

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Application for registration

4. (1) An application for registration as an industrial agent is to be made to the Registrar in an approved form and is to specify —
- (a) the full name and business address of the applicant and, if the applicant is not a natural person, the full name, business address and position occupied by each of the officers of the body that is making the application; and
 - (b) details of the criminal record, if any, of the applicant for the 10 years prior to the making of the application and, if the applicant is not a natural person, of any of the officers of the body that is making the application.
- (2) The application is to be accompanied by —
- (a) an application fee of \$85;
 - (b) evidence satisfactory to the Registrar that the applicant —
 - (i) has, or will have if registration is granted, professional indemnity insurance for not less than \$100 000; or
 - (ii) has sufficient moneys or other financial resources, or other sufficient material resources in the form of real or personal property, to provide professional indemnity;and
 - (c) a statutory declaration by the applicant or, where the applicant is a firm or a body corporate, by the person who is to be in *bona fide* control of the business carried on under the registration —
 - (i) verifying the particulars contained in the application;
 - (ii) if the application includes details referred to in subregulation (1) (b), detailing the grounds on which the applicant believes that, having regard to the conduct required under the code of conduct, the convictions are of a kind that do not relate to whether or not the applicant is a fit and proper person to be registered as an industrial agent; and
 - (iii) declaring that the applicant will comply with the code of conduct.
- (3) The applicant —
- (a) within 2 working days of making an application, is to publish notice of the application in the public notices section of “The West Australian” newspaper; and

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- (b) is to give the Registrar a copy of the notice within one working day of its publication.

(4) The notice referred to in subregulation (3) (a) is to specify the name and address of the applicant and the time within which, and place at which, an objection to the granting of the application may be made.

Objection to application

5. (1) At any time within 7 days of the publication of a notice under regulation 4 (3) a person may lodge with the Registrar a written objection to the granting of the application on the ground that the applicant is not a fit and proper person to be an industrial agent because of the criminal record of the applicant or of an officer of the body making the application.

(2) An objection under subregulation (1) is to —

- (a) specify the name and address of the objector;
- (b) contain particulars of the grounds on which the objector objects to the application; and
- (c) information in support of the grounds of objection.

(3) The Registrar is to give the applicant a copy of any objection made to the application.

Registrar may grant or refuse application

6. (1) The Registrar is to grant an application made under regulation 4 if —

- (a) there is no admission of a criminal record by the applicant and no objection under regulation 5 (1) to the registration of the applicant; and
- (b) the applicant produces to the Registrar evidence that the applicant —
 - (i) holds professional indemnity insurance for not less than \$100 000 covering the year in which registration is to be granted; or
 - (ii) has sufficient moneys or other financial resources, or other sufficient material resources in the form of real or personal property, to provide professional indemnity.

(2) If there is an admission of a criminal record in an application, or an objection to the registration of an application, made under regulation 4, the Registrar is to conduct an investigation as to whether the applicant is a fit and proper person to be registered as an industrial agent.

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- (3) If, after an investigation has been conducted —
- (a) the Registrar is satisfied that the applicant is a fit and proper person to be an industrial agent; and
 - (b) the applicant produces to the Registrar evidence that the applicant —
 - (i) holds professional indemnity insurance for not less than \$100 000 covering the year in which registration is to be granted; or
 - (ii) has sufficient moneys or other financial resources, or other sufficient material resources in the form of real or personal property, to provide professional indemnity,

the Registrar is to grant the application.

(4) If, after an investigation has been conducted, the Registrar is not satisfied that the applicant is a fit and proper person to be an industrial agent, the Registrar is to give to the applicant written notice of the intention to refuse the application stating the grounds on which the refusal is intended to be made and allowing the applicant 21 days within which to respond to the notice.

(5) Where the Registrar, having had due regard to any response to the notice under subregulation (4), refuses to grant an application the Registrar, not later than 28 days after the decision is made, is to give written notice to the applicant setting out the decision and the reasons for the decision.

