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INDUSTRIAL RELATIONS ACT 1979

**INDUSTRIAL RELATIONS
(WORKPLACE
AGREEMENTS)
REGULATIONS 1995**

WESTERN AUSTRALIA

**INDUSTRIAL RELATIONS
(WORKPLACE AGREEMENTS)
REGULATIONS 1995**

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INDUSTRIAL RELATIONS ACT 1979
INDUSTRIAL RELATIONS (WORKPLACE AGREEMENTS)
REGULATIONS 1995

Made by His Excellency the Governor in Executive Council.

PART 1 — PRELIMINARY

Citation

1. These regulations may be cited as the *Industrial Relations (Workplace Agreements) Regulations 1995*.

Definition

2. In these regulations —

- (a) a reference to an “agent” includes a reference to a legal practitioner;
- (b) a “referral” means a referral to the Commission for determination of a question or dispute under section 7F (1) of the Act.

PART 2 — PRACTICE AND PROCEDURE FOR REFERRALS

Documents to be filed in Registry

3. (1) All documents required by this Part to be filed or lodged are to be filed or lodged in the Registrar’s office.

(2) Documents are to be filed or lodged during the times in which, and on any day on which, the Registrar’s office is open for business unless the Registrar or a Deputy Registrar directs otherwise.

(3) Where a document is required to be filed or lodged within a prescribed time and the Registrar’s office is not open for business on the last day on which it may be filed or lodged, the document may be taken to have been filed or lodged, as the case may be, within time if it is filed or lodged on the first day the Registrar’s office is open for business following that time.

(4) With the prior consent of the Registrar, a document may be filed or lodged by sending a facsimile of the original document by facsimile transmission to the Registrar’s office.

(5) Subject to subregulations (6) and (7), where a document is sent by facsimile transmission, filing or lodgment of the document is to be treated as being effected upon completion of the transmission of the document unless it is subsequently established by or on behalf of the Registrar that the document was not in fact received by the Registrar’s office facsimile machine.

(6) Except as otherwise directed by a Commissioner, when a document is filed under this Part, there is also to be lodged such number of copies of the document as there are parties to the matter.

(7) The Registrar or a member of the Registrar's staff may reject a document for filing or lodgment if the document —

- (a) is not in the form, or does not contain an endorsement, required by this Part;
- (b) is not legible in whole or in part;
- (c) is incomplete; or
- (d) is not accompanied by the fee set out in regulation 29 for the filing or lodgment of the document, as the case may be.

Procedure to be followed by Registrar

4. (1) The Registrar is to issue all processes out of the Commission in relation to this Part and stamp each document accepted for filing or to be issued under this Part with the Commission's stamp, endorsed with the date and time of filing or issue.

(2) The Registrar is to cause each notice of referral to be marked with a distinguishing number and all documents subsequently taken in by, and any determination of, the Commission in relation to the referral to be marked with the same number.

(3) The Registrar is to cause copies of documents lodged under regulation 3 (6) to be stamped and returned to the lodging party.

(4) The Registrar is to keep a register of all referrals and the entries in the records kept with regard to each referral are to be entered together and kept separate from entries that relate to any other referral.

Notices of referrals

5. (1) A referral is to be commenced by a notice in the form of Form 1 in Schedule 1 that is filed together with the attachments required by subregulation (2) (b).

(2) A notice of referral is to —

- (a) be signed by the applicant or the applicant's agent; and
- (b) have attached a copy of —
 - (i) the workplace agreement that is the subject of the referral; and
 - (ii) if the agreement under section 7F of the Act for the referral is separate from the workplace agreement, the written agreement for the referral.

Service of notice of referral

6. (1) Subject to an order made under subregulation (2), a copy of the notice of referral and each of the attachments to it that have been lodged with, and stamped by, the Registrar is to be served —

- (a) on each party to; and
- (b) on any other persons bound under section 12 (1) of the *Workplace Agreements Act 1993* by,

the workplace agreement that is the subject of the referral.

(2) The Commission may order that a person need not be served as required under subregulation (1) if the Commission is satisfied that —

- (a) the person —
 - (i) has been informed of the nature of each matter that is proposed to be a subject of the referral;
 - (ii) has been informed that each matter referred to in subparagraph (i) is proposed to be a subject of the referral; and
 - (iii) has decided not to be a party to the referral;
- or
- (b) the outcome of the referral would be of such insignificance to the person as to justify the person not being served.

