

**INDUSTRIAL RELATIONS**

IR301

**INDUSTRIAL RELATIONS ACT 1979  
INDUSTRIAL RELATIONS COMMISSION AMENDMENT REGULATIONS  
1991**

Pursuant to the powers conferred by section 113 of the Industrial Relations Act 1979 and all other powers enabling the Western Australian Industrial Relations Commission hereby makes the following regulations:

1. (1) These regulations may be cited as the Industrial Relations Commission Amendments Regulations, 1991.

(2) In these regulations the Industrial Relations Commission Regulations 1985\* as amended are referred to as the principal regulations.

*[\*Published in the Government Gazette 28 February 1985 at pages 3-50 and see amendments published in the Government Gazette on 16 August 1985, 1 November 1985 and 19 August 1988.]*

2. Regulation 32 of the principal regulations is amended by repealing the existing regulation and substituting the following regulation:

“ 32. In this Part of these regulations the terms “Chairman”, “Department”, “Chief Executive Officer”, to this “teacher” and “Tribunal” shall, unless the context otherwise requires, have the same meaning as that attributed to those terms in Division 1 of Part II A of the Act. ”

3. Regulation 34 of the principal regulations is amended:

(a) by repealing subregulations (2) and (3) and substituting the following subregulations—

“ (2) A notice of appeal shall clearly and concisely set out the grounds of the appeal and shall be signed by the appellant or his agent provided that said agent has been duly authorised by the filing of a warrant in accordance with Form 27.

(3) An appeal under section 78(1)(b)(i) of the Act shall be filed within 14 days of the date on which the notice given under the Education Act Regulations, 1960 of the decision with respect to which the appeal is filed or lodged, is served or deemed to have been served on the appellant. ”

(b) by repealing subregulations (6) and (7) and substituting the following subregulations—

“ (6) Notwithstanding subregulations (3) and (5) of this regulation, where a teacher is employed in a remote locality or is temporarily absent from his school, he may file or lodge notice of an appeal by facsimile transmission within the time prescribed in subregulation (3) or (5) as the case requires, if notice of appeal is filed in accordance with subregulation (1) within 7 days next following the last day under subregulation (3) or (5), as the case requires, and an appeal so filed shall be deemed to have been filed or lodged within the time prescribed by subregulations (3) and (5).

(7) The appellant shall upon the return to him of the stamped copy of the notice of appeal serve or cause to be served a copy of the notice on the Chief Executive Officer. ”

4. Regulation 35 of the principal regulations is amended by repealing the existing regulation and substituting the following regulation:

“ 35. For the purposes of the interpretation of that term in subsection (1) of section 80 of the Act—

“efficiency” shall be determined by having regard for the position to be filled and the experience, qualifications, diligence and conduct of the teacher; but shall not include experience in an acting capacity. ”

5. Regulation 38 of the principal regulations is amended by repealing the existing regulation and substituting the following regulation:

“ 38. Subject to (8) hereof, the following shall apply to all appeals brought pursuant to section 78(1)(b)(i) of the Act.

(1) Upon the appellant filing a Declaration of Service (Form 2) in respect of an appeal instituted pursuant to section 78(1)(b)(i) of the Act, the Clerk to the Tribunal shall forward the details of the appeal/s to the employer.

(2) On receipt of the document pursuant to 1. hereof, the employer within 7 days shall file in the Registry a statement and documents which shall include the following: the relevant details of the position under appeal, the date of vacancy of the position, the date advertised, a copy of the relevant advertisement/s, the date applications closed, details of the selection process including the membership of any selection panel and the criteria used for selection; and a summary statement of the employment record of each appellant and of the recommended applicant.

(3) Copies of the statement and documents filed pursuant to 2. hereof shall be forwarded within the same 7 days by the employer to each appellant against the decision to promote.

(4) Each party to an appeal (i.e. each appellant and the respondent employer) shall serve on the other parties a written statement of evidence to be produced at the hearing in support of the appeal or the recommendation as the case may be.

Such statements shall not include any material or information which was not available to the selection panel which made the decision.

(5) Service of such statements shall be effected at least four working days prior to the date set down for hearing the appeal.

(6) Three copies of the statement of evidence of each party as per 4. hereof is to be received by the Registry of the Western Australian Industrial Relations Commission (4th Floor, 815 Hay Street, Perth) at least four working days prior to the date set down for hearing the appeal.

(7) The procedure during the hearing of an appeal will be as follows:

The respondent employer shall briefly state its case; and shall include reference to the application of the criteria used in making the selection decision to the recommended applicant and to any appellant for the position.

The respondent employer is expected to call the chairperson of the selection panel or a person directly involved in the selection decision and the recommended applicant to give evidence. The recommended applicant will be expected to verify the statement of evidence submitted in accordance with 4. hereof. The appellants shall be entitled to cross-examine. The respondent employer shall be entitled only to re-examine on matters arising.

The case for the respondent employer shall then be closed.

The parties should regard all documents and statements of evidence filed in the Registry as read for the purposes of the hearing and part of the record. In presenting its case, a party to the appeal may refer the Tribunal to matters considered of particular relevance in such documents.

In the presentation of the appeal/s to the Tribunal, each appellant is expected to verify the statement of evidence submitted in accordance with 4. hereof and to make submissions going to the specific grounds relied upon for the appeal.

The respondent employer may cross-examine an appellant who gives sworn evidence and any such appellant may deal with matters arising.

The case/s for the appellant/s shall then close.

(8) The Tribunal may waive any of the requirements of this Regulation or vary the procedure at any time. ”

6. Form 8 of the principal regulations is amended by repealing the existing form and substituting the following form:

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Form 8

Industrial Relations Act 1979

IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

No. of 19

NOTICE OF APPEAL BY GOVERNMENT SCHOOL TEACHER

TO: (name and address of respondent)

TAKE NOTICE that (full name and address for service of appellant)

has this day instituted an appeal against the decision to: (here state subject matter of decision appealed against)

notice of which was given on: (date)

on the grounds or for the reasons which follow: (here set forth clearly and concisely the grounds of appeal—attach schedule if necessary)

DATED at this day of 19

Signature of appellant /or authorised agent

(Affix Stamp of Commission)

THE APPROPRIATE FEE IS TO BE PAID UPON LODGEMENT OF THIS APPEAL

NOTE: The appellant or a duly authorised agent is required to sign this notice.

The appellant shall upon the return to him of the stamped copy of appeal serve or cause to be served a copy of this notice on the cited respondent.

Upon proof of service of this notice of appeal the Registrar shall remit the appeal for hearing. "

Dated this 25th day of October 1991.

- P. J. SHARKEY, President.
W. S. COLEMAN, Chief Commissioner.
G. G. HALLIWELL, Senior Commissioner.
G. L. FIELDING, Commissioner.
O. K. SALMON, Commissioner.
J. A. NEGUS, Commissioner.
J. F. GREGOR, Commissioner.
S. A. KENNEDY, Commissioner.
R. N. GEORGE, Commissioner.
A. R. BEECH, Commissioner.
C. B. PARKS, Commissioner.