(6) When conducting an investigation and making a determination as to whether a person is a fit and proper person to be registered as an industrial agent the Registrar is to have regard to the conduct required under the code of conduct.

Professional indemnity insurance etc.

7. (1) It is a condition of every registration that the industrial agent is to —
- (a) maintain the professional indemnity insurance produced at the time of registration or equivalent insurance; or
 - (b) hold sufficient moneys or other financial resources, or other sufficient material resources in the form of real or personal property, to provide professional indemnity.

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(2) An industrial agent is to lodge with the Registrar each year, not later than 15 days after the anniversary date of registration of the agent, evidence satisfactory to the Registrar that —

- (a) the professional indemnity insurance produced at the time of registration, or equivalent insurance, will be of effect in the following year; or
- (b) the industrial agent holds sufficient moneys or other financial resources, or other sufficient material resources in the form of real or personal property, to provide professional indemnity.

(3) If the evidence referred to in subregulation (2) is not lodged with the Registrar within the time specified in that subregulation, the Registrar is to give the industrial agent notice that, if the evidence is not lodged on or before the day specified in the notice, the industrial agent will cease to be registered.

(4) If the evidence is not lodged as required under subregulation (3), the person ceases to be registered and the person's name is to be removed from the register.

Code of conduct

8. (1) The code of conduct set out in Schedule 1 is prescribed for industrial agents.

(2) It is a condition of every registration that the industrial agent is to comply with the code of conduct.

Certificate of registration

9. (1) If the Registrar grants an application for registration, the Registrar is to cause a certificate of registration in an approved form to be issued to the applicant.

(2) An industrial agent may, by notice in writing given to the Registrar and accompanied by the relevant certificate, surrender the certificate of registration.

Registrar to keep register of certificates

10. (1) The Registrar is to cause to be kept, in a form determined by the Registrar, a register of the following information in relation to each certificate of registration issued —

- (a) the name and business address of the holder of the certificate and where the certificate is held on behalf of a body corporate, the name (including, where relevant, the business name) and address of the body corporate; and
- (b) such other particulars as the Registrar may determine.

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(2) The Registrar is to allow any person to inspect the register.

(3) On application being made to the Registrar in respect of a certificate of registration and payment of a fee of \$4, the Registrar may issue a certified copy of an entry in the register relating to that certificate of registration.

(4) The Registrar, as the occasion requires, is to make such amendments, additions and corrections to the register as may be necessary to make the register an accurate record of the particulars of all industrial agents.

Duration of registration

11. (1) Subject to these regulations, registration of an industrial agent has effect for 5 years.

(2) Registration may be renewed for 5 years on payment of a renewal fee of \$85.

(3) The Registrar is to give written notice of the renewal fee to an industrial agent, sent to the address of that agent as recorded in the register, at least 28 days before the fee falls due.

(4) An industrial agent ceases to be registered if —

- (a) registration of that agent is not renewed under this regulation;
- (b) the industrial agent dies or, in the case of a body corporate, the body corporate is wound up;
- (c) regulation 7 (4) has effect in respect of the registration;
- (d) the industrial agent surrenders the certificate of registration under regulation 9 (2); or
- (e) the registration is cancelled under these regulations.

Complaint

12. (1) Any person may lodge with the Registrar a written complaint alleging that —

- (a) the registration of an industrial agent may have been improperly obtained; and
- (b) at the time when the application for registration of an industrial agent was granted, there may have been grounds for refusing the application.

(2) A client of an industrial agent may lodge with the Registrar a written complaint alleging that the industrial agent may have failed to comply with a condition to which the registration was subject.

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(3) A complaint under subregulation (2) is to be lodged within 28 days of the client becoming aware of the facts of the matter giving rise to the alleged failure to comply or, if the Registrar is satisfied that the circumstances of the complaint are exceptional, within such later time as the Registrar may allow.