(3) An application for an order under subregulation (2) is to be made to the Commission in chambers and dealt with *ex parte* unless the Commission directs otherwise.

(4) The grounds on which the application is made are to be set out in the application in relation to each person proposed not to be served.

Applications to the Commission in chambers

7. An application under this Part to the Commission in chambers is to be in the form of Form 2 in Schedule 1 and filed.

Answer not necessary

8. It is not necessary for an answer to the notice of referral to be filed but the matter is not to be listed for hearing until there has been filed proof of service of the notice on each of the parties required to be served.

Further and better particulars

9. (1) A party to a referral may apply to the Commission in chambers for an order that any other party to the referral give further and better particulars of any matter —

- (a) stated in the notice of referral; or
- (b) not stated in the notice but relevant to the referral.

(2) Details of the nature of the particulars sought are to be given in the application.

(3) It is not necessary for an answer to the application to be filed but the application is not to be listed for hearing until there has been filed proof of service on each party to whom the application is directed.

(4) Despite subregulations (1) to (3), the Commission may at any stage during the hearing of a referral permit an oral application for further and better particulars of the kind mentioned in subregulation (1) or of its own motion direct that such particulars be given upon terms that the Commission thinks just.

Notice to admit

10. (1) Any party to a referral may, at least 10 days before the date fixed for the hearing of the referral, file a notice in the form of Form 3 in Schedule 1 and serve the notice on any other party to the referral, requiring the party served to admit any fact relevant to the referral.

(2) Within 7 days of being served with a notice to admit, a party is to file and serve upon the party who gave the notice, a written reply admitting or denying each fact alleged in the notice, with or without qualification.

Production and inspection of documents

11. (1) A party to a referral may apply to the Commission in chambers for an order directing any other party to the referral to produce for inspection by the applicant any document in the possession, power or control of the other party where the document is, or contains anything, relevant to the referral.

(2) The grounds on which the application is made are to be set out in the application.

(3) It is not necessary for an answer to the application to be filed but the application is not to be listed for hearing until there has been filed proof of service on each party to whom the application is directed.

(4) Despite subregulations (1) to (3), the Commission may at any stage during the hearing of a referral permit an oral application for the production and inspection of documents of the kind mentioned in subregulation (1) upon terms that the Commission thinks just.

Taking of depositions

12. (1) The Commission may, where it appears just and expedient to do so in relation to a referral, make an order for the examination upon oath or otherwise before the Commission or any officer of the Commission, and at any place, of any witness or person, and may make such order in relation to the taking of the deposition of such witness or person as the Commission thinks necessary.

(2) An application for an order under subregulation (1) is to be made to the Commission in chambers.

(3) It is not necessary for an answer to the application to be filed but the application is not to be listed for hearing until there has been filed proof of service on each other party to the referral.

(4) An examination mentioned in subregulation (1) is to take place in the presence of the parties or their representatives, or of such of them that appear, and the witness may be cross-examined and re-examined.

(5) The deposition taken on the examination is to be taken down in writing by, or in the presence of, the examiner so as to represent as nearly as may be the statement of the witness, and when completed is to be read to or by the witness and signed when correct by the witness in the presence of the parties who attended the examination.

(6) The examiner is to cause the original signed deposition to be filed.

(7) Unless otherwise directed by the Commission, no deposition may be given in evidence at the hearing without the consent of the party against whom the deposition may be offered in evidence unless the Commission is satisfied that the deponent is dead or beyond the jurisdiction of the Commission or unable from sickness or other cause to attend the hearing; in any of which cases the deposition certified by the examiner is admissible in evidence without proof of the signature to the certificate.

Summons to witness

13. (1) A summons to a witness to attend the hearing in relation to a referral is to be in the form of Form 4 in Schedule 1.

(2) A summons cannot be directed to more than one person.

(3) Each summons is to be prepared in duplicate by the party requesting it and filed and the Registrar is to retain the original, sign and stamp the duplicate and return the duplicate to the requesting party for service.

(4) A summons must be served personally on the person named in the summons.