(4) A complaint is to be in the form of a statutory declaration specifying —

- (a) the name and address of the complainant; and
- (b) the grounds of the complaint.

Withdrawal of complaint

13. (1) A complainant may at any time withdraw the complaint by notifying the Registrar in the approved form and the Registrar is to then —

- (a) stop dealing with or investigating the complaint;
- (b) if a copy of the complaint has been given to the industrial agent who is the subject of the complaint, notify the industrial agent of the withdrawal; and
- (c) if the complaint has been lodged before an industrial magistrate, notify that magistrate.

(2) An industrial magistrate is to discontinue any proceedings relating to a complaint that has been withdrawn under subregulation (1).

Inquiry by Registrar

14. (1) On receipt of a complaint under regulation 12 (1) or (2) the Registrar is to —

- (a) give a copy of the complaint to the industrial agent who is the subject of the complaint;
- (b) give the industrial agent notice of the time and manner in which the agent may respond to the complaint; and
- (c) conduct an inquiry into the complaint.

(2) A response to a notice under subregulation (1) (b) is to be verified by statutory declaration.

(3) In conducting an inquiry the Registrar may request any person to disclose information that the Registrar believes may be relevant to the inquiry.

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(4) After holding an inquiry in relation to a complaint under regulation 12 (1), and having had due regard to any response to the notice under subregulation (1) (b), the Registrar is to —

- (a) make a determination as to the complaint; and
- (b) notify the complainant and the industrial agent of the Registrar's determination and the reasons for the determination.

(5) Matters that come to the knowledge of the Registrar in the course of conducting an inquiry are confidential and the Registrar must not communicate such matters to any person, except as may be required under or in connection with these regulations or any other written law.

Determinations

15. (1) The Registrar is to reject a complaint that the Registrar determines, whether before or after conducting an inquiry —

- (a) is vexatious, trivial or without substance;
- (b) relates to conduct or events too remote in time to justify further action; or
- (c) is a matter in which the complainant does not have a sufficient interest to justify the complaint.

(2) If the Registrar determines in relation to a complaint under regulation 12 (1) that —

- (a) the registration of the industrial agent was improperly obtained; and
- (b) at the time when the application for registration of the industrial agent was granted, there were grounds for refusing the application,

the Registrar is to cancel the registration of the industrial agent.

(3) If a complaint is made under regulation 12 (2) the Registrar —

- (a) is to make a determination as to whether or not there are reasonable grounds for the complaint; and
- (b) if the determination is that there are reasonable grounds for the complaint, endeavour to resolve the complaint by conciliation under regulation 16.

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Conciliation

- 16.** (1) The Registrar may for the purpose of conciliation —
- (a) arrange and preside over conferences of the persons concerned, or their representatives;
 - (b) give such advice and make such recommendations to the persons concerned as may establish or maintain adequate communication between them and encourage them to exchange or divulge information likely to assist in the reaching of agreement; and
 - (c) cause the persons concerned, either separately or together, to appear before the Registrar.
- (2) If a complaint is resolved to the satisfaction of the complainant and the industrial agent, the Registrar may embody the terms of the agreement in a memorandum signed by both the parties.
- (3) If, within 28 days of the Registrar giving notice under regulation 14 (4), the complaint has not been resolved to the satisfaction of the complainant and the industrial agent, the Registrar is to issue a certificate authorizing the complainant to initiate proceedings before an industrial magistrate.
- (4) Evidence of anything said or admitted, or any record made, during the conciliation process is not admissible in proceedings before an industrial magistrate, a court or tribunal.
- (5) Any conciliation process in respect of a complaint is to cease if an appeal relating to the relevant determination is lodged under regulation 19 (1).

Proceedings before industrial magistrate

- 17.** (1) A complainant to whom a certificate has been issued under regulation 16 (3) may initiate proceedings before an industrial magistrate by lodging a complaint and the certificate with the industrial magistrate.
- (2) Written notice of any hearing before an industrial magistrate is to be given to the industrial agent concerned and to the complainant not later than 14 days before the hearing.
- (3) The notice is to set out the time and place of the hearing and short particulars as to the matter to be heard and the procedures to be followed in hearing that matter.
- (4) The industrial magistrate is to make a determination as to whether or not, on the balance of probabilities, the industrial agent has failed to comply with a condition subject to which the agent was registered.