(5) At the time of service, the person serving the summons must tender to the person named in the summons sufficient money to enable the person named in the summons to travel between his or her place of residence or employment (whichever is appropriate) and the place of hearing mentioned in the summons.

(6) A person summoned under this regulation must not, without reasonable cause, proof of which is on the person —

- (a) fail to attend for examination;
- (b) fail to bring any document required by the summons to be brought;
- (c) having attended, refuse to be sworn or affirmed; or
- (d) having attended, refuse to answer a question if directed to do so by the Commission.

Applications to set aside witness summons

14. (1) Where a summons has been served on a person to appear and give evidence before the Commission in relation to a referral, the person may make an application to the Commission in chambers for cause to be shown for that person to appear, and, if on the hearing of the application cause is not shown, the person is not required to appear.

(2) The application is to be served on the party who required the summons to be issued.

(3) It is not necessary for an answer to the application to be filed but the application is not to be listed for hearing until there has been filed proof of service on the party mentioned in subregulation (2).

Warrant to act as agent

15. (1) Subject to this regulation, a person may not be recognised as the agent for a party to a referral unless the person is appointed in the form of Form 5 in Schedule 1 and the form is filed.

(2) A person may authorize any other person or member of a class of persons to act for the first-mentioned person and the authorization is to be in writing and filed.

(3) An authorization given under subregulation (2) may be for a specified period of time or indefinitely and has effect until a withdrawal of authority is filed.

(4) Where a person appoints another person as agent in relation to a referral and at the time at which the first-mentioned person signs Form 5 he or she expressly validates any action taken by the person appointed as agent in respect of that matter before the time of signing, all such previous action is to be treated as being taken by the first-mentioned person.

(5) A notice of referral or any subsequent document in the referral may be signed and filed by the agent on behalf of the person who appointed the agent under this regulation.

(6) A document filed or lodged by an agent is to be filed or lodged in the name of the party and be endorsed with the name of the agent and the fact that the agent is acting as the agent of the party.

(7) An agent may represent more than one person in a referral as long as each person represented is named in the, or a, form mentioned in subregulation (1).

Service

16. (1) Unless the Commission directs otherwise and subject to regulation 13 (4), service of a document under this Part may be effected —

- (a) in the case of an organization, in the manner prescribed by section 60 (3) of the Act;
- (b) in the case of a corporation (other than an organization), by leaving it at, or sending it by prepaid post to, its principal place of business or principal office of business in the State or the registered office of the corporation;
- (c) in the case of a partnership, firm or unincorporated body, by leaving it at, or sending it by prepaid post to the principal place of business of the partnership, firm or body, in the State; or
- (d) in the case of any other person, by delivering it to the person personally, or by leaving it for the person at the person's usual or last known place of residence, or if the person is a principal of a business at the person's usual or last known place of business; or by sending it by prepaid post to the person's usual or last known place of residence, or if the person is a principal of a business to the person's usual or last known place of business.

(2) Where —

- (a) a party to a referral; or
- (b) the agent of a party to a referral,

has given written notice to the effect that the agent whose name and address is stated in the notice is authorized to accept service on behalf of the party, service of a document on the party may be effected by leaving the document with, or sending it by prepaid post to, the agent at the address stated in the notice.

Substituted service

17. (1) Where it is not practicable to serve a document on a person in the manner required under regulation 16, the Commission may order that the document be served on the person by substituted service.

(2) An application for substituted service is to be made to the Commission in chambers and dealt with *ex parte* unless the Commission directs otherwise.

(3) The grounds on which the application is made are to be set out in the application.

(4) Substituted service ordered under this regulation is effected by taking such steps as the Commission directs to bring the document to the notice of the person to be served and has the same effect as service under regulation 16.

Proof of service

18. (1) Where service of any document is required for the purposes of this Part proof of such service is to be given by statutory declaration in the form of Form 6 in Schedule 1 filed within 7 days of the day on which service was effected unless the hearing date is within that time in which case the form is to be filed before or on the hearing date.

(2) Where service is effected by prepaid post, unless the contrary is proven, the service is to be treated as having been effected at the time at which the letter containing the document would have been delivered in the ordinary course of post.

Answers etc.

19. (1) A party to a referral who wishes to give an answer to a notice of referral or to an application under regulation 9, 11, 12 or 14 may do so by filing a notice in the form of Form 7 in Schedule 1.