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(5) If an industrial magistrate finds that an industrial agent has failed to comply with a condition subject to which the agent was registered the industrial magistrate may —

- (a) reprimand the industrial agent; or
- (b) cancel the registration and, in addition, disqualify the industrial agent —
 - (i) for a specified period; or
 - (ii) until the fulfilment of any condition which may be imposed by the industrial magistrate,

from being registered as an industrial agent.

(6) If proceedings are initiated against an industrial agent and no finding is made against the industrial agent, the industrial magistrate may order the complainant who initiated the proceedings to pay all or parts of the costs of that industrial agent in respect of the proceedings and such sum, not exceeding \$500, as the industrial magistrate may fix in or towards defraying the costs of the proceedings.

(7) Costs ordered to be paid under this regulation are recoverable in a court of competent jurisdiction as a debt payable by the person ordered to pay the costs.

Procedure

18. (1) In any inquiry under regulation 14, the Registrar —

- (a) is to proceed with as little formality and technicality and as speedily as the requirements of these regulations and a proper hearing of the matter permit;
- (b) is not bound by the rules of evidence but may inform himself or herself of any matter in such manner as the Registrar or industrial magistrate considers appropriate; and
- (c) may, subject to these regulations and the rules of natural justice, determine the procedures to be followed.

(2) In any hearing under regulation 17 or 19 the industrial magistrate is to apply, so far as is practicable, the same principles of practice and procedure as would be applied in an application before an industrial magistrate's court exercising its general jurisdiction.

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(3) A party responding to a notice under regulation 14 (1) (b) or regulation 17 (2) or appearing at a hearing under regulation 19 is entitled to —

- (a) be represented by a legal practitioner or by any other person;
- (b) be given a reasonable opportunity to call or give evidence and make submissions to the Registrar or the industrial magistrate; and
- (c) examine or cross-examine witnesses.

Appeal to industrial magistrate

19. (1) A person aggrieved by —

- (a) a determination of the Registrar under regulation 15 (3) that there are, or are not, reasonable grounds for a complaint under regulation 12 (2); or
- (b) the Registrar's determination to cancel the person's registration,

may appeal to an industrial magistrate.

(2) An appeal is to be commenced by notice in the approved form lodged within 21 days after receiving notice of the determination.

(3) The industrial magistrate may determine an appeal on the material that was before the Registrar or on such additional or fresh evidence, either oral or by affidavit, as the industrial magistrate may allow.

(4) On an appeal the industrial magistrate may confirm or reverse the determination of the Registrar.

(5) If the industrial magistrate finds that there are reasonable grounds for a complaint under regulation 12 (2), the industrial magistrate may —

- (a) remit the matter to the Registrar for conciliation with or without directions; or
- (b) if the parties agree, deal with the matter as if it were a matter initiated before the industrial magistrate under regulation 17.

(6) If the matter is remitted to the Registrar for conciliation the period of 28 days referred to in regulation 16 (3) is taken to commence on the day on which the matter is remitted.

(7) If an appeal is not upheld, the industrial magistrate may order the party who commenced the appeal to pay all or parts of the costs of the other parties to the appeal.

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(8) Costs ordered to be paid under this regulation are recoverable in a court of competent jurisdiction as a debt payable by the person ordered to pay the costs.

Appeal to Full Bench

- 20.** (1) A person aggrieved by —
- (a) the Registrar's decision to refuse to register that person as an industrial agent; or
 - (b) a decision of an industrial magistrate under regulation 17 or regulation 19 (5) (b),

may appeal to the Full Bench within 21 days after receiving notice of the decision.

(2) Subject to this regulation, section 49 of the Act applies to an appeal under this regulation as if the decision appealed against were a decision of the Commission.

(3) A decision of the Full Bench is subject to appeal under section 90 of the Act.

Other industrial agent taken to be registered

21. (1) A person who is registered as an industrial agent under the *Workplace Agreements Act 1993* and who has elected, at the time of that registration to be registered under these regulations is, subject to subregulation (3), taken to be registered as an industrial agent under these regulations for the purposes of section 112A of the Act.

(2) A complaint against a person taken to be an industrial agent under subregulation (1) may be lodged and dealt with under these regulations as if the person were registered under these regulations for the purposes of section 112A of the Act.

(3) A person who is taken to be registered as an industrial agent under subregulation (1) ceases to be taken to be so registered if —

- (a) the person ceases to be registered as an industrial agent under the *Workplace Agreements Act 1993*; or
- (b) the registration of that person as an industrial agent is cancelled under these regulations.

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Transitional

22. (1) Subject to subregulation (2), a person who, immediately before the coming into operation of these regulations, carried on business as an industrial agent within the meaning of section 112A (1) of the Act, is taken to be registered under that section until —

- (a) 30 days after the coming into operation of these regulations; or
- (b) if the person has made an application within 30 days of the coming into operation of these regulations for registration as —
 - (i) an industrial agent under these regulations; or
 - (ii) an industrial agent under the *Workplace Agreements Act 1993*, with an election for registration as an industrial agent under these regulations,

the application is determined,

whichever is the later.

(2) If an application for registration of an industrial agent is determined within 30 days of the coming into operation of these regulations, that determination cancels any registration deemed under subregulation (1).

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SCHEDULE 1 — CODE OF CONDUCT

[regulation 8]

Introduction

1. It is the duty of an industrial agent —
 - (a) to comply with the provisions of this code of conduct;
 - (b) not to engage in conduct which is illegal, dishonest or which may otherwise bring industrial agents into disrepute; and
 - (c) to be competent as an industrial agent.

Application to bodies corporate

2. Where a body corporate is registered as an industrial agent, this code applies to the body corporate and to each officer of the body corporate.

Business integrity and diligence

3. (1) An industrial agent must not attempt to further a client's case by unethical or dishonest means.
 - (2) An industrial agent must not knowingly assist or seek to induce another person to breach this code of conduct.
 - (3) An industrial agent must take reasonable care to ensure that the partners or employees of the agent do not do any act that would be a breach of this code of conduct if done by the agent.
 - (4) An industrial agent must treat clients fairly and in good faith, giving due regard to a client's position of dependence upon the agent, and the high degree of trust which a client is entitled to place on the agent.
 - (5) An industrial agent must always be completely frank and open with a client and with all others so far as the interests of the client permit and must at all times give a client a candid opinion on any matter in which the agent acts for that client.
 - (6) An industrial agent must take such action consistent with the agent's retainer as is necessary and reasonably available to protect and advance a client's interests.
 - (7) An industrial agent must at all times use his or her best endeavours to complete work on behalf of a client as soon as is reasonably possible, and if an industrial agent accepts instructions and it is, or becomes, apparent to the agent that the work cannot be done within a reasonable time, the agent must so inform the client.

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(8) An industrial agent must not take unnecessary steps or do work in such a manner as to increase proper costs to the client.

(9) If it is in the best interests of the client of an industrial agent to do so, the agent must endeavour to reach a solution by settlement rather than commence or continue proceedings.

Confidentiality

4. (1) An industrial agent must strive to establish and maintain a relationship of trust and confidence with clients.

(2) An industrial agent must impress upon a client that the agent cannot adequately serve the client without knowing everything that might be relevant to the client's interests and that the client should not withhold information that the client might think is embarrassing or harmful to the client's interests.