(2) A party referred to in subregulation (1) is to serve the notice of answer on the applicant and all other persons on whom the notice of referral or application, as the case may be, has also been served, within 21 days of being served with the notice of referral or application.

Extension or abridgment of time

20. (1) A party to a referral may apply to the Commission to extend or abridge the time prescribed by these regulations for doing any thing.

(2) An application under subregulation (1) is to be made to the Commission in chambers, unless the Commission otherwise directs.

(3) An application to extend the time for the doing of any thing is to be made before that time has expired.

(4) The grounds on which the application is made, and the period of the extension or abridgment as the case may be, are to be set out in the application.

(5) Unless the Commission directs otherwise, it is not necessary to serve the application which may be determined by the Commission after the Commission makes enquiries as it thinks appropriate in the circumstances of each case.

(6) Subregulation (4) does not apply if all of the persons concerned consent to the extension or abridgment of time and endorse the application accordingly.

Application for and notice of hearing

21. (1) When all necessary procedure has been completed, any party to a referral may lodge with the Registrar an application for a date and place to be fixed for the hearing of the referral.

(2) The Registrar is to give each party to the referral at least 7 days' notice of the time and place fixed for hearing in the form of Form 8 in Schedule 1.

(3) Despite subregulation (1), a referral may be listed for hearing by the Commission without a request from any party if the Commission considers it appropriate in the circumstances of the case to do so.

Procedure for the hearing of the referral

22. (1) The procedure before the Commission in relation to a referral is to be as follows —

- (a) the applicant is to state the applicant's case and then call witnesses, if any;
- (b) unless the Commission otherwise permits, the examination in chief may not be conducted by more than one person on behalf of the applicant and the cross-examination may not be conducted by more than one person on behalf of each of the other parties;
- (c) the applicant may re-examine but the re-examination is to be confined to matters arising out of the cross-examination;
- (d) the case for the applicant is then to close;
- (e) other parties, if any, are to in turn state their cases and call witnesses, if any, and paragraphs (b), (c) and (d) apply with such modifications as are necessary.

(2) The procedure mentioned in subregulation (1) may be modified or varied by the Commission where the Commission considers it just or expedient to do so.

Exhibits

23. No party to a referral may remove any exhibit tendered as evidence in the hearing without the leave of the Commission.

Declarations and affidavits

24. A party to a referral who wishes to use any statutory declaration or affidavit in relation to the referral is to file and serve the statutory declaration or affidavit on each other party to the referral not less than 24 hours before the time fixed for the hearing.

Exemption from procedural requirements of regulations

25. The Commission may, in relation to a referral before it, in special circumstances, and either absolutely or subject to conditions, exempt any person from compliance with any procedural requirement of these regulations.

Commission may make orders for costs

26. For the purposes of enforcing a provision of these regulations relating to practice and procedure for a referral, the Commission may order that a party to the referral pay such costs as are specified in the order.

Non-compliance with regulations

27. Non-compliance with any of these regulations is not to be taken to mean that the proceedings are of no effect but the Commission may set aside the proceedings either wholly or in part, as irregular, or amend or otherwise deal with the matter and upon such terms as the Commission thinks fit.

Determinations

28. (1) Every determination of a matter referred under section 7F of the Act —

- (a) is to be in writing;
- (b) is to be sealed with the seal of the Commission;
- (c) is to be deposited in the office of the Registrar in a sealed envelope;
- (d) is not to be open to inspection by any person other than a person who is a party to the referral or any other person who, by order of the Commissioner, may inspect the determination.

(2) The Commission may order that the determination in relation to a referral not be inspected by any person who would otherwise be entitled to inspect the determination until the fee under regulation 30 in relation to the referral has been paid.

Fees for filing and services of Commission

29. (1) The fee for the filing or lodgment of a document referred to in column 1 of the Table to this subregulation is set out in the corresponding reference in column 2 of the Table.

Table

Document	Fee (\$)
Notice of referral	5.00
Application to Commission in chambers	5.00
Notice to admit	5.00
Reply to notice to admit	5.00
Witness summons	5.00
Affidavit or declaration	5.00
Application to fix hearing date	5.00
Answer	5.00

(2) No fee is payable for filing any of the following documents —

- (a) warrant to appear as agent;
- (b) notice of change of address for service;
- (c) notice of discontinuance of referral or application.

(3) The party applying to the Registrar or an examiner for a service of the type referred to in column 1 of the Table to this subregulation is to pay the fee corresponding in column 2 of the Table to the service.

Table

Service	Fee (\$)
Taking of deposition	1.00 per page
Authentication of document	4.00
Inspection of one or more documents in custody of the Registrar (per day)	1.00
Photocopy of transcript of proceedings	1.00 per page
Photocopy of reasons for determination (first copy to be issued free of charge to each party who appeared at the proceedings)	2.75 plus 20c for each page in excess of 10 pages
Photocopy of exhibits or other documents	20c per page

Fees for services of Commissioners

30. (1) The fee to be paid for the time taken by a Commissioner performing a function in relation to a referral is \$70.00 per hour, or *pro rata* for part of an hour, rounded to the nearest quarter hour.

(2) The fee in relation to the referral is to be paid —

- (a) if there is a provision in the relevant workplace agreement or agreement under section 7F of the Act under which a party is liable to pay the fee, then by that party in accordance with the provision; or
- (b) if there is no such provision, then by each party to the referral.

(3) Each person to whom subregulation (2) (b) applies is jointly and severally liable to pay the fee unless, and to the extent that, the Commission orders otherwise.

(4) The Registrar is to serve a notice on each party who is liable to pay the fee, or a portion of the fee, in relation to the referral —

- (a) if the referral has proceeded to a hearing, when informed by the Commissioner that the Commissioner is ready to hand down the determination; and

- (b) if the referral has been discontinued or otherwise settled without proceeding to a hearing, when the Registrar is informed of the discontinuance or settlement.

(5) The Registrar is to set out in a notice under subregulation (4) —

- (a) each procedural matter; and
- (b) any other matter,

in relation to the referral that required the Commissioner's consideration, and the time spent by the Commissioner on each of those matters.

(6) A party who is served with a notice under subregulation (4) is to pay the fee within 7 days of service.

(7) The Commissioner who is to make a determination in relation to a referral may refuse to hand down the determination until the fee under this regulation has been paid.

PART 3 — APPEALS FROM DETERMINATIONS UNDER SECTION 7F

Appeals to Industrial Appeal Court

31. For the purposes of section 7H (b) of the Act, an appeal from a determination under section 7F of the Act lies to the Court but only —

- (a) on a question of law arising out of the determination; and
- (b) with the leave of the Court.

SCHEDULE 1 — FORMS

FORM 1

[Regulation 5 (1)]

Industrial Relations Act 1979 section 7F

In the Western Australian Industrial Relations Commission

Notice of referral in relation to the meaning or effect of a workplace agreement

To: No. of 19 ..
.....
.....
(names and addresses for service of all parties to the workplace agreement other than applicants — attach schedule if insufficient space)

Take notice that
.....
.....
(names and addresses for service of applicant/s — attach schedule if insufficient space)

has/have this day referred to the Commission for determination a question or dispute that has arisen between the parties to a workplace agreement about the meaning or effect of the agreement.
The workplace agreement is no. _____ of 19
(insert number of workplace agreement allocated by the Commissioner of Workplace Agreements)

The question to which an answer is required
OR the dispute which requires determination
is as follows
.....
.....

The provision/s of the workplace agreement under which the question or dispute has arisen is/are as follows —
.....
.....

The facts giving rise to the referral are as follows —
.....
.....
(attach schedule if insufficient space)

The parties request that Commissioner _____
(insert name of Commissioner if the parties have agreed) makes the determination in this matter.

.....
Signature of applicant or applicant's agent

NB: *Attach to this form a copy of the workplace agreement and, if separate, a copy of the written agreement of the parties to refer this matter to the Commission.*

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FORM 2

[Regulation 7]

Industrial Relations Act 1979 section 7F

In the Western Australian Industrial Relations Commission

No. of 19 .

IN THE MATTER OF

BETWEEN
.....
..... (Applicant/s to referral)

AND
.....
..... (Other parties to referral)

Application for an order of the Commission in Chambers

Let all parties concerned attend the Commission in chambers on _____ day, the _____ day of _____ 19 _____ at _____ a.m./p.m. on the hearing of an application of the part of for the following order/s —

.....
.....
.....