(3) An industrial agent must not, without the client's consent, directly or indirectly reveal a client's confidence, or use the confidence in any way detrimental to the interests of that client, or lend or reveal the contents of the confidence in any brief or instructions to any person except to the extent —

- (a) required by law, rule of court or court order; or
- (b) necessary for replying to or defending any charge or complaint of criminal conduct or misconduct contrary to this code brought against the agent.

Conflict of interest

5. (1) An industrial agent must disclose to a client any conflict of interest that the industrial agent has or may have in any matter concerning that client.

(2) An industrial agent must not act or continue to act on behalf of a client if to do so would or may give rise to a conflict of interest adverse to the client unless the client has been fully informed of the nature and implications of the conflict and consents to the industrial agent acting or continuing to act on behalf of the client.

Proceedings

6. (1) Subject to this code of conduct, an industrial agent must provide advice and conduct each case and matter in the manner the agent considers most advantageous to the agent's client.

(2) An industrial agent must not knowingly deceive or mislead the Commission or a court.

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- (3) An industrial agent must at all times —
- (a) act with due courtesy to the Commission or a court;
 - (b) use his or her best endeavours to avoid unnecessary expense and waste of the Commission's or court's time;
 - (c) when so requested, inform the Commission or court of the probable length of the case;
 - (d) inform the Commission or court of the possibility of a settlement provided the agent can do so without revealing the existence or content of "without prejudice" communications; and
 - (e) subject to this code of conduct, inform the Commission or court of any development that affects the information already before the Commission or court.

(4) In cross examination which goes to a matter in issue, an industrial agent may put questions suggesting fraud, misconduct or the commission of a crime provided that the agent is satisfied that the matters suggested are part of the case of the agent's client and he has no reason to believe that they are only put forward for the purpose of impugning the witness's character.

(5) Questions which affect the credibility of a witness by attacking the witness's character, but which are otherwise not relevant to the actual inquiry, must not be put in cross examination unless there are reasonable grounds to support the imputation conveyed by such questions.

Advertising

7. An industrial agent must not engage in promotional conduct or advertising about the agent's skills, experience, fees or results in a manner which is misleading or deceptive or likely to mislead or deceive.

Withdrawal

8. (1) An industrial agent must recognize that a client is entitled to change industrial adviser at any time without giving a reason and must, subject to the satisfaction of any lien the agent may have taken, take all reasonable steps to facilitate such a change should a client so request.

(2) If a client engages another industrial agent in a matter and that agent is of the opinion that the conduct of the preceding agent in the matter warrants the making of a complaint, the agent must so advise the client.

- (3) An industrial agent may withdraw from representing a client —
- (a) at any time and for any reason if withdrawal will cause no significant harm to the client's interests and the client is fully informed of the consequences of withdrawal and voluntarily assents to it;

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- (b) if the industrial agent reasonably believes that continued engagement in the case or matter would be likely to have a seriously adverse effect upon the agent's health;
- (c) if the client commits a significant violation of a written agreement regarding fees or expenses;
- (d) if the client made material misrepresentations about the facts of the case or matter to the agent;
- (e) if the agent has an interest in any case or matter which the agent is concerned may be adverse to that of the client;
- (f) if such action is necessary to avoid the agent breaching this code of conduct; or
- (g) if any other good cause exists.

(4) If an industrial agent withdraws from representing a client the agent must take reasonable care to avoid foreseeable harm to the client, including —

- (a) giving due notice to the client;
- (b) allowing reasonable time for the substitution of a new agent;
- (c) co-operating with the new agent; and
- (d) subject to the satisfaction of any lien the agent may have, promptly turning over all papers and property and paying to the client any monies to which the client is entitled.

Fees

9. (1) An industrial agent must as soon as possible inform a client in writing of the basis of calculation of the costs of the agent.

(2) During the course of a retainer, an industrial agent must promptly advise the client of any circumstances likely to have a substantial effect on the amount, or basis of calculation, of such costs or any disbursements.

Trust moneys

10. An industrial agent must not hold for or on behalf of a client or other party any moneys in trust without the written authorization of that person.

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.