The grounds of this application are —

(complete if applying for an order that a person need not be served, for production and inspection of documents, for substituted service or for the extension or abridgment of time)

The period of the extension or abridgment of time sought is
(complete if applying for the extension or abridgment of time)

.....
Signature of applicant or applicant's agent

15

FORM 3

[Regulation 10 (1)]

Industrial Relations Act 1979 section 7F

In the Western Australian Industrial Relations Commission

No. of 19

IN THE MATTER OF

BETWEEN
.....
..... (Applicant/s to referral)

AND
.....
..... (Other parties to referral)

Notice to admit

To:
.....
of

Take notice that you are required within 7 days of receiving this notice to admit or deny in writing, with or without qualification, the following facts —
.....
.....
.....

and take further notice that within that time you are also required to file the reply in the office of the Registrar of the Industrial Relations Commission and serve a copy of the reply on the party issuing this notice.

This notice is issued by
.....
of

(state name and address for service of party requesting the admission or denial of the above facts)

.....
Signature of requesting party or
party's agent

FORM 4

[Regulation 13 (1)]

Industrial Relations Act 1979 section 7F

In the Western Australian Industrial Relations Commission

No. of 19 .

IN THE MATTER OF

BETWEEN

(Applicant/s to referral)

AND

(Other parties to referral)

Summons to Witness

To:
of

You are summoned to appear before the Commission at a.m/p.m
on _____ the _____ day of _____ 19 _____
at

(address of Commission)

until discharged from attendance, to give evidence concerning the above-
mentioned matter on behalf of

(name and address of party taking out summons)

And you are also required to have and produce at the same time and place all
documents in your possession or under your control in any way relating to
these proceedings and in particular, but not exclusively, the following —
.....
.....

If you fail or refuse to comply with this summons then you may become liable
to pay a penalty.

17

FORM 5

[Regulation 15]

Industrial Relations Act 1979 section 7F

In the Western Australian Industrial Relations Commission

No. of 19

IN THE MATTER OF

BETWEEN

(Applicant/s to referral)

AND

(Other parties to referral)

Warrant to act as agent

(full name of agent in block letters)

of

(address)

is authorized to act for/and accept service on behalf of [delete if not applicable]

(name of person/s for whom agent is acting — attach schedule if insufficient space)

as agent in these proceedings.

Period of authorization

Dated this _____ day of _____ 19_____.

Signature of person appointing agent

FORM 6

[Regulation 18 (1)]

Industrial Relations Act 1979 section 7F

In the Western Australian Industrial Relations Commission

No. of 19

IN THE MATTER OF

BETWEEN

(Applicant/s) to referral

AND

(Other parties to referral)

Declaration of Service

I, (full name in block letters)

of (address)

in the State of Western Australia do solemnly and sincerely declare that on the day of 19, I served the following document/s

*upon (name of party served)

*by (state method of service — see regulations 13 (4), 16 and 17)

*at (place of service or in case of service by post, address of party served)

And I make this solemn declaration by virtue of section 106 of the Evidence Act 1906.

Declared at in the State of Western Australia this day of 19 before me —

Justice of the Peace
Commissioner for Declarations
Other authorized person

(*Attach schedule if insufficient space)

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FORM 7

[Regulation 19 (1)]

Industrial Relations Act 1979 section 7F

In the Western Australian Industrial Relations Commission

No. of 19

IN THE MATTER OF

BETWEEN

AND
(Applicant/s to referral)
.....
(Other parties to referral)

Notice of answer

To:

Take notice that the particulars of the answer to your notice of referral/application dated are as follows —

.....
.....
.....
.....
.....

(Attach schedule if insufficient space)

.....
Signature of respondent
or respondent's agent

20

FORM 8

[Regulation 21 (2)]

Industrial Relations Act 1979 section 7F

In the Western Australian Industrial Relations Commission

No. of 19 .

IN THE MATTER OF

BETWEEN

(Applicant/s to referral)

AND

(Other parties to referral)

Notice of hearing

To:

Take notice that Commissioner
will sit at

in court number
on _____ day the _____ day of _____ 19__
at _____ a.m./p.m. to hear this matter.

(Seal of Commission)

By His Excellency's Command,

J. PRITCHARD, Clerk of the Council